

**ORDINANCE NO. 1236**

**AN ORDINANCE ADOPTING THE RESTORATION OF THE SILCO THEATER AS AN ECONOMIC DEVELOPMENT PROJECT WITHIN AND FOR THE SILVER CITY ARTS AND CULTURAL DISTRICT PURSUANT TO SECTION 5-10-2 B. NMSA 1978 (LOCAL ECONOMIC DEVELOPMENT ACT) AND SECTION 16-21(a) OF THE MUNICIPAL CODE OF THE TOWN OF SILVER CITY, GRANT COUNTY, NEW MEXICO AND, FURTHER, AUTHORIZING THE EXECUTION OF A PROJECT PARTICIPATION AGREEMENT AND AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE TOWN AND THE STATE OF NEW MEXICO OR AN AGENCY THEROF.**

**Sponsor: Councilor Jose A. Ray, Jr.**

**WHEREAS**, in Section 16-21 of the Municipal Code, the Town has adopted an Economic Development Plan which provides for investment in projects which are designed to create jobs as well as to promote art and cultural projects which further creates a healthy environment for the furtherance of economic development; and

**WHEREAS**, the Silco Theater is a Town-owned facility located within the Town's Arts and Culture District; and

**WHEREAS**, the Town Council finds that the restoration of the Town-owned property located at 311 North Bullard Street, Silver City, commonly known as the Silco Theater, is a worthy project in that it will contribute to the available venues for art and cultural activities and generally enhance the Town's downtown neighborhood; and

**WHEREAS**, the Town Council finds that the Silco Theater Project will be beneficial to the Town as a whole by fostering economic development and revitalization of the downtown area; and

**WHEREAS**, it is the intent of the Town Council that the Town Manager shall explore all available sources of funding to complete the project, including filing applications and other requests for funding from the New Mexico Economic Development Department, and to commit the Town to agreements that include terms of use, and the pledging of appropriate collateral when necessary;

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE TOWN OF SILVER CITY, GRANT COUNTY, NEW MEXICO**, that:

1. The restoration of the Silco Theater located at 311 N. Bullard Street, Silver City, New Mexico is formally adopted as an economic development project of the Town; and
2. The Town Manager is directed to secure funding for the project from any and all available sources, including grants from the New Mexico Economic Development Department; and
3. The Town Manager is hereby authorized to file necessary applications and to commit the Town

to the terms and conditions expressed therein, including where necessary, the pledging of appropriate collateral for monies loaned or granted.

4. The Town Manager is authorized to execute both a Project Participation Agreement and an Intergovernmental Agreement with the State of New Mexico, or an agency thereof, describing the project and the means and measures to be taken in furtherance thereof, which shall be binding upon the Town.

**PASSED, ADOPTED AND APPROVED** by vote of the Council of the Town of Silver City, Grant County, New Mexico, this 10th day of February, 2015.

(Seal)

TOWN OF SILVER CITY

\_\_\_\_\_  
Michael S. Morones, Mayor

ATTEST:

\_\_\_\_\_  
Ann L. Mackie, Town Clerk

**INTERGOVERNMENTAL PROJECT PARTICIPATION AGREEMENT  
NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT AND  
THE TOWN OF SILVER CITY, NEW MEXICO**

This Intergovernmental Agreement (“Agreement”) is entered into as of the date of the last signature affixed below by and between the New Mexico Economic Development Department (“EDD”) and the Town of Silver City and collectively referred to as “the Parties,” with reference to the following facts.

**SECTION 1: RECITALS:**

**WHEREAS**, the New Mexico State Legislature enacted Laws 2014, Chapter 63, Section 5, Subsection 33 which appropriated ten million dollars (\$10,000,000) to EDD “[f]or economic development projects pursuant to the Local Economic Development Act” (the “Appropriation”); and

**WHEREAS**, the purpose of the Local Economic Development Act, NMSA 1978 §§ 5-10-1 through 5-10-13 (2007) (“LEDA”), is to provide “public support for economic development to foster, promote and enhance local economic development efforts...;” and

**WHEREAS**, the Town of Silver City has adopted an Economic Development Plan pursuant to LEDA by Ordinance No. 1230 which established the Town of Silver City’s Economic Development Plan that promotes economic development within the Town of Silver City; and

**WHEREAS**, the Town of Silver City has adopted Ordinance No. \_\_\_\_\_ (“Ordinance”) to approve the economic development project (“Project”) to secure the restoration of Silco Theater; and

**WHEREAS**, EDD and the Town of Silver City desire to enter into this Agreement to facilitate disbursement of funds for the Project;

**NOW THEREFORE**, the Parties do hereby agree to the following terms and conditions to accomplish the Project.

## **SECTION 2. PURPOSE OF AGREEMENT:**

The purpose of this Agreement is to place the primary responsibility on the Town of Silver City for overseeing and administering the appropriation for the Project. It is the intent of the Parties that EDD will TRANSFER an amount not to exceed \$100,000.00 from the appropriation to the Town of Silver City for expenditures made to implement the Project. The Parties agree that any and all State funds received will be accounted for by Town of Silver City as the fiscal agent for EDD in accordance with the procedures the Town of Silver City will use to account for its own funds and property used to implement the project, or any properties acquired or developed by the Town of Silver City as a result of implementation of the Project will be used by the Town of Silver City for economic development purposes only.

## **SECTION 3. SCOPE OF WORK:**

The Town of Silver City will manage the funding in accordance with State and Local Procurement Codes for the appropriation supporting the Project. EDD will transfer an amount not to exceed \$100,000.00 from the appropriation to the Town of Silver City for expenditures made to implement the Project, pursuant to Section 5-10-3(D) of LEDA. In exchange for the Appropriation, Silco Theater will create at a minimum 1 job and make a \$37,274 capital investment during the 1 year after the execution of this Agreement. The Town of Silver City will review the project timeline and progress bi-annually until the five-year anniversary of this Agreement or until it certifies to the Town of Silver City and EDD that the requisite substantive contribution has been provided. In the event Silco Theater falls below the hiring target in any given period, reimbursements will be suspended until hiring target is achieved and sustained for ninety (90) days.

EDD and the Town of Silver City agree that failure of Silco Theater to make the required contribution will result in a violation of the terms and conditions of this Agreement. Such violation, after any cure period granted, will require that EDD foreclose on the security interest.

#### **SECTION 4. Town of Silver City RESPONSIBILITIES:**

The Town of Silver City shall:

1. Submit all documentation supporting expenditures made to implement the Project in a format acceptable to EDD. The Town of Silver City shall notify EDD in writing of any default by the qualified entity within 10 days of the event of default;
2. Serve as Fiscal Agent for the funds transferred to it under this Agreement;
3. Complete all of the following goals identified in this Agreement within the time limits agreed upon by the Parties:
  - a. Account for receipts and disbursements of reimbursed funds;
  - b. Provide EDD with the required financial documentation pertaining to this disbursement;
  - c. Submit all required and reasonably requested documentation to EDD including the endorsed LEDA Ordinance approved by the Town of Silver City Council accepting the Project as a qualifying entity for LEDA, with the accompanying endorsed Project Application and PPA entered into by the Town of Silver City and Silco Theater, a fully executed copy of the security interest, and copies of invoices and other documentation as required by EDD within the time required; and
4. Not impose any obligations on EDD with respect to the administration of this Project, other than the transfer of funds described in this Agreement; and
5. Monitor job creation by Silco Theater and report the number of jobs created in May and November of each year to EDD for a period of 1 year following completion of the Project.

The Parties shall create a Schedule listing all such time limits which shall then be appended to this Agreement and thereupon incorporated into this Agreement and made a part hereof by this reference as though set forth in full.

**SECTION 5. Town of Silver City CERTIFICATIONS:**

As Fiscal Agent, the Town of Silver City hereby assures and certifies that:

1. It will comply with all applicable State laws, regulations, policies, guidelines and requirements with respect to the acceptance and use of State funds;
2. It has the legal authority to receive and expend the funds;
3. It will enforce the provisions of Ordinance No. \_\_\_\_\_ approving the Project;
4. It has exercised due diligence in certifying that the Project is a viable economic development initiative with potential long term economic development benefits;
5. It will provide EDD all documentation and references to expertise it has relied upon in approving this Project upon receipt thereof or reliance thereupon and copies of all reports and documentation it receives from Silco Theater;
6. It shall not at any time during the life of this Agreement convert any property acquired or developed pursuant to this Agreement to uses other than those within the Project description as defined in Section 2 - Purpose of Agreement and Section 3 - Scope of Work stated above;
7. It will notify EDD of any default within 10 days of the event of default. Further, the Town of Silver City shall provide the opportunity for any default to be cured by the Companies in accordance with the PPA prior to termination thereof.
8. No member, officer, or employee of the Town of Silver City or its designees or agents, no member of the governing body of the locality of which the program is situated, and no other public official that exercises any functions or responsibilities with respect to

the Project during his/her tenure, or for one (1) year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the process thereof, for work to be performed in connection with the Project that is the subject of this Agreement. The Town of Silver City shall incorporate in all contracts or subcontracts a provision prohibiting such interest pursuant to this certification; and

9. It has complied with Article IX, Section 14 of the New Mexico Constitution, known as the “anti-donation clause.”

**SECTION 6. EDD RESPONSIBILITIES:**

EDD shall:

1. Transfer an amount not to exceed \$100,000.00 from the appropriation to the Town of Silver City for expenditures made to implement the Project; and
2. At its discretion, review and audit the Project if it is deemed to be necessary or desirable.

**SECTION 7. TERM OF AGREEMENT:**

This Agreement shall become effective on the date it is fully executed and shall terminate when Silco Theater documents that it has provided the required substantive contribution.

**SECTION 8. LIABILITY:**

No party shall be responsible for liability incurred as a result of the other party’s acts or omissions. Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, §§ 41-4-1, et seq. The Parties may agree to reimburse one another under these liability provisions, subject to sufficient appropriation by the New Mexico Legislature or sufficient funds being available to the Party, as determined by the Party responsible for payment.

**SECTION 9. DISPOSITION OF PROPERTY; RECORDS; RETURN OF SURPLUS FUNDS:**

1. Property purchased under this Agreement for the Project shall remain with the purchasing Party unless otherwise agreed upon.
2. The Town of Silver City shall keep such records as will fully disclose the amount and disposition of the total funds from all sources budgeted for the Project, the purposes for which such funds were used, and such other records as EDD may require.
3. If, upon the expiration of the Project or the termination date of this Agreement, any surplus funds are possessed by the Town of Silver City, the Town of Silver City shall return said funds to EDD for disposition in accordance with law.

**SECTION 10. STRICT ACCOUNTABILITY:**

The Town of Silver City shall be strictly accountable for receipts and disbursements relating hereto and shall make all relevant financial records available to EDD and the New Mexico State Auditor quarterly or upon request, and shall maintain all such records for a period of six (6) years following completion of all the records and any audits.

**SECTION 11. REPORTS:**

The Town of Silver City shall submit to EDD the quarterly employment report in the form of an affidavit signed by the Town Manager of Silver City. The Town of Silver City shall submit to EDD a final report respecting direct and indirect job creation and retention attributable to the State Appropriation on or before the termination of this Agreement. The Final Report shall contain a description of work accomplished, the methods and procedures used, a detailed budget breakdown of expenditures, a description of any problems or delays encountered and the reasons therefore, and such other information as may be requested by EDD.



**SECTION 12. NOTICES; REPRESENTATIVES OF THE PARTIES:**

Any notice required to be given to a Party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. Mail, either first class or certified, return receipt requested, postage prepaid, as follows. The Parties hereby designate the individuals named below as their representative responsible for overall administration of this Agreement.

To EDD:

Antoinette Vigil  
Financial Development Team Leader  
Joseph Montoya Building  
1100 St. Francis Drive  
Santa Fe, New Mexico 87505  
antoinette.vigil@state.nm.us

To the Town of Silver City:

Office of the Town of Silver City Manager  
Attn: James Marshall  
Assistant Town Manager  
P.O. Box 1188  
Silver City, NM 88062

**SECTION 13. AMENDMENTS:**

This Agreement shall not be altered, changed, or amended, except by instrument in writing executed by all of the Parties hereto.

**SECTION 14. GOVERNING LAW:**

This Agreement shall be governed by the laws of the State of New Mexico.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the last date of signature below,

Town of Silver City

By: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM

By: \_\_\_\_\_

ECONOMIC DEVELOPMENT DEPARTMENT

By: \_\_\_\_\_

Jon Barela

Cabinet Secretary

Date: \_\_\_\_\_

By: \_\_\_\_\_

Wade Jackson

Its: General Counsel, certifying legal sufficiency