

MEMORANDUM OF UNDERSTANDING

**Doña Ana County
Spaceport Gross Receipts Tax
Distribution to County School Districts**

This Memorandum of Understanding (hereinafter “MOU”) is entered into this _____ day of _____, 2009, by and among the Board of County Commissioners of Doña Ana County (hereinafter “the County”) and the Boards of Education of the Las Cruces Public Schools (hereinafter “LCPS”), the Hatch Valley Public Schools (hereinafter “HVPS”) and the Gadsden Independent Schools (hereinafter “GISD”), (collectively referred to herein as “the School Districts”);

WHEREAS, the parties are local public bodies constituted and acting in accordance with New Mexico law, empowered to enter into contracts for the benefit of the citizens of their governmental entities; and

WHEREAS, State law and the respective powers and duties of the County and of each Board of Education authorize the parties to enter into written agreements with other public entities for the joint exercise of any powers common to the parties; and

WHEREAS, the County has adopted Ordinance No. 227A-07 (hereinafter “the Ordinance”) imposing a gross receipts tax pursuant to its authority under the County Local Option Gross Receipts Tax Act, Section 7-20E-25, NMSA 1978 for the benefit of Spaceport America, which tax is known as the “County Regional Spaceport Gross Receipts Tax”; and

WHEREAS, the voters of Doña Ana County voted to approve said Ordinance imposing the “County Regional Spaceport Gross Receipts Tax” (hereinafter “the Tax”) for the benefit of Spaceport America; and

WHEREAS, the gross receipts tax imposed pursuant to the Ordinance has been in effect since January 2009 and revenue collection has begun; and

WHEREAS, pursuant to the County Regional Gross Receipts Tax Act, the County may retain no more than twenty-five percent (25%) of the tax proceeds for “spaceport-related projects as approved by the resolution of the governing body of the County”; and

WHEREAS, the County has determined, by adoption of Resolution No. 2007-55A, that twenty-five percent (25%) of the revenues generated by the Tax will be retained for “spaceport-related projects”;

WHEREAS, the County has determined that the “spaceport-related projects” it will fund will be educational programs designed and administered by the School Districts;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein, the parties agree as follows:

1. PURPOSE. The purpose of this MOU is to establish the mechanism by which the revenues generated by the Tax for “spaceport-related projects” are to be distributed to the School Districts and the nature of the School District programs which may be funded by the revenues so distributed.

2. ADMINISTERING AGENT. The County is hereby designated to be the entity responsible under this MOU for collection of the Tax revenues and for distribution of the revenues to the School Districts, as provided in the MOU.

3. FORMULA FOR DISTRIBUTION. The County shall disperse the revenues for the “spaceport-related projects” to the School Districts *prorata* on the basis

of each School District's 40th day student membership, as defined by the Public School Finance Act, Section 22-8-1 *et seq.*, NMSA 1978.

4. PROGRAMS FUNDED BY DISTRIBUTED TAXES. The funds distributed pursuant to this MOU shall be used by the School Districts for support and development of special programs that focus on math, science and technology education as follows:

A. The funds will be earmarked for rigorous academic programs to support a strong, technically literate workforce; and,

B. By providing an educational foundation in literacy, math, science and technology, and teaching students about the space industry, the programs will prepare high school graduates for post-secondary education without remediation and/or immediate entry into the workforce in the aerospace and other "high-tech" industries; and

C. The School Districts will ensure such funds will support expansion and improvement of existing science, engineering, technical, and mathematics programs; and

D. The funds will support articulated 6th-12th grade programs aligned to correct readiness standards and correspond to State and regional workforce development initiatives.

E. The School Districts will ensure that a portion of the funds will support a commitment for professional development locally with New Mexico State University and/or Doña Ana Community College.

F. Each School District will make reasonable efforts to include the charter schools within the geographical boundaries of the district.

5. CITIZEN-BASED ADVISORY COMMITTEE. A citizen-based advisory committee of community, educational (in the form of curriculum specialists including those from charter schools of the School Districts), and business leaders will work in conjunction with the local Boards of Education to ensure that such funds are appropriately expended to prepare students to become math-, science-, and technology-literate citizens. Said Committee shall be appointed by the Superintendents of the School Districts, with each appointing five representatives to the Committee. The County shall appoint two additional members to the Committee. Within 90 days from the approval of this MOU, the Committee shall meet, organize and receive reports from each School District as to the program(s) which will be funded by the distributed Tax revenues. It shall be the responsibility of the Committee to provide input and guidance to each School District as to the program(s) designed by the School District, but the role of the Committee shall be advisory only. The Committee shall meet with such frequency as it shall decide is appropriate.

6. REPORTS. Each School District shall, beginning October 1, 2011, make an annual report to the County which shall include an accounting/audit of how the funds have been used, describing and evaluating the program(s) it has developed and operated using the funds provided under this MOU and describing the program(s) to be operated for the current school year.

7. EDUCATIONAL DISCRETION. It is recognized that the School Districts are responsible for the design and implementation of any program(s) funded through this MOU and nothing herein shall be construed as limiting the educational

judgment and discretion of the School Districts in designing or operating their respective curriculum and education programs.

8. TERM OF AGREEMENT. This MOU shall become effective upon approval by the County and the School Districts. The County may terminate this agreement by giving advance written notice of 120 days of its intent to terminate.

9. ENTIRE AGREEMENT. This MOU incorporates all of the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements, and understandings have been merged into this written MOU. No prior agreements or understandings, verbal or otherwise, of the parties or their agents shall become valid or enforceable unless embodied in this MOU.

10. AMENDMENT. This MOU shall not be altered, changed, or amended except by an instrument in writing and executed by the parties hereto.

11. LIABILITY. Each party shall be solely responsible for fiscal or other sanctions occasioned as a result of its own violation or alleged violation of requirements applicable to the performance of the MOU. Each party shall be liable for its actions in accordance with this MOU consistent with the New Mexico Tort Claims Act.

12. ACCOUNTABILITY FOR FUNDS AND RECORDS: Each party shall be strictly accountable for all receipts and disbursements under the MOU. The Districts shall follow the requirements of the Manual of Procedure for Uniform Financial Accounting and Budgeting for the New Mexico Public Schools (Current Edition) in handling and accounting for all property or funds. The County shall follow all applicable federal and state laws and regulations and follow generally accepted accounting

principles. All receipts and disbursements shall be subject to audit in the same manner as County and District funds in accordance with the New Mexico Audit Act.

IN WITNESS WHEREOF, the undersigned representatives of the School Districts and the County have caused this Agreement to be executed, said Agreement to become effective as of the date of the last required signature.

Date: _____ By: _____

Brian D. Haines, County Manager,
Doña Ana County Commission

Date: _____ By: _____

_____, President,
Las Cruces Board of Education

Date: _____ By: _____

_____, President,
Hatch Board of Education

Date: _____ By: _____

_____, President,
Gadsden Board of Education