Alamogordo City Commission

NOTICE OF MEETING

Regular Meeting Agenda

March 9, 2021 - 6:00 PM

The Commission Meeting will be a VIRTUAL MEETING with City Commission and City staff participating through video. The link is: https://www.youtube.com/channel/UCTTgU3xsQBqlyRaME7TaYrQ/live

Richard Boss .... Mayor
Nadia Sikes .... Mayor Pro-Tem, District 2
Jason Baldwin .... District 1
Susan Payne .... District 3
Josh Rardin .... District 4
Sharon McDonald .... District 5
Dusty Wright .... District 6

Brian Cesar .... City Manager
Petria Bengoechea .... City Attorney
Rachel Hughs .... City Clerk

MISSION STATEMENT as Adopted by the City Commission on March 24, 1995.

The City of Alamogordo is a Municipal Corporation that exists solely for the purpose of providing the best possible services to our customers, the citizens of Alamogordo. We are committed to providing these services with honesty, integrity, compassion, fairness, and a commitment to excellence.

We are committed to the long-term financial stability and responsible growth of the City and all decisions will be driven by our commitment to provide the best services possible in a financially sound and responsible manner given the economic realities facing the City.

In accordance with Section 10-15-1.D, NMSA 1978 (2010 Cumulative Supplement), this agenda has been posted on the bulletin board located in the east/west lobby of the City Hall and in the glass case located outside a the north entrance of the City Hall, distributed to the appropriate news media, and posted on the City website: http://ci.alamogordo.nm.us within the required time frame. As a courtesy, the entire Agenda Packet has also been posted on the City of Alamogordo website: http://ci.alamogordo.nm.us

The Mayor and City Commission request that all cell phones be turned off or set to vibrate. Members of the audience are requested to step outside the Commission Chambers to respond to or to conduct a phone conversation. The Alamogordo Commission Chambers is wheelchair accessible. Other special assistance for disabled attendees must be requested 48 hours in advance by contacting the City Clerk's Office at 575-439-4100.

CALL TO ORDER & ROLL CALL

Announce the presence of a Quorum.

INVOCATION & PLEDGE OF ALLEGIANCE

APPROVAL OF AGENDA

PRESENTATIONS

1. Presentation on Otero County Economic Development Council quarterly report. *(Laurie Anderson, Interim Executive Director)*

PUBLIC COMMENT

Residents must submit comments to the City Clerk prior to 3 p.m. on the day of the Commission meeting. Comments will be distributed to the Commission and the City Manager and will be included in the public record.

CITY MANAGER'S REPORT

REMARKS AND INQUIRIES BY THE CITY COMMISSION

CONSENT AGENDA (Roll Call Vote Required for an Ordinance or Resolution)

All matters listed under the Consent Agenda are considered to be routine by the City Commission and will be enacted by one motion. There will not be separate discussion of these items. If discussion is desired, that item will be removed from the Consent Agenda and will be considered separately.

2. Approve the minutes for the February 23, 2021 Regular meeting. *(Rachel Hughs, City Clerk)*

3. Approve the statements related to the Executive Closed Session held on February 23, 2021. *(Rachel Hughs, City Clerk)*

4. Consider, and act upon, final publication and adoption of Ordinance 1626 authorizing the execution and delivery of a loan and subsidy agreement for the amount of $2,151,300.00 between the City of Alamogordo and New Mexico Finance Authority. *(Evelyn Huff, Finance Director)* **(Roll Call Vote Required)**

5. Consider, and act upon, Resolution 2021-07 to apply for the New Mexico Department of Tourism's Clean and Beautiful Grant for FY 22. This will provide funding for the Keep Alamogordo Beautiful program. *(Joshua Sides, Keep Alamogordo Beautiful Program Coordinator)* **(Roll Call Vote Required)**

6. Consider, and act upon, acceptance of grant agreement from NMDOT, Aviation Division, to Alamogordo-White Sands Regional Airport in the amount of $88,000.00 to purchase a tractor and attachments. *(JimTalbert, Airport Manager)*

7. Consider, and act upon, Resolution 2021-08 to apply for the UPS Community & Recovery Tree Planting Grant through Keep America Beautiful. This will provide additional funding for the Keep Alamogordo Beautiful program. *(Joshua Sides, Keep Alamogordo Beautiful Program Coordinator)* **(Roll Call Vote Required)**

ITEMS REMOVED FROM CONSENT AGENDA

NEW BUSINESS

8. Consider, and act upon, the proposed phase of the Alamogordo Family Recreation Center opening and personnel changes. *(Heather Casebolt, AFRC Manager)*

9. Appointments to Boards and Committees. *(Richard Boss, Mayor)*

ADJOURNMENT

AGENDA REPORT
CITY OF ALAMOGORDO
CITY COMMISSION

Meeting Date: 3/9/2021 **Report Date:** 3/3/2021 **Report No:** 1.

Submitted By:

Subject: Presentation on Otero County Economic Development Council quarterly report. *(Laurie Anderson, Interim Executive Director)*

Fiscal Impact:
Amount Budgeted:
Fund:

Additional Fiscal Impact:

Recommendation: Presentation only.

Background:

City of Alamogordo City Commission Meeting
AGENDA REQUEST FORM

Today's Date: March 2, 2021

Request Date of Meeting: March 9, 2021

Name and Title: Otero Co. Economic Development Council, Inc.
Laurie Anderson, Interim Executive Director

Address: 2400 N. Scenic Dr. #113/NMSU-A Campus
Alamogordo, NM **ZIP** 88310

Phone Number: (575) 439-3688

E-Mail Address: l.anderson@ocedc.com

Item requested will be for Information only

Brief description of topic to be discussed:
Please attach one original of any documents pertaining to the topic - We do not allow handouts at the meeting

2nd Quarter OCEDC Report

Signature: Monica Steeby
m.steeby@ocedc.com

Please return to: Rachel Hughs, CMC, City Clerk
City of Alamogordo
1376 E. 9th Street
Alamogordo, NM 88310

Phone: (575) 439-4100 **Fax:** (575) 439-4396 **E-mail:** rhughs@ci.alamogordo.nm.us

Revised 6/16/2020

OCEDC 2nd Quarter Report for 2020-2021 FY

Prospective Recruitment Opportunities

- **NM Partnership Request: PRO SINK**
  - Granite Sink Manufacturer
  - Company asked us to identify companies that are open to exploring partnership opportunities
- **NM Partnership Request: PRO BEANS**
  - Coffee Roasting, Packing & Distribution
  - Building: 35,000-50,000 SQ FT
  - Ceiling Height: 30 FT
  - Loading Dock: 6 or ability to add 6 docks
  - Site: Prefers a Greenfield Site
  - Transaction Type: Prefer to own
  - Workforce: 15 employees immediately and will grow to 30-32 within 3-4 years
- **NM Partnership: PRO BRAIN**
  - R & D and Product Development AEROSPACE (DNQ)
  - Building: 1,500 SQ FT
  - Ceiling Height: 30 FT
  - Site: ALBQ Technology Park
  - Transaction Type: Prefers to lease
- **GSLI: PRO Looking Sharp**
  - Food & Beverage
  - Years in Business: 115
  - Current Employees: 201-500
  - Capital Investment: TBD
  - Building Size: 10,000 to 25,000 SQ FT
  - Land Requirements: 1 to 5 acres
  - New Employee Needs: 20 to 50
- **GSLI: PRO Straw Hat (DNQ)**
  - Environmental
  - Years in Business: <10
  - Current Employees: 10
  - Capital Investment: N/A
  - Building Size: over 500,000 SQ FT
  - Land Requirements: 25 to 100 acres
  - New Employee Needs: 200

- **GSLI: PRO Pack USA**
  - Building size: 200,000 SQ FT
- **GSLI: PRO PIPE MACHINERY**
  - Machinery
  - Building Size: 5,000-10,000 SQ FT
- **GSLI: PRO STAGECOACH**
  - Building Size: 300,000 SQ FT
  - Land Requirements: 1-10 acres
- **GSLI: PRO Gummies**
  - Agriculture
  - Years in Business: 4
  - Current Employees: 200-500
  - Capital Investment: $800,000
  - Building Size: 10,000 to 25,000 SQ FT
  - Land Requirements: 1 to 5 acres
  - New Employee Needs: 50-100
- **GSLI: PRO Quick Ship**
  - Shipping e-commerce fulfillment solution
  - Years in Business: 5+
  - Current Employees: 201
  - Capital Investment: $15,000,000
  - Building Size: 100,000 to 200,000 SQ FT
  - Land Requirements: 1 to 5 acres
  - New Employee Needs: 50 to 100
- **GSLI: PRO POT OF GOLD**
  - Temperature Controlled Warehouse and Distribution Company
  - Building Size: 250,000 SQ FT
  - Greenfield location to construct facility
  - Building Size: 250,000 SQ FT
  - Land Requirements: 5-10 acres
  - 150 new jobs
- **GSLI: PRO Plant Based**
  - Food & Beverage
  - Capital Investment: TBD
  - Building Size: 100,000 SQ FT
  - New Employee Needs: 20-50
- **GSLI: PRO Friendly Fiber**
  - Packaging
  - Building Size: over 50,000 SQ FT
- **GSLI: PRO A+ Appliance-Do Not Qualify**
  - Distribution
  - Building Size: 300,000 SQ FT
  - Land Requirements: 50-100 acres
- **GSLI: PRO HEMPIRE**
  - Agriculture
  - Building Size: 25,000 SQ FT

Business Retention Efforts/Recruiting

- New Business Welcome Card
    - 43 Welcome Cards mailed out
- NM Safe Certified Outreach Cars to Partnership, New & Local Businesses
    - 98 Cards mailed out
- Phone calls/Socially Distanced Visits
    - 42
- Prospective Recruitment Opportunities
    - New Mexico Partnership continues to develop a Virtual Show with Community Participation
        - Due to COVID-19, all familiarization tours and trade shows are on hold
        - Virtual "Show" will be on a multi-month networking platform, highlighting different areas of New Mexico
        - Potential of over 550,000 visitors
    - Attended NM IDEA *Conversations with Site Selectors*

Film Office

- Desert Light Film Festival
    - 2021 Festival will be held virtually, due to COVID-19 pandemic
        - Workshop learning opportunities have been made available to teachers and students through NMSU Zoom meetings
        - Virtual Festival Planning is underway

Marketing Campaign/Collateral

Updated & New Materials

- OCEDC Benefits & Incentives Booklet
- NM Safe Certified Postcard
- NM Safe Certified Card
- Social Media Ads for Holidays, Shopping Local for Holidays, etc.

Social Media

Facebook

- October – 27 posts
- November – 32 posts
- December – 28 posts

LinkedIn

- October – 21 posts
- November – 9 posts
- December – 17 posts

Email Outreach: OCEDC Board, Ex-Officios, Partners, Elected Officials

- October – 21 messages
- November – 12 messages
- December 14 messages

Website

- News – 24 posts (Resources, updates, webinar announcements, etc.)
- Events Calendar – 8 posts (webinar & virtual fairs, etc.)

Professional Development

- NM Outdoor Economics Online Fall Forum, October 1 & 2, 2020
- USDA's New Mexico Community Prosperity Virtual Summit, October 20, 2020
- Small Business Resiliency Virtual Workshop, October 27, 2020
- Planning Great Virtual Events & Podcasts for Your Business, November 12, 2020
- SBA *Get Ready for Small Business Saturday* Webinar, November 16, 2020
- NM EDD *What are COGs (Council of Governments) and How are they Helping with COVID Recovery and Planning*, November 18, 2020
- New Mexico Data Users Conference 2020 (November 16-20, 2020)
  - The New Mexico Economy: Recent History & Outlook
  - New Mexico Census 2020: Response & New Mexico Population Estimates
  - Tribal Area Data Access: Advanced Census Data
  - Economic Census Data & Tools
  - Census Data Basics: How to Find Data
  - 2020 Census Geography: What Changed & What's Stayed the Same
  - Local Employment Dynamics
  - Microdata Analysis on data.census.gov
  - Differential Privacy: Updates on Disclosure Avoidance & How it Will Effect 2020 Census Data
  - New Mexico Health Data
  - 2020 Census Debrief: New Mexico State Data Center Affiliates Meeting
- NM EDD Mini-Series for Business Owners of Color: *Effective Financial Tools for Small Businesses*, November 20, 2020
- NM EDD Small Business CARES Relief Grant Program Overview, December 3, 2020
- NM EDD Small Business CARES Relief Grant Program Overview for Hospitality & Tourism, December 4, 2020
- ReNew Mexico: Rural Jobs Now, hosted by ReNew Mexico, December 9, 2020
- NM EDD Southwestern Business Finance Fair, December 9, 2020
- Holiday Marketing Tips for Businesses, hosted by Gallup MainStreet, December 9, 2020
- SBA Surety Bond Program Overview, December 20, 2020

Miscellaneous

October

- Attended NM IDEA Monthly Board Meeting, October 7, 2020
- Attended Southeastern NM Economic Development Quarterly Meeting, October 9, 2020
- Attended NM IDEA EARN Meeting to discuss challenges of doing business during COVID-19 times, October 15, 2020
- Prepared Quarterly Report PowerPoint for City & County Commission Meetings, October 19, 2020
- Attended the Southeaster NM Housing Coalition Meeting, October 21, 2020

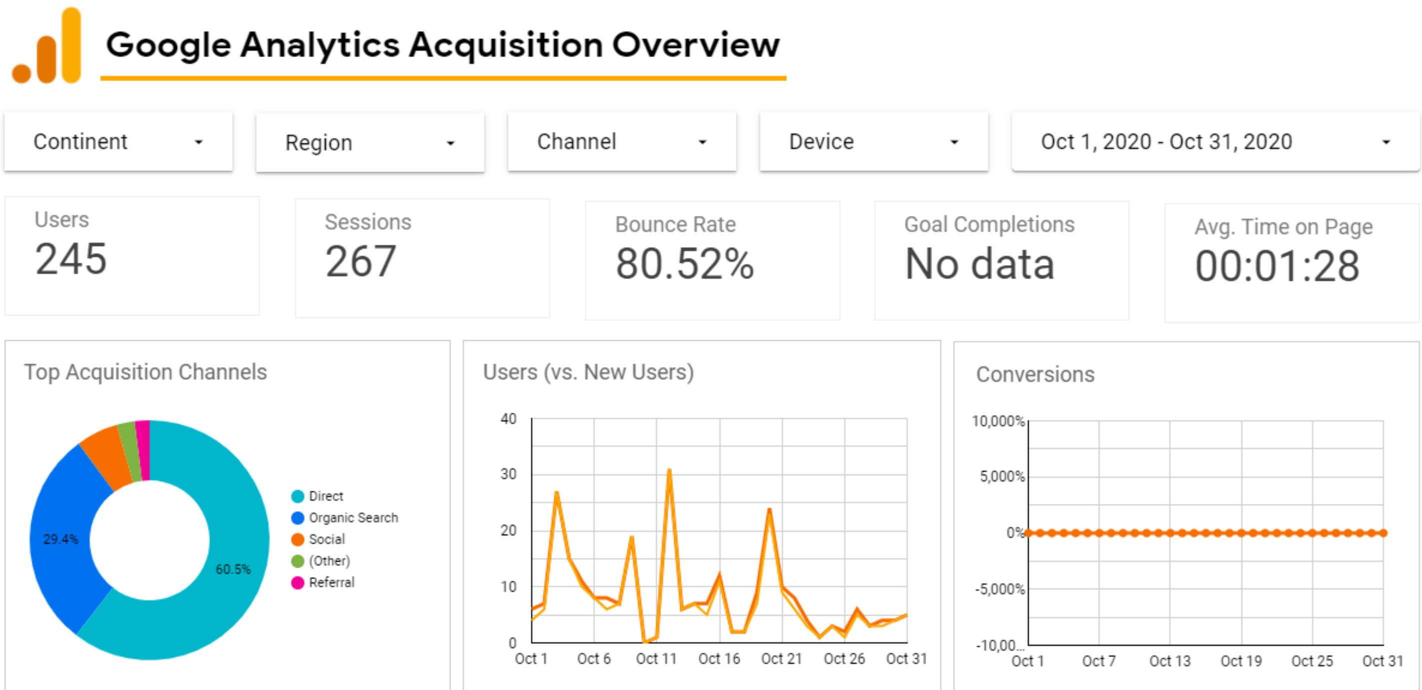
November

- Attended BI/GR, November 10, 2020
- OCEDC offices began working remotely on Monday, November 16, 2020, due to Governor Lujan Grisham's orders
- Attended NM IDEA Fall Meeting, November 19, 2020
- OCEDC offices were closed November 26-27, 2020 for Thanksgiving Holiday
- Attended Foundation Search Finding Solution Webinar, November 30, 2020

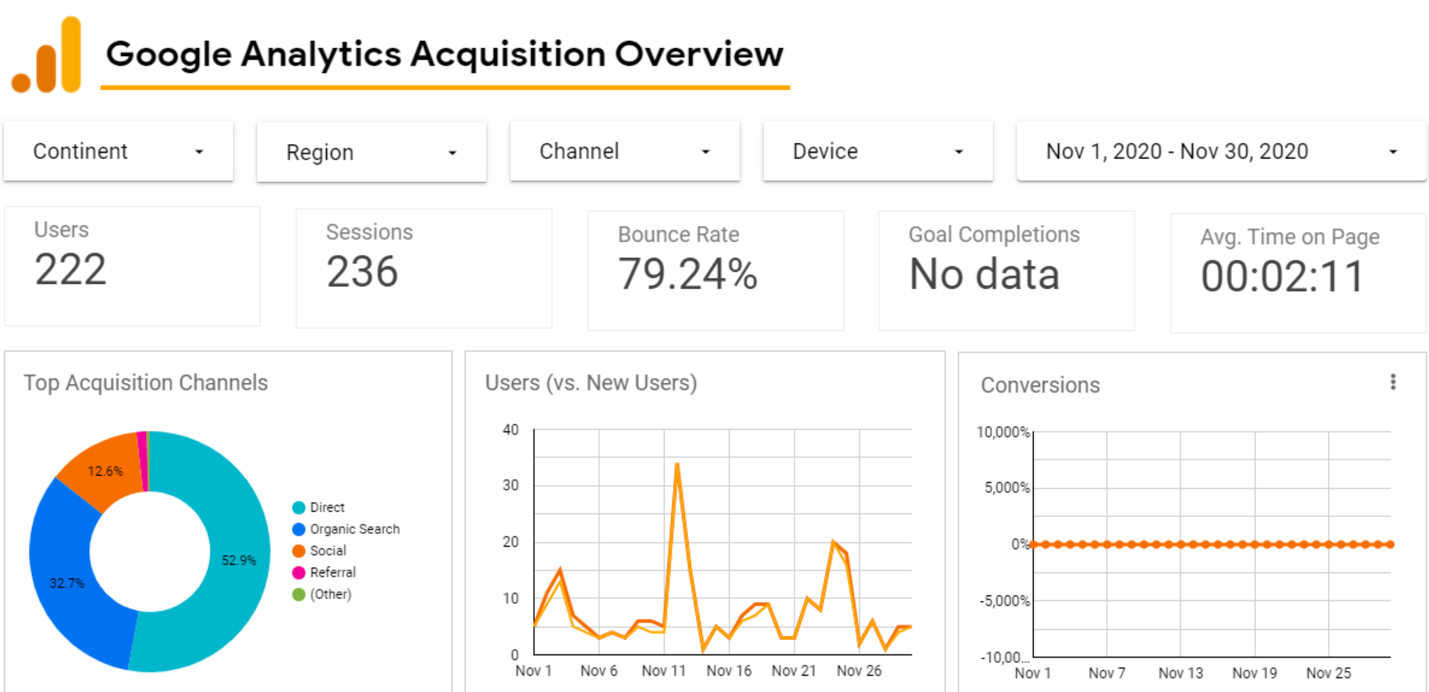
December

- Attended the NM Partnership India-New Mexico Partnership webinar, an interactive session for opportunities for strengthening the partnership, energy, healthcare, logistics and manufacturing, medical and research, December 8, 2020
- Attended NM IDEA Board Meeting, December 9, 2020
- Attended NM Partnership Virtual Site Tours are Here to Stay Round Table speaking one on one with Sara White, Global Location Strategies; Chris Schwinden, Site Selection Group; and Dan Foster, Newmark, December 10, 2020
- Attended the Eastern Plains Council of Governments Regional Legislative Forum, December 17, 2020
- Attended 2nd Quarter Tourism Commission Meeting, December 17, 2020
- Desert Light Film Festival Webinar w/NMSU Film Instructor, December 21, 2020
- OCEDC Offices were closed on campus from December 23, 2020-January 4, 2020

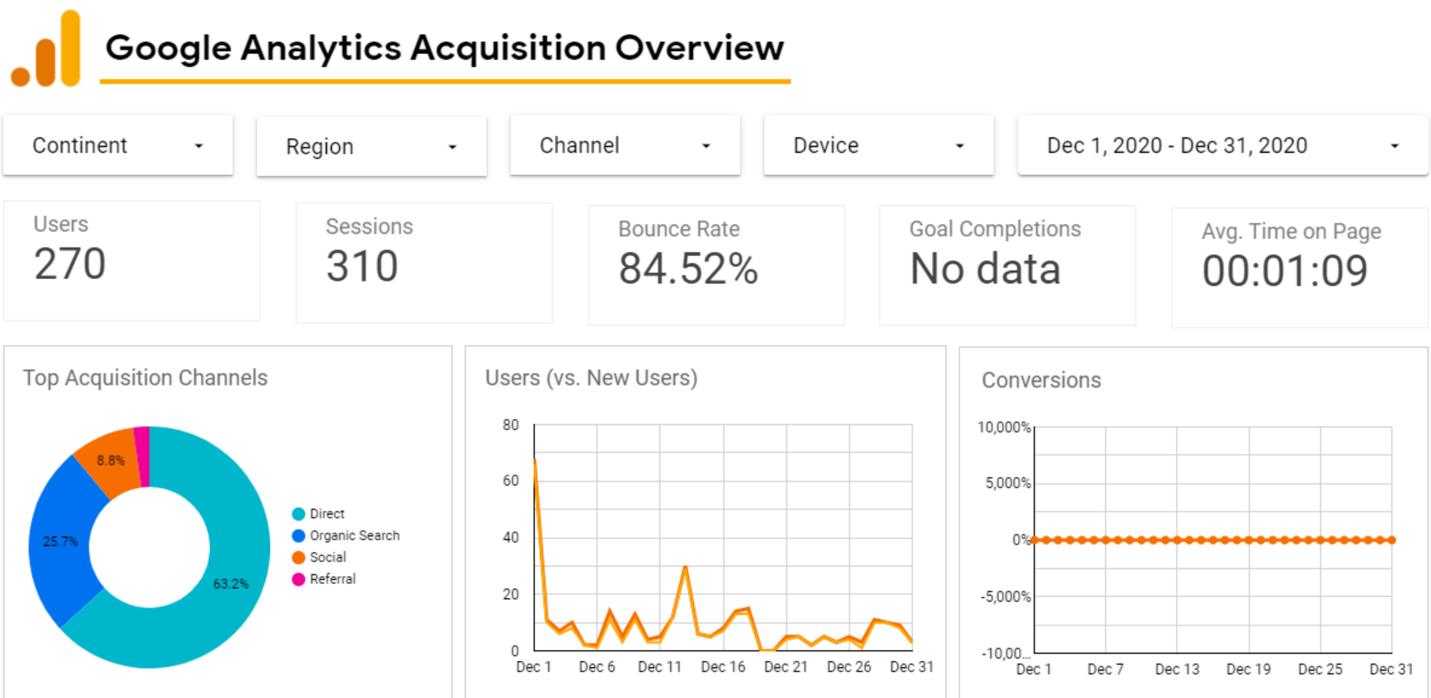
Website Analytics for October 2020



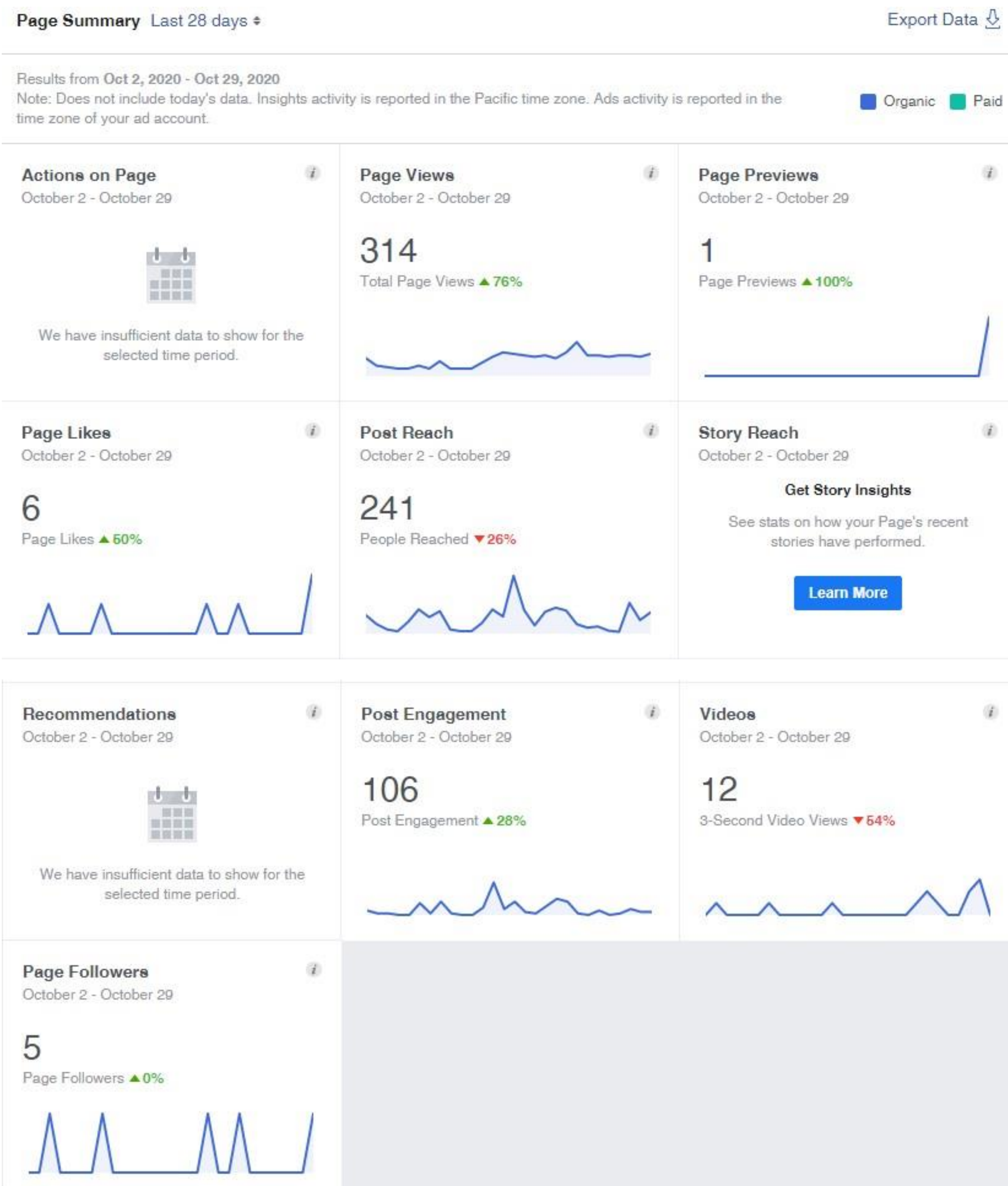
Website Analytics for November 2020



Website Analytics for December 2020



Facebook Analytics for October 2020



Facebook Analytics for November 2020

Results from **Nov 2, 2020 - Nov 29, 2020**
Note: Does not include today's data. Insights activity is reported in the Pacific time zone. Ads activity is reported in the time zone of your ad account.

Organic Paid

Actions on Page
November 2 - November 29

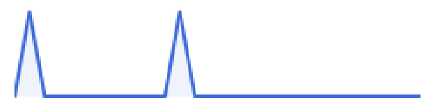
We have insufficient data to show for the selected time period.

Page Views
November 2 - November 29

200
Total Page Views ▼41%

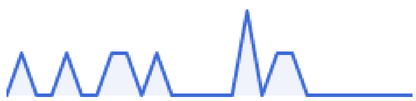
Page Previews
November 2 - November 29

2
Page Previews ▲100%



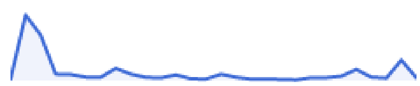
Page Likes
November 2 - November 29

9
Page Likes ▲50%



Post Reach
November 2 - November 29

1,646
People Reached ▲577%



Story Reach
November 2 - November 29

Get Story Insights

See stats on how your Page's recent stories have performed.

Learn More

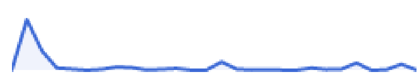
Recommendations

Recommendations
November 2 - November 29

We have insufficient data to show for the selected time period.

Post Engagement
November 2 - November 29

526
Post Engagement ▲426%

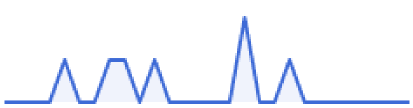


Videos
November 2 - November 29

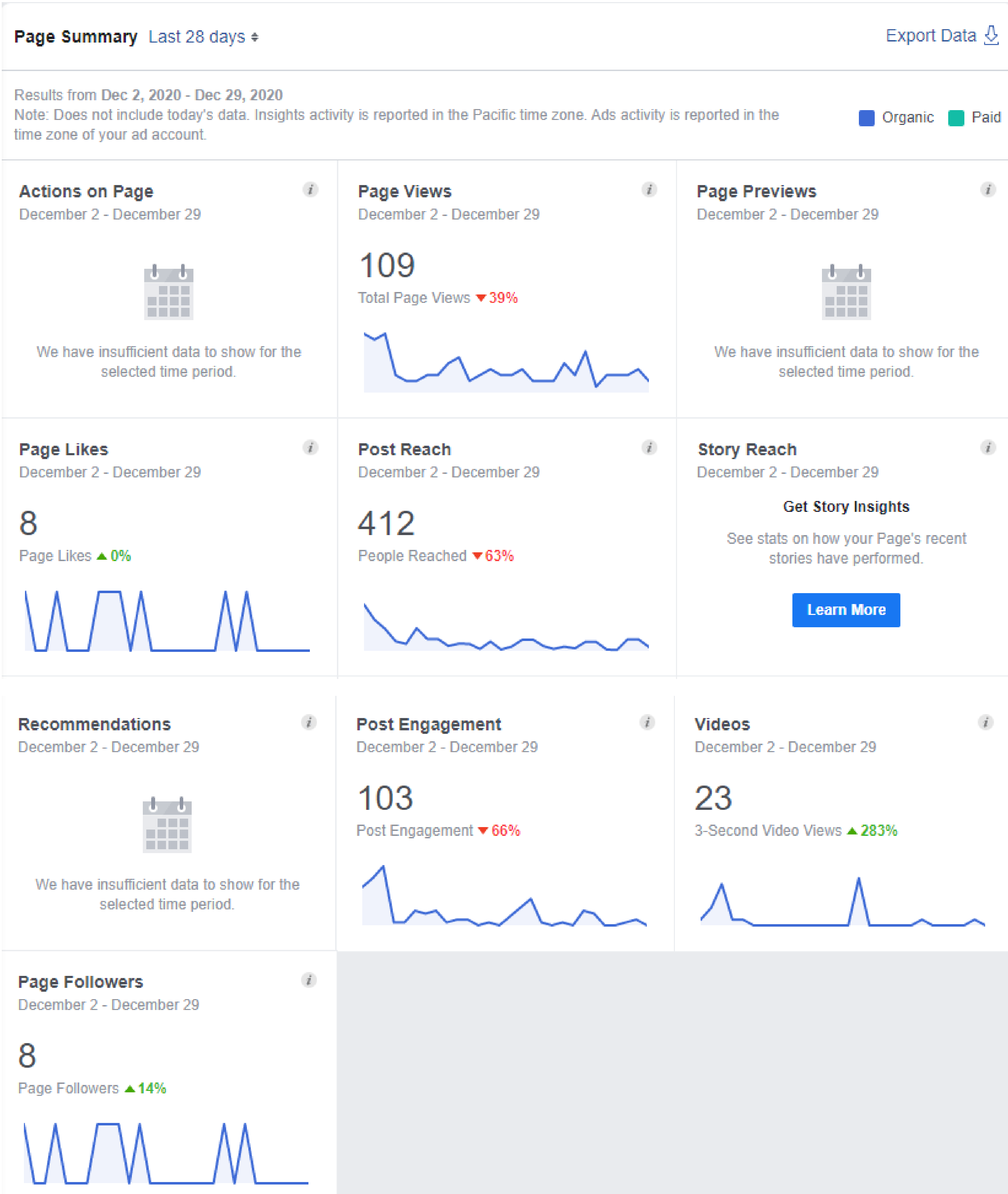
7
3-Second Video Views ▼42%

Page Followers
November 2 - November 29

7
Page Followers ▲40%



Facebook Analytics for December 2020



AGENDA REPORT
CITY OF ALAMOGORDO
CITY COMMISSION

Meeting Date: 3/9/2021 **Report Date:** **Report No:** 2.

Submitted By: Rachel Hughs

Subject: Approve the minutes for the February 23, 2021 Regular meeting. *(Rachel Hughs, City Clerk)*

Fiscal Impact:
Amount Budgeted:
Fund:

Additional Fiscal Impact:

Recommendation: Approve the minutes.

Background: This is required by the Open Meetings Act.

CITY OF ALAMOGORDO, NEW MEXICO
CITY COMMISSION REGULAR MEETING MINUTES
6:00 P.M., VIRTUAL MEETING
February 23, 2021

RICHARD BOSS, MAYOR
SHARON McDONALD, COMMISSIONER
JOSH RARDIN, COMMISSIONER
DUSTY WRIGHT, COMMISSIONER
SUSAN PAYNE, COMMISSIONER
NADIA SIKES, MAYOR PRO-TEM
JASON BALDWIN, COMMISSIONER
BRIAN CESAR, CITY MANAGER
PETRIA BENGOECHEA, CITY ATTORNEY
RACHEL HUGHS, CITY CLERK

CALL TO ORDER / ROLL CALL / INVOCATION / PLEDGE OF ALLEGIANCE

Mayor Boss called the meeting to order at 6:00 p.m. Roll Call was taken by the Deputy Clerk. Deputy Clerk Gutierrez announced there was a quorum present. Invocation was given by Commissioner Payne, and the Pledge of Allegiance was led by Commissioner McDonald.

APPROVAL OF AGENDA

Commissioner Baldwin moved to approve the agenda.
Commissioner Rardin seconded the motion.
Motion carried with a vote of 7-0-0.

PRESENTATIONS

1. Presentation for Alamogordo Police Department's Mobile Crisis Response Team and Crisis Intervention Calls. *(Richard Denton, Police Chief and Jeanette Borunda, Mobile Crisis Response Team Clinician)*

MCRTC Borunda gave a PowerPoint presentation (included in agenda packet backup). Ms. Borunda stated that she was a social worker and therapist. As a Licensed Clinical Social Worker, she could independently make diagnosis and work on her own. Her team also included Officer Charlene Ashe who was a full CIT Officer, and Peer Support Specialist Tracy Rivera. Together, the three of them made up the Mobile Crisis Response Team.

Mayor Pro-Tem Sikes asked if the Dispatchers were trained in CIT to know when a call came in, where it was to be directed? Ms. Borunda said yes, at this point almost all their Officers had been trained. Mayor Pro-Tem Sikes said these numbers were almost alarming. How were the other Officers of the Police force accepting the Mobile Crisis Team? CIT Officer Ashe felt they liked the fact that they had someone to call and it was a quick turnaround time for them because once the Crisis Response Team arrived, the Officers could leave to attend to other calls. Once an Officer put someone into protective custody, the Response Team could take over which meant not tying the Officer up for two to six hours at the hospital. Ms. Borunda added that she was able to do a mental health assessment in the field so that by the time they got to the Emergency Room, she could give her assessment to the provider on duty at the hospital. Another benefit was that her team would deal with individuals presenting signs of needing help in the moment, which they could relay to the Emergency Room staff.

Mayor Boss thanked Ms. Borunda and her staff and stated that this was a service which was very much needed in our community.

2. Presentation of Stats within the Alamogordo Police Department, 3-year comparison. *(Richard Denton, Police Chief)*

Police Chief Denton gave a PowerPoint presentation (included in agenda packet backup).

Mayor Boss asked if the increase in domestic disputes was a direct result of the Covid impact? Police Chief Denton said he could not make a direct prediction, but he assumed that was most probably why.

Commissioner Payne asked if these figures were just between spouses, or could it be any domestic dispute? Police Chief Denton said they had no way to identify the exact types of relationships involved. They had gone live with their Spillman accounting system back in August, so that system more accurately kept track of all the reporting. That in itself would make the numbers go up on everything now.

Mayor Boss said it seemed like over the past five years the number of drug charges had gone up. Police Chief Denton said yes, and a lot of that resulted from general traffic stops. He could look into it further and present more specific comparisons over the past few years. Mayor Boss said he would appreciate seeing that.

Commissioner Payne said it seemed like almost every week there was at least one unattended death. Police Chief Denton said the assumption on his part was that there were more deaths during the winter months. Commissioner Payne noted that a lot of these deaths involved younger people which was alarming to her. Mayor Boss felt like the majority of them were older people. Police Chief Denton said that was also something he could further look into for them as well.

Mayor Pro-Tem Sikes asked if Spillman tracked crimes that were solved. Police Chief Denton said he could not give a direct answer on that. They could look into the charges of their cases and see from there. He could probably run a report that showed the status of their cases. With the Spillman data because they had just gone live in August, they found that they really needed a bunch of data in there before they could get accurate trends from it. The struggle was real with how many reports they could run in there. Of course, getting the Otero County Detention Center on board with it as well would really help. They had reports of those cases which were closed pending further leads which indicated that particular case was not solved. They could have a crime where no one was charged, which could turn out to not be a crime after all, but just a civil matter.

Mayor Boss thanked the Chief for his presentation.

PUBLIC COMMENT

Deputy Clerk Gutierrez read the following two public comments into the record:

1. "Esteemed Mayor Boss, City Commissioners, and City Manager Brian Cesar:
I was honored to be a member of the Advisory Council during planning for the Mobile Crisis Response Team and the Crisis Intervention Training program. I commend and thank Jeanette Borunda, Officer Ashe, and Chief Denton for implementing this vital program. The important on-going work of the MCRT has been recognized by local professionals and our public alike. I know this is lifesaving work and lifts up our police department among their peers for utilizing best practices. Additionally, thank you for the great work of regularly holding Crisis Intervention Trainings and making these available to other law enforcement and first responders in our region. This is excellent leadership in practice and example.
Thank you, Maureen Schmittle,
Health Promotion Specialist for Otero County
with NM Department of Health, Southwest Region"

2. "Dear City Commissioners:
We want to thank you for your support of the Alamogordo Crisis Intervention Team (CIT) program in general and the APD Mobile Crisis Response Team in particular. We all want people living with a mental illness or substance use disorder to get the support and services they need in our community, and we all want our officers to have the resources and training they need to safely respond to people in crisis. Supporting and sustaining the CIT initiative in our community is a Health Council priority, and is an important part of improving our community mental health systems. On behalf of the Otero County Community Health Council, thank you for your service and for your commitment to our community.
With gratitude,
Holly J. Mata (President, OCCHC)
Otero County Community Health Council"

CITY MANAGER'S REPORT

City Manager Cesar said City staff had started their budget reviews. They were on track with that and planned on holding the budget hearings with the Commission in May. By that point they should know from a Federal or State level where they needed to be with the possible passing of minimum wage bills, as well as regulatory bills involving water/wastewater, etc. He felt this year they needed to plan on these hearings running at least two, if not three nights. Once staff reviews were finished this week, Finance could commence putting a budget together taking into consideration capital requests, equipment requests, and personnel requests.

REMARKS AND INQUIRIES BY THE CITY COMMISSION

There were none.

CONSENT AGENDA

3. Approve the minutes for the February 9, 2021 Regular meeting. *(Rachel Hughs, City Clerk)*

4. Consider, and act upon, the amended State Grants-in-Aid award from the New Mexico State Library for local library support, the additional fiscal impact is $3,456.62 of which $2,106.13 is from CARES Act funds and $1,350.49 is from additional state funds that became available after the original estimated grant amount was announced. *(Sharon Rowe, Library Manager)*

Commissioner Baldwin moved to approve items 3 and 4 of the Consent Calendar.
Mayor Pro-Tem Sikes seconded the motion.
Motion carried with a vote of 7-0-0.

UNFINISHED BUSINESS

5. Consider, and act upon, Case V-2020-0002(A) to allow the placement of a 14x46 manufactured home that has been placed in the rear yard of the property located at 818 8th Street, within an R-3 Zoning District (Two Family Dwelling District). *(Stella Rael, City Planner)* **(Roll Call Vote Required)**

City Planner Rael gave a PowerPoint presentation (included in agenda packet backup). She noted that Armando Ortega, son of the property owner, was present to answer questions.

Commissioner Payne clarified that the two-page letter was from the next-door neighbors. City Planner Rael said yes, it was.

Mayor Boss asked if we had done anything similar to this for others in the past? City Planner Rael said no. She had recommended denial of the case due to the fact that it did not comply with the current zoning requirements within an R-3 zoning district.

Commissioner Payne asked if the City knew about this ahead of time, or was there any request to place the mobile home there? City Planner Rael said in May 2020, she had received paperwork for placement of a 12 foot by 40 foot building to be placed in the back yard to be used for storage, as an accessory building. After several conversations with Mr. Ortega, she explained that the contractor who was going to be moving the building would need to submit paperwork and apply for all the proper permits. There were a few more conversations after that, and then her office received a complaint in late September of the building being placed there. So, she reached out to the property owner and his son and had explained that this building did not belong there, and they were going to have to remove it. They asked for other options, and she explained that they could ask for a variance. This conversation took place on October 9th, and shortly thereafter she had received the paperwork for the variance. So basically, her office had learned about it through the complaint from a neighbor.

Commissioner McDonald asked if the building was going to be used for storage or was someone going to be living in that trailer? Mr. Ortega said he would like to give a quick synopsis of how this had all transpired from his point of view. On April 27th he contacted Planning and Zoning about a building his dad had purchased from Tip Top Trailers. This business sold construction trailers, and not manufactured homes. His dad used this trailer as his office; it had no kitchen or shower or anything else except a toilet. He contacted Planning and Zoning and City Planner Rael was out of the office at that time, so he dealt mostly with Shelbe Abbott (P&Z Administrative Assistant), and he had several emails. His dad owned two other houses on that same block, and he had purchased this trailer to use for construction purposes only. It was not going to be used for a dwelling. His dad had connected water and sewer to it so he could use the bathroom of it only. He had finally contacted City Planner Rael, and his last correspondence with her was that whoever was going to move that was going to have to pull permits. He may have misinterpreted it, but to him, if someone told him that, then he was assuming if someone had to move it, then they would have to go pull permits. His dad had hired a person from Las Cruces, and he had called Construction Industries Division (CID) himself. They told him they could not pull a permit because the person pulling the trailer had to be the ones to do that. So, they hired someone to move it for them, and to this day he was not sure whether they had received the proper permit because he could not get ahold of the guy. So, they had gone through the proper channels to get this trailer moved. It was in the City limits and was not the right zoning. They'd had to turn that paperwork in two or three times, and they showed setbacks. Everything was done by the book. They got an electrical permit and put electricity in it. They were kind of surprised that this issue had come up. He also wanted to add that 23 letters were sent out. They (property owners) had a deadline to either return a letter or go in person to the Planning and Zoning Commission meeting and complain. Why was this stuff being brought up after the fact, after the Planning and Zoning meeting? Anything after that meeting should not even be admissible to what was happening today, because they had a deadline. Planning's letter had given them a deadline; he knew because his dad had also received a letter. He had 17 signatures from other people around there who did not have a problem with it because just a block and a half away from that property was a mobile home park. They could see the pictures, and that workshop was going to look better than half of the houses on that block. He understood it could have been a miscommunication, but when someone told him the permits needed to be pulled to move it, he was assuming they were good.

Commissioner Payne asked if they had stated it was going to be used for storage? Mr. Ortega said yes, they had to put that on the application. Commissioner Payne clarified that nobody was living in there. Mr. Ortega said no, absolutely not. Commissioner Payne said it was her understanding that somebody was living in there. Mr. Ortega said that was not correct. They could send someone over tomorrow and there was absolutely no one living in there. City Planner Rael had done a site visit, and he was pretty sure she had walked inside it. There was no kitchen or shower, only a toilet. Mayor Boss asked if that was correct? City Planner Rael said she did perform a site visit when she first got the complaint. At that point they had recently moved it in, and there were construction materials like sheetrock in there like they were going to be doing some work. She could not say whether it was going to be a storage unit or a home. All she knew was that at this point in time it was a manufactured home, and it did not belong in an R-3 District. Mayor Boss asked if it had a kitchen? City Planner Rael said it had a cabinet, but not a functioning kitchen.

Commissioner Rardin asked what kind of foundation it had? Mr. Ortega said it was sitting on a permanent foundation, but it was blocked. It was concrete because there used to be a home there. Commissioner Rardin confirmed that through FHA rules, and as long as it had the concrete runners, had a blocking permit, and was strapped down correctly it was considered a permanent foundation. Mr. Ortega said, no, then it was not. Commissioner Rardin said he actually knew that structure because he had dealt with Mr. Tapley too, and Mr. Ortega was not lying on that. There was one main room, a bathroom, and an office in the back. In the event that this did remain and we were going to approve this, were they going to underpin it and all of that so it would look more presentable? Mr. Ortega said absolutely. If they looked at it now, it was already an improvement over what it was when it was at Tip Top Trailers previously. The reason he did that was because that was the type of person he was, and he did not want the neighbors to have issue with it.

Commissioner McDonald said she had gone by the property and seen the trailer and where it was parked. She looked at all the other properties in there and noticed that there were brand new fences, and they were wooden fences. So, they had a certain look, and she just could not understand why the trailer was put there before it was approved. She was looking at the look of the neighborhood, the reason the trailer was there, and the way it was so close to the fence. If something were to happen in there such as a fire or any type of accident, there was no chance for any of the neighbors to salvage their property. She had heard from a couple of the neighbors. When she looked at something being put on the property before it was approved, and pretty much in this district people let things go. Of course, now they were saying something about it. Right now, she would be against it. She did not know the property owner, but right now the look and the way the trailer was in there jarred, she felt if something happened, it would be very difficult for the other neighbors to salvage their homes and fences. Mr. Ortega said it actually met all the setback requirements of the City.

Commissioner Rardin said if they considered that an accessory building, did it meet all the setbacks for the back yard? City Planner Rael said the setback requirements were 2 feet from the rear and 2 feet from the side, and the building must be no closer than 10 feet to the main structure. Commissioner Rardin asked if they met all those setbacks? City Planner Rael said yes. She wanted to explain a little bit about the permitting process because Mr. Ortega was saying that she did inform him that permits needing to be pulled and they needed to be pulled by the mover. That was correct. CID would not accept paperwork from a homeowner if a structure like this was being moved by a mover. It was the homeowner's responsibility to make sure that all proper permits were pulled. When moving a manufactured home, the mover had to obtain a Transport Permit from the State. Once that Transport Permit was issued, they came to her department for a blocking permit or a placement permit. At that time, the property owner or the mover had to submit a site plan indicating where it was going to be placed and what the setbacks were. They also had to pull the proper plumbing, mechanical, and electrical permits. Then, the CID manufactured housing inspector would come out and inspect and make sure it was blocked properly and that it was meeting the setback requirements per the site plan. The inspector was also looking at whether the water, sewer, and electrical were connected properly. If they were and it passed inspection, then he gave the utility company permission to release the utilities. None of this was done when she was speaking with Mr. Ortega. All the paperwork indicated putting a 12 foot by 40 foot building in the backyard. His site plan for the backyard of 818 8th Street stated: "The building will be 10 feet from the alley, 7 feet from the east neighbor's fence, and 25 feet from the existing home". They were now talking about a 14 foot by 46 foot manufactured home.

Commissioner Payne said she was glad to hear someone was not living in it, but her biggest concern was that it was still a mobile home and if they approved it, they were approving a variance for a mobile home. If they did that, were they setting a precedent? Were they going to find other houses in that neighborhood that had mobile homes backed up into them? How would they set that apart, because she would not want to set a precedent.

Commissioner Rardin said regarding the argument that it was a mobile home, it was more of a mobile office. For CID to classify it as a home, it had to have a working HVAC system, a functioning kitchen, and a functioning shower. Basically, it did not have everything to consider it a home. You actually used buildings like that as mobile job site trailers because they were portable. They had offices and a restroom. Essentially it was not technically a home, but an office. He was kind of torn on it. He understood they did not pull the correct permits and that kind of stuff, but they could go back and pull those and get the required inspections if they needed. Commissioner Payne asked if those things could be installed at some point? Commissioner Rardin said yes, you could very easily go in and install a kitchen and shower down the road. He had been in that building before, and it did not look aesthetically bad. It just sat out on that property for 20 years because the owner had built himself a new office. It used to be Big Guy's Auto Sales, and when that owner passed away, Mr. Tapley bought the property and turned it into the trailer sales. Commissioner Payne clarified that she had a concern about it, and she was really torn about how to proceed with that.

Mayor Pro-Tem Sikes said as a Commissioner for a number of years, she relied on the Planning and Zoning Director and the Planning and Zoning Commission to give them advice so when they walked into a City Commission meeting, they could look at what they had looked at, look at what they had investigated, and look at the work they had already done in order that the City Commission could better vote. Why did the Planning and Zoning Commission vote against this? City Planner Rael clarified they had met in December and they had voted against it because they were seeing it as a manufactured home. At this present time, it might not be a home, but since it was a manufactured home, in the future it could become one. The Planning and Zoning Commission were going along with the Ordinance in that it was a manufactured home and did not belong in that zoning district. Mayor Pro-Tem Sikes said she respected the process and so often when the process was not followed, it caused the City, the Planning and Zoning Commission, and the City Commission problems. Had the process been followed properly, would we even be here discussing this? Mr. Ortega said as far as he was concerned, the process was followed accordingly. Maybe he misunderstood or took it the wrong way, but when he handed in all the paperwork, they told him it was fine. Once they told him the person who was moving it needed to get a permit, he assumed that was the next step. He did not disrespect the process. He contacted Planning and Zoning and had turned in the site plan with the setbacks. His not following the entire process was not on purpose.

Mr. Ortega requested to add something. Who did the minutes for the Planning and Zoning meetings? City Planner Rael said her Administrative Assistant. Mr. Ortega said what he wanted to bring up was that there were a couple of incidents that happened in the Planning and Zoning Meeting. One of the incidents was that they had to remind City Planner Rael that there was a quorum at the time, and she was texting with some of the board members and giving them information. One of the board members found out and they explained to City Planner Rael that because there was a quorum, she could not do that because of Robert's Rules of Order. It was in the minutes. But in the minutes that were in the packet, it was not in there. The reason he was bringing this up was because it did have an effect on how they voted. Another thing was that people had the opportunity to complain in person and they had the opportunity to complain in writing. She had brought up the fact that she had had people call her. When she talked to them it kind of swayed a couple people on their vote, in his opinion. They had rules they had to follow in these meetings for a reason. City Attorney Bengoechea said she appreciated Mr. Ortega's advocacy, and she was sure City Planner Rael had a response. But at this point they were so far beyond talking about a variance, she was not sure we would conform with the Open Meetings Act. She felt they needed to skip this. If Mr. Ortega had an issue with an Open Meetings Act violation, she would be happy to discuss it with him. She felt what she was hearing from some of the Commissioners was that there was some confusion that an original application was received that was for a building which was a different size than this one was. So perhaps Mr. Ortega could talk about why when he filed his original application, the dimensions were different than what was there today. She felt that would clear a lot up, and that had not quite been addressed yet. Mr. Ortega said the only reason he had brought it up was because Mayor Pro-Tem Sikes had asked him if he had gone through the process. He wanted it to be fair across the board. Yes, he had contacted Mark Tapley about the size of the building, and those were the dimensions he gave him. He was in the process of doing the application prior to getting the actual Title in hand. Part of the big issue was that the County had gone over there, and they had not transferred the Title yet.

Commissioner Baldwin asked City Planner Rael if water and sewer were hooked up to the structure? City Planner Rael said yes it was. Commissioner Baldwin asked if that was permitted or not? City Planner Rael said no, it was not. She had contacted CID to see if they had actually issued any mechanical, plumbing, or electrical permits, and the response was that no mechanical or plumbing permits had been issued. Also, they told her that in 2019 there was an electrical permit pulled, not for this manufactured home, but for the main residence. Commissioner Baldwin asked if there was electricity going to the structure now? City Planner Rael said she had no idea. Commissioner Baldwin felt everyone was trying to decide whether this was a big deal or not. They got these situations all the time where someone was asking for a variance after the fact, which he was not very appreciative of. It sounded like if it were not a mobile home but just an actual office, that there would be less of an issue here. Was that correct? If it were just a square and was an office, would this be less of an issue because that would be allowed on there, but a manufactured home was not? City Planner Rael said that was correct. If it were an actual accessory building and did meet all requirements, including setback requirements, there would not be an issue. Commissioner Baldwin said he had a problem with the size being different, but he would chalk that up to the information given to Mr. Ortega being wrong, as long as it met all the setback requirements stated by Mr. Ortega that it did. He had a real issue with it being hooked up to water and sewer prior to permits. They were getting into that territory of let's just get it in there and get it hooked up, and then there was really nothing the City could do. He was not putting words in anyone's mouth, but just talking about other cases they had dealt with. Once this process was done, was there any way we could make sure it stayed an office building or storage building and not turned into a home? If we said yes to this variance, was there any recourse the City had if somebody moved into that structure later? That was what was going to get them in trouble. Was there anything we could do, other than the word of the homeowner, which said this had to stay this kind of structure for the rest of its existence without having some other kind of process to go through? City Attorney Bengoechea said they could approve the variance, they just had to put a contingency on it. Essentially, they would want to say it could be used for any use as long as it did not involve someone living there. Commissioner Baldwin felt this was the biggest issue to the Commission right now, because the visual of it was that we should not be putting a mobile home in there. They had evidence from people who had seen it and from the person who put it down that it was not a mobile home, but basically was an office. If he were to say yes to this, he just wanted to make sure that in a year or two from now or when the home was sold, that it did not turn into a home for somebody else at some point. If there was legal recourse for that, then he would be willing to move forward. City Attorney Bengoechea thought legal recourse was always going to be a lawsuit and nobody would win in that kind of litigation. But if they went with a nonconforming use, we would have to take them to court in order to have it removed. That would have to be a Commission decision, and obviously it could happen even 50 years in the future. Commissioner Baldwin clarified it would pass with the property and not with the owner.

Commissioner McDonald said she did not have anything against Mr. Ortega or anyone doing anything in the area, but she felt one of the things they would want to look at was through the Comprehensive Plan and the designated area and the way it was set up, the zoning, and all those things. She kept looking at the fact that they wanted the area not to look different, but to be what it said so when it was looked at, they did not have to keep coming to the Commission for variances. They wanted everything in the area to be aligned with what it was zoned. So, when they had all these little piecemeals come in, it set a precedent. She did not see how they could put a building that big in the back yard and not see issues that were happening. If they looked just one block over, if they were hooking this up to some of the water and sewer, there was an issue right down the street with sewer which was open, and the sewage was not being handled by the system yet. She just kept looking at them adding things onto the sewage, how things were happening, and just making sure they got things right before they kept adding things on. That was her objection. She did not have anything against anyone, she just wanted to make sure for the area that it was all looking the same. Everything was zoned R-3, so let it be R-3 and not go any place else. Just for the sake of looking like we care about an area instead of adding stuff on that made it look like people could do anything. That was what she was looking at right now. As the Commissioner for that particular area, right now it was a struggle making sure that the area looked like somebody lived there.

Commissioner Wright said he had some personal issues on this, so he would abstain from voting on it. He felt if they looked at the entire neighborhood, there were mobile homes for a block and a half to the east, cinderblock buildings for commercial use at the end of that block, and there were camper trailers in other back yards. This was an issue not just for this one residence. They would be seeing this all around this entire neighborhood, so if they went after one then they needed to go after all of them to clean up their properties and take down buildings that were bigger than stated. It would just be opening up a big can of worms. There were some permitting issues that maybe could be reconciled legally, but he felt they should look at it from both directions to see if something could be worked out to and to make sure it stayed a storage building. With that being said, he would abstain from voting on the issue.

Commissioner Rardin said in the event this variance was approved, would the property owner be building a fence around the back yard once everything was said and done? Mr. Ortega said absolutely. Yes, they would be building a fence. And just so the Commission was aware, his dad owned the property just south of this one, on 7th Street. Commissioner Rardin felt that if this were approved and once the fence was up, it would look just like a structure in the back yard and not so much a trailer house. Once it was underpinned and set correctly and the fence was up, you would basically just see the pitched roof and a portion of the walls was all.

Commissioner Rardin moved to approve the variance with the stipulations that they would go back and get it permitted correctly for the electrical, plumbing, and blocking, and that it would only be used as an accessory building and would not be inhabited or lived in.
Commissioner Baldwin seconded the motion.

Commissioner Rardin asked if those stipulations would suffice to keep it legal? City Attorney Bengoechea said yes, that it remains an accessory building and never be occupied. Commissioner Rardin said sometimes you could hire a contractor and they did not always follow the rules as far as the permitting. So, he may have thought he was getting a blocking permit, but the contractor may or may not have pulled them. So, if he went back and got all the required permits and inspections done on the electrical, plumbing, and blocking then he personally did not have an issue with it. City Attorney Bengoechea said she just would like to personally hear from Mr. Ortega if that were okay and something that could be done, that they could go back and get all those permits. She did not want the Commission to vote on something that Mr. Ortega may say was impossible. She did not want to see it set up to fail, so she would like Mr. Ortega to weigh in on it.

Mr. Ortega said he would pull any permit he needed to make everything right. Commissioner Rardin said with the understanding that he may need to hire somebody who had the mobile home license to pull the permits. Mr. Ortega said yes.

Commissioner Payne asked how long they had to do that because there had to be a time limit. City Attorney Bengoechea said the motion belonged to Commissioner Rardin, so if he would like to put a time limit on it. Commissioner Rardin said he really did not want to give them a 100 percent time because right now permits were taking awhile through CID with Covid. They were taking 30 days now just to get a permit pulled through the State, plus the City's side of it. They could give them 90 days to get it taken care of. Did that sound reasonable to everybody? Mayor Pro-Tem Sikes said actually, no. This had been going on since October. It was on the agenda in January, and then on again in February. She felt Mr. Ortega understood the fact that the permits had not been pulled. This could have been in process by the time this meeting was scheduled. She did believe they were setting a precedent, and she just had a problem with that. We were going to acquiesce and roll over and accept this even though it went against Commissioner McDonald's idea of how a neighborhood could be preserved or go forward being more uniform. She believed they needed to put some legs on this and have it happen more quickly, or they needed to vote against it. Commissioner Rardin said the reason for the 90 days was due to the fact that he did this every day and he dealt with their timeframes. He had one which had been sitting over at CID for 30 days now. And then it would have to go to the City for their portion of it, and probably take two weeks over there. Then they would need time to coordinate with a contractor who had a mobile home license, which was a special license they had to pay extra for. After coordinating with the contractor, they would have to get permits pulled through the City, then shipped off to CID and get those pulled, get the work performed, and get the inspections performed. So, 90 days was not really all that unrealistic to get that done.

Commissioner Payne said she understood what Commissioner Rardin was saying, but she did have the same issue. This had been going on since that building was placed in October. Commissioner Rardin said in their defense, would she want to spend all that money? They were probably looking at $1,000 by the time all the permits were pulled, plus hiring a contractor, plus the work. Commissioner Payne said she realized that. Commissioner Rardin said he understood why they had not spent it yet. Commissioner Payne said no, she did not understand it because it was part of the process. You had to be permitted. This was something that should have or could have been done quite awhile ago. But here we sit, so she did not understand that. Commissioner Rardin said they had hired a gentleman to move it who should have pulled the required permits to block it and move it. He may or may not have done that, but they could not get ahold of him.

City Attorney Bengoechea said all this really got lost in the making of a motion. She would like to clarify the motion for the official minutes, find if there was still a second, and then all the discussion could take place and they could follow Robert's Rules. Mayor Boss said Commissioner Rardin had made the motion, and Commissioner Baldwin had seconded it. City Attorney Bengoechea just wanted to clarify that the motion had a time limit on it because there was a lot of question about that.

Commissioner Rardin amended his motion to include that it be done within ninety (90) days.

Commissioner Rardin clarified that the 90 days was just due to Covid; if it was not for Covid and all the nonsense going on, then he would shorten the timeframe. He just knew that right now it was taking a little bit of time to pull permits.

Commissioner Baldwin seconded the amended motion.
Roll Call vote was taken.
Commissioner Baldwin, Mayor Pro-Tem Sikes, and Commissioner Rardin voted "aye". Commissioner McDonald, Commissioner Payne, and Mayor Boss voted "nay". Commissioner Wright abstained. The motion failed with a vote of 3-3-1.

City Attorney Bengoechea clarified that the motion failed, so the Commission declined to approve the variance. If the zoning did not fit and that was not allowed there, then unfortunately, the Ortega's were going to have to deal with it. If Mr. Ortega wanted to call City Planner Rael or herself, then they could discuss next steps and what needed to happen now. But it was a nonconforming building in a zoning district, so they would require it to either come into compliance or it be removed. If Mr. Ortega would like to talk about it, she was available tomorrow.

NEW BUSINESS

6. Consider, and act upon Ordinance 1627 Case Z-2021-0001(A) for first publication for a map amendment to change the zoning designation of the property located at 911 Mescalero St. from MH-1 Manufactured Housing Subdivision to MH-2 Manufactured Housing Park. *(Stella Rael, City Planner*) **(Roll Call Vote Required)**

City Planner Rael gave a PowerPoint presentation (included in agenda packet backup).

Commissioner Baldwin moved to approve.
Mayor Pro-Tem Sikes seconded the motion.
Roll Call vote was taken.
Motion carried with a vote of 7-0-0.

7. Consider, and act upon, Case V-2021-0001(A) to allow to continue to have the existing number of spaces (57) within the existing park. *(Stella Rael, City Planner)* **(Roll Call Vote Required)**

City Planner Rael gave a PowerPoint presentation (included in agenda packet backup). She said one of the things she wanted to bring to the Commission's attention was that Mr. and Mrs. Smith had owned this park for 25 plus years and they had always complied with pulling the proper permits, whether they were blocking permits or permits for foundations, for additions, electrical, and plumbing, and yet no one had ever corrected this variance issue. Current Ordinance indicated that our manufactured housing parks should be no smaller than two acres and should only allow eight manufactured homes per acre. They were all aware of the fact that when we annexed in a piece of property, we accepted it as is. So, at the time this was annexed, it was annexed in with 57 spaces. Now that Mr. and Mrs. Smith were in the process of selling the property, if she were to make them comply with current Ordinance, it would probably lose about 24 spaces. So, this variance request was to continue to have the existing number of spaces within this manufactured housing park. She had spoken to the potential buyer and she had made it very clear to them and to Mr. and Mrs. Smith that she would be requesting a park plan because there currently was not one and they needed to look at that as part of her effort to try and clean up the area in the Walker Subdivision.

Commissioner Baldwin moved to approve.
Commissioner Rardin seconded the motion.
Roll Call vote was taken.
Motion carried with a vote of 7-0-0.

8. Consider, and act upon Ordinance 1625, for the first publication, authorizing the Repeal of Ordinance 1439 Housing Authority Advisory Board and Create Resident Advisory Board. *(Marissa Ruiz, Housing Authority Manager and Evelyn Huff, Finance Director)* **(Roll Call Vote Required)**

Finance Director Huff said the Housing Authority Advisory Board was created in 2013. As some of them may remember, the City Commission used to convene separately prior to the City Commission meeting as the Housing Authority Board. The Housing Authority Advisory Board was created so that it could meet in place of the Commission. The Board would approve items, and then those items would be taken to the City Commission for approval. However, HUD had changed several of its rules and allowed for the Commission to be the governing body of the Housing Authority. They had been told many times by HUD that the Housing Authority Board was not only obsolete, but also redundant. They had suggested several times to stop doing double work by presenting items to the Housing Authority Board first and then presenting them to the City Commission a second time. They had suggested that there be a Resident Advisory Board developed which be made up completely of residents from both complexes. That would allow residents to review the five-year plans, the annual plans, and other things in order that their input would be received before it came to the City Commission for approval. Over the years there were variations of the Housing Authority Advisory Board, but there was just one time when they had a full board.

Housing Authority Manager Ruiz said obviously in recent months the Board had not been able to meet. But before that they normally could not even get a quorum. It was redundant, and the City Commissioners were recognized as our Housing Authority Board in the eyes of HUD. With this Resident Advisory Board, there would be three members from Plaza Hacienda, and three from Alta Vista. That would help bring more community to the residents in feeling like they had a say and take them in a different direction for the Housing Authority. Obviously, they would have more input as far as knowing what was in their five-year plan and some of the projects that were coming up at the Housing Authority. They would have a Board that would meet and which they could bring to the Commission for voting.

Mayor Pro-Tem Sikes said they had had a difficult time of getting people on the Housing Authority Advisory Board to meet and get a quorum. What would be different and would make them think that the residents would be more enthusiastic about embracing the idea of being on a board where they could finally meet and get a quorum and discuss things for them to vote on? Finance Director Huff said in the past, the board included one resident. They'd had residents resign because they felt overwhelmed by the professional people on the board. They had not felt like they could join in because there was someone on the board who was the Vice President of a bank or a successful real estate agent. Whereas with the Resident Advisory Board, they would definitely feel like they were with their peers and would therefore be more willing to be involved and feel more comfortable. Back when they had the board which reconvened as the City Commission, they had one resident on the board, who did not want to come to the Commission Meeting because he did not think he had nice enough shoes to come to the City Commission. So, they hoped that by just having a complete resident board, that it would be very non-threatening, and they would be willing to give their opinion in a situation where they felt comfortable.

Mayor Boss asked what other municipalities that had Housing Authorities in New Mexico were doing? How were they structuring their organizations? Finance Director Huff said for Housing Authorities that were part of the City like we were, the City Commission would be their governing board and then they would have a Resident Advisory Board. For Housing Authorities that were stand alone or had different types of components, they would have their own board that handled everything. Even though they were in that city, they were stand alone and so they handled everything, including budgets, salaries, hiring, firing, etc. The City Commissions at those types of Housing Authorities had no input. We were a little different because our Housing Authority was a fully involved department within our City. That was where the Commission became the main authority.

Commissioner Payne felt this made a lot of sense and doing something like this gave the residents more buy in. She felt it was a fabulous idea.

Commissioner Payne moved to approve.
Commissioner McDonald seconded the motion.
Roll Call vote was taken.
Motion carried with a vote of 7-0-0.

9. Appointments to Boards and Committees. *(Richard Boss, Mayor)*

Mayor Boss read the openings and appointed Svitlana Chernova to the Airport Zoning Board, appointed Billy Childs to the Alamogordo Public Library Board; and Susan Poore to the Senior Volunteer Programs Advisory Council. No one was opposed.

Mayor Boss clarified that anyone interested in serving on a City Board or Committee could always apply online as well.

Mayor Pro-Tem Sikes asked if the residents who wanted to apply to be on the Housing Authority's Resident Advisory Board would have to apply the same as all other board applicants? Finance Director Huff said yes, and the Housing Authority staff would help them with the application process and would have the applications at the Housing Authority.

EXECUTIVE SESSION (Roll Call Vote Required)

10. Adjourn into Executive Closed Session in compliance with 10-15-1(h)(8)(7), NMSA (as amended) to discuss Real Property - Land around the Bonito Lake area and to discuss Threatened or Pending Litigation - Taxation and Revenue Department lawsuit and discuss Threatened or Pending Litigation - Union Pacific Rail Road/8th Street Crossing.

ADJOURNMENT

Commissioner Payne moved to adjourn into Executive Session at 7:53 p.m.
Commissioner Baldwin seconded the motion.
Roll Call vote was taken.
Motion carried with a vote of 7-0-0

Mayor Richard Boss

ATTEST:

City Clerk Rachel Hughs

(Prepared by Teresa Gutierrez, Deputy Clerk)
Approved at the Regular Meeting held on March 9, 2021.

AGENDA REPORT
CITY OF ALAMOGORDO
CITY COMMISSION

Meeting Date: 3/9/2021 **Report Date:** 3/2/2021 **Report No:** 3.

Submitted By: Rachel Hughs

Subject: Approve the statements related to the Executive Closed Session held on February 23, 2021. *(Rachel Hughs, City Clerk)*

Fiscal Impact:
Amount Budgeted:
Fund:

Additional Fiscal Impact:

Recommendation: The statement is required per the Open Meetings Act.

Background: Approve the following statements authorizing them to be included in the minutes of March 9, 2021: “The Governing Body of the City of Alamogordo, New Mexico, hereby states that on February 23, 2021, a Closed Executive Session was held and matters discussed in the closed meeting were limited only to: discuss Real Property Land around the Bonito Lake area and to discuss Threatened or Pending Litigation Taxation and Revenue Department lawsuit and discuss Threatened or Pending Litigation Union Pacific Rail Road/8th Street Crossing.

AGENDA REPORT
CITY OF ALAMOGORDO
CITY COMMISSION

Meeting Date: 3/9/2021 **Report Date:** 3/2/2021 **Report No:** 4.

Submitted By: Debbie Osborne

Subject: Consider, and act upon, final publication and adoption of Ordinance 1626 authorizing the execution and delivery of a loan and subsidy agreement for the amount of $2,151,300.00 between the City of Alamogordo and New Mexico Finance Authority. *(Evelyn Huff, Finance Director)* **(Roll Call Vote Required)**

Fiscal Impact: $2,151,300.00
Amount Budgeted: $0.00
Fund: 082

Additional Fiscal Impact: Total DWSRF Loan= $2,151,300.00. Loan was awarded in the amount of $2,130,000 plus $21,300 Cost of Issuance Fee (COI). Funding breakdown: $1,075,650 DWSRF Loan / $1,064,885 DWSRF Principal Forgiveness (Grant); $21,300 COI / $10,765 DWSRF COI Forgiveness. Loan term is 20 years at 0.34% interest.

Recommendation: Approve Ordinance No. 1626 for final publication and adoption.

Background:
Ordinance 1626 came before the Commission on February 9, 2021 for first publication. Commission passed it with a vote of 7-0-0.

On October 27, 2020, the City Commission approved acceptance of a Commitment Letter from NMFA for a $2,151,300.00 Drinking Water State Revolving Fund Loan to make Bonito Lake Surface Water Reservoir Improvements. Ordinance No. 1626 authorizes the execution and delivery of a loan and subsidy agreement between the City of Alamogordo and New Mexico Finance Authority. The Ordinance further establishes all terms and conditions of the loan agreement. The City will pay a principal amount of no more than $1,075,650, together with interest, expenses, if any and administrative fees thereon, and to accept a loan subsidy of no more than one million seventy-five thousand six hundred fifty dollars $1,075,650, for the purpose of financing the costs of making improvements to Bonito Lake surface water reservoir as further described in Ordinance No. 1626.

NEW MEXICO
FINANCE**AUTHORITY**

Public Water System Binding Commitment Letter for DW- 5357

October 1, 2020

Via email to bjohnson@ci.alamogordo.nm.us

City of Alamogordo
Attn: Bob Johnson
1376 E. 9th Street
Alamogordo, NM 88310

The New Mexico Finance Authority's Board of Directors has approved the application submitted by the City of Alamogordo, and hereby commits to make a loan in the amount of $2,151,300 with a maturity of 22 years. This loan has a construction term of two (2) years, and a repayment term of 20 years. It is funded through the Drinking Water State Revolving Loan Fund and part of it may be forgivable. An interest rate of .34% over the life of the loan applies to the loan portion of this loan.

The Applicant is a qualified public water supply system under federal law, 42 U.S.C. 300j-12, and applicable state law, Sections 6-21A-1, *et seq.*, NMSA 1978, organized and existing under the Laws of New Mexico. The Applicant will finance the water project described in the application, subject to the following terms and conditions of this Binding Commitment Letter.

This Commitment requires that the Applicant submit the documents listed below, to the Finance Authority within 6 months of this commitment: April 1, 2021.

- Signed Binding Commitment Letter
- Executed copy of attached EPA form 4700-4
- Preliminary Engineering Report (PER) or technical memo acceptable to the Finance Authority;
- Cost breakdown of the project, certified by an engineer or architect;
- Detailed drawdown schedule for project payments;
- Engineering Contract Award approval by New Mexico Environment Department (NMED-CPB) and Finance Authority;
- Completion of the State Environmental Review Process approved by the Finance Authority; and
- Any additional information requested by the Finance Authority.

If the conditions set forth above are not satisfied, the commitment may be extended, in the sole discretion of the Finance Authority, for an additional 60 days, during which time the Applicant must submit the remaining documentation to the Finance Authority. Failure on the Applicant's part to submit the above documentation may result in termination of the Authority's Commitment at the sole discretion of the NMFA.

NEW MEXICO
FINANCE**AUTHORITY**

Public Water System Binding Commitment Letter for DW- 5357

The following documents will be required before funds will be disbursed for construction:

1) Approval of Plans and Specifications by New Mexico Environment Department (NMED-CPB) Construction Programs Bureau and Finance Authority;
2) Applicant needs to demonstrate compliance with EPA guidance on System Award Management found at the following website: (https://www.sam.gov/portal/public/SAM/)
3) Approval of Plans and Specifications by New Mexico Environment Department (NMED-DWB) Drinking Water Bureau prior to construction start;
4) Approval of Bids by NMED-CPB and Finance Authority;
5) Any additional information requested by Finance Authority.

Closing and funding of the loan has been approved by the Finance Authority's Board of Directors, subject to the terms and conditions set out in this Commitment. The construction of the project must be completed within two years from the date of closing of the loan.

Marquita D Russel

Marquita Russel, Chief Executive Officer
New Mexico Finance Authority

9.30.2020
Date

The undersigned hereby accepts and acknowledges the foregoing commitment and agrees to the terms and conditions thereof.

Applicant: Brian Cesar, City of Alamogordo

Signature of Authority

10/27/2020
Date

City Manager
Title

207 Shelby Street
Santa Fe, NM 87501
505-984-1454

1-877-ASK-NMFA * Main Fax: 505-992-9635
Accounting Fax: 505-992-9640 * www.nmfa.net

RECORD OF PROCEEDINGS RELATING TO THE ADOPTION OF ORDINANCE NO. 1626 OF THE CITY COMMISSION OF THE CITY OF ALAMOGORDO, OTERO COUNTY, NEW MEXICO MARCH 9, 2021

STATE OF NEW MEXICO)
) ss.
COUNTY OF OTERO)

The City Commission (the "Governing Body") of the City of Alamogordo, New Mexico (the "Governmental Unit"), met in a regular session in full conformity with the law and the rules and regulations of the Governing Body at the City Commission Chambers, located at 1376 E. Ninth Street, Alamogordo, New Mexico. In compliance with COVID-19 Health Emergency Orders, the meeting was held virtually via zoom and livestreamed at https://www.youtube.com/channel/UCTTgU3xsQBqlyRaME7TaYrQ/live, being the meeting place of the Governing Body for the meeting held on the 9th day of March, 2021, at the hour of 6:00 p.m. Upon roll call, the following members were found to be present:

Present:

Mayor: ______________________________

Commissioners: ______________________________

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Absent:

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Also Present:

Thereupon, there was officially filed with the City Clerk a copy of a proposed Ordinance in final form, as follows:

CITY OF ALAMOGORDO, OTERO COUNTY, NEW MEXICO
ORDINANCE NO. 1626

AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AND SUBSIDY AGREEMENT ("LOAN AGREEMENT") BY AND BETWEEN THE CITY OF ALAMOGORDO, OTERO COUNTY, NEW MEXICO (THE "GOVERNMENTAL UNIT") AND THE NEW MEXICO FINANCE AUTHORITY, EVIDENCING A SPECIAL LIMITED OBLIGATION OF THE GOVERNMENTAL UNIT TO PAY A PRINCIPAL AMOUNT OF NO MORE THAN ONE MILLION SEVENTY-FIVE THOUSAND SIX HUNDRED FIFTY DOLLARS ($1,075,650), TOGETHER WITH INTEREST, EXPENSES, IF ANY AND ADMINISTRATIVE FEES THEREON, AND TO ACCEPT A LOAN SUBSIDY OF NO MORE THAN ONE MILLION SEVENTY-FIVE THOUSAND SIX HUNDRED FIFTY DOLLARS ($1,075,650), FOR THE PURPOSE OF FINANCING THE COSTS OF MAKING IMPROVEMENTS TO BONITO LAKE SURFACE WATER RESERVOIR, TO REPAIR DAMAGE RESULTING FROM A FLOOD EVENT RELATED TO THE LITTLE BEAR FIRE, INCLUDING REPAIR AND REPLACEMENT OF THE MAIN VALVE MANIFOLD AND VALVES LOCATED INSIDE THE DAM HOUSE, INSTALLATION AND EQUIPPING OF A NEW INTERIOR LADDER AND SAFETY CLIMB, CATWALK FOR ACCESS, INSTALLATION OF THREE ADDITIONAL INTAKE PORTS AND A MEASURING STRIP LOCATED ON THE EXTERIOR OF THE DAM HOUSE; PROVIDING FOR THE PLEDGE AND PAYMENT OF THE PRINCIPAL, ADMINISTRATIVE FEES AND INTEREST DUE UNDER THE LOAN AGREEMENT SOLELY FROM THE NET REVENUES OF THE JOINT WATER AND SEWER SYSTEM OF THE GOVERNMENTAL UNIT; SETTING AN INTEREST RATE FOR THE LOAN; APPROVING THE FORM OF AND OTHER DETAILS CONCERNING THE LOAN AGREEMENT; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS ORDINANCE; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE LOAN AGREEMENT.

Capitalized terms used in the following recitals have the same meaning as defined in Section 1 of this Ordinance, unless the context requires otherwise.

WHEREAS, the Governmental Unit is a legally and regularly created, established, organized and existing incorporated municipality under the general laws of the State; and

WHEREAS, the Governing Body has determined and hereby determines that the Project may be financed with amounts borrowed under the Loan Agreement and that it is in the best interest of the Governmental Unit and the public it serves that the Loan Agreement be executed and delivered and that the financing of the construction of the Project take place by executing and delivering the Loan Agreement; and

WHEREAS, the Governing Body has determined that it may lawfully pledge the Pledged Revenues for the payment of amounts due under the Loan Agreement; and

WHEREAS, other than as described on the Term Sheet, the Pledged Revenues have not heretofore been pledged to secure the payment of any obligation which is currently outstanding; and

WHEREAS, there have been presented to the Governing Body, and there presently are on file with the City Clerk, this Ordinance and the form of the Loan Agreement; and

WHEREAS, the Governing Body hereby determines that the Project to be financed by the Loan Agreement is to be used for governmental purposes of the Governmental Unit; and

WHEREAS, all required authorizations, consents and approvals in connection with (i) the use and pledge of the Pledged Revenues to the Finance Authority (or its assigns) for the payment of amounts due under the Loan Agreement, (ii) the use of the proceeds of the Loan Agreement to finance the Project, and (iii) the authorization, execution and delivery of the Loan Agreement, which are required to have been obtained by the date of the Ordinance have been obtained or are reasonably expected to be obtained prior to the Closing Date.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF ALAMOGORDO, OTERO COUNTY, NEW MEXICO:

Section 1. Definitions. Capitalized terms defined in this Section 1 shall, for all purposes, have the meaning herein specified, unless the context clearly requires otherwise (such meanings to be equally applicable to both the singular and the plural forms of the terms defined):

"Administrative Fee" or "Administrative Fee Component" means the 0.25% annual fee payable to the Finance Authority as 0.125% of the Loan Agreement Principal Amount then outstanding as a part of each Loan Agreement Payment for the costs of originating and servicing the Loan.

"Aggregate Disbursements" means, at any time after the Closing Date, the sum of all Disbursements.

"Aggregate Forgiven Disbursements" means the amount of Subsidy provided in the form of principal forgiveness, and shall at any time after the Closing Date be equal to the product of the Subsidy times the Aggregate Disbursements, up to the Maximum Forgiven Principal.

"Aggregate Repayable Disbursements" means, at any time after the Closing Date, the Aggregate Disbursements less the Aggregate Forgiven Disbursements.

"Approved Requisition" means a requisition in the form of Exhibit "C" to the Loan Agreement, together with supporting documentation submitted to and approved by the Finance Authority pursuant to Section 4.2 of the Loan Agreement.

"Authorized Officers" means the Mayor, the Mayor Pro Tem, the Finance Manager, the City Manager and the City Clerk of the Governmental Unit.

"Bonds" means drinking water state revolving loan fund revenue bonds, if any, issued hereafter by the Finance Authority and related to the Loan Agreement and the Loan Agreement Payments.

"Closing Date" means the date of execution, delivery and funding of the Loan Agreement authorized by this Ordinance.

"Debt Service Account" means the debt service account established in the name of the Governmental Unit and administered by the Finance Authority to pay the Loan Agreement Payments under the Loan Agreement as the same become due.

"Disbursement" means an amount caused to be paid by the Finance Authority for an Approved Requisition for costs of the Project, including the Expense Fund Component.

"DWSRLF Act" means the general laws of the State, particularly the Drinking Water State Revolving Loan Fund Act, NMSA 1978, §§ 6-21A-1 through 6-21A-9, as amended; NMSA 1978, §§ 3-31-1 through 3-31-12, as amended; and enactments of the Governing Body relating to the Loan Agreement, including this Ordinance.

"Drinking Water State Revolving Loan Fund" means the drinking water state revolving loan fund established by the DWSRLF Act.

"Environmental Protection Agency" means the Environmental Protection Agency of the United States.

"Expense Fund" means the expense fund hereby created to be held and administered by the Finance Authority to pay Expenses.

"Expense Fund Component" means an amount equal to one percent (1%) of each Disbursement for the Project, minus any amount forgiven under the Loan Agreement, simultaneously withdrawn and deposited in the Expense Fund to pay Expenses.

"Expenses" means the Finance Authority's costs of issuance of the Loan Agreement and the Bonds, if any, and periodic and regular fees and expenses incurred by the Finance Authority in administering the Loan Agreement, including legal fees.

"Final Loan Agreement Payment Schedule" means the schedule of Loan Agreement Payments due on the Loan Agreement following the Final Requisition, as determined on the basis of the Aggregate Repayable Disbursements.

"Final Requisition" means the final requisition of moneys to be submitted by the Governmental Unit, which shall be submitted by the Governmental Unit on or before the date provided for in Section 4.1(b) of the Loan Agreement.

"Finance Authority" means the New Mexico Finance Authority, created by the New Mexico Finance Authority Act, NMSA 1978, §§ 6-21-1 through 6-21-31, as amended.

"Fiscal Year" means the period commencing on July 1 of each calendar year and ending on the last day of June of the next succeeding calendar year, or any other twelve-month period which any appropriate authority may hereafter establish for the Governmental Unit as its fiscal year.

"Governing Body" means the duly organized City Commission of the Governmental Unit and any successor governing body of the Governmental Unit.

"Governmental Unit" means the City of Alamogordo, Otero County, New Mexico.

"Gross Revenues" means all income and revenues directly or indirectly derived by the Governmental Unit from the operation and use of the System, or any part of the System, for any particular Fiscal Year period to which the term is applicable, and includes, without limitation, all revenues received by the Governmental Unit, or any municipal corporation or agency succeeding to the rights of the Governmental Unit, from the System and from the sale and use of water and sanitary sewer services or facilities, or any other service, commodity or facility or any combination thereof furnished by the System.

Gross Revenues do not include:

(a) Any money received as (i) grants or gifts from the United States of America, the State or other sources or (ii) the proceeds of any charge or tax intended as a replacement therefore or other capital contributions from any source which are restricted as to use;

(b) Gross receipts taxes, other taxes and/or fees collected by the Governmental Unit and remitted to other governmental agencies; and

(c) Condemnation proceeds or the proceeds of any insurance policy, except any insurance proceeds derived in respect of loss of use or business interruption.

"Herein," "hereby," "hereunder," "hereof," "hereinabove" and "hereafter" refer to this entire Ordinance and not solely to the particular section or paragraph of this Ordinance in which such word is used.

"Interest Component" means the portion of each Loan Agreement Payment paid as interest accruing on the Aggregate Repayable Disbursements then outstanding, calculated from the date of each Disbursement.

"Interest Rate" means the rate of interest on the Loan Agreement as shown on the Term Sheet.

"Loan" means the funds to be loaned to the Governmental Unit by the Finance Authority pursuant to the Loan Agreement, up to the Maximum Principal Amount.

"Loan Agreement" means the loan and subsidy agreement and any amendments or supplements thereto, including the exhibits attached to the loan agreement.

"Loan Agreement Payment" means, collectively, the Principal Component, the Interest Component, Expenses, and the Administrative Fee Component to be paid by the Governmental Unit as payment on the Aggregate Repayable Disbursements under the Loan Agreement, as shown on Exhibit "B" thereto.

"Loan Agreement Principal Amount" means, as of any date of calculation, the Aggregate Repayable Disbursements (including the Expense Fund Component) then outstanding.

"Maximum Forgiven Principal" means the maximum amount of loan subsidy available in the form of principal forgiveness, which is equal to fifty percent (50%) of the Maximum Principal Amount. The Maximum Forgiven Principal is one million seventy-five thousand six hundred fifty dollars ($1,075,650).

"Maximum Repayable Principal" means the maximum amount of Aggregate Repayable Disbursements repayable by the Governmental Unit pursuant to the Loan Agreement, and is equal to the Maximum Principal Amount less the Maximum Forgiven Principal. The Maximum Repayable Principal is one million seventy-five thousand six hundred fifty dollars ($1,075,650).

"Maximum Principal Amount" means two million one hundred fifty-one thousand three hundred dollars ($2,151,300).

"Net Revenues" means the Gross Revenues of the System owned and operated by the Governmental Unit minus Operation and Maintenance Expenses of the System, indirect charges, amounts expended for capital replacements and repairs of the System, required set asides for debt and replacement requirements and any other payments from the gross revenues reasonably required for operation of the System.

"NMSA" means the New Mexico Statutes Annotated, 1978 Compilation, as amended and supplemented from time to time.

"Operation and Maintenance Expenses" means all reasonable and necessary current expenses of the System, for any particular Fiscal Year or period to which such term is applicable, paid or accrued, related to operating, maintaining and repairing the System, including, without limiting the generality of the foregoing:

(a) Legal and overhead expenses of the Governmental Unit directly related and reasonably allocable to the administration of the System;

(b) Insurance premiums for the System, including, without limitation, premiums for property insurance, public liability insurance and workmen's compensation insurance, whether or not self-funded;

(c) Premiums, expenses and other costs (other than required reimbursements of insurance proceeds and other amounts advanced to pay debt service requirements on System bonds) for credit facilities;

(d) Any expenses described in this definition other than expenses paid from the proceeds of System bonds;

(e) The costs of audits of the books and accounts of the System;

(f) Amounts required to be deposited in any rebate fund;

(g) Salaries, administrative expenses, labor costs, surety bonds and the cost of water, materials and supplies used for or in connection with the current operation of the System; and

(h) Any fees required to be paid under any operation, maintenance and/or management agreement with respect to the System.

Operation and Maintenance Expenses do not include any allowance for depreciation, payments in lieu of taxes, franchise fees payable or other transfers to the Governmental Unit's general fund, liabilities incurred by the Governmental Unit as a result of its negligence or other misconduct in the operation of the System, any charges for the accumulation of reserves for capital replacements or any Operation and Maintenance Expenses payable from moneys other than Gross Revenues.

"Ordinance" means this Ordinance No. 1626 adopted by the Governing Body of the Governmental Unit on March 9, 2021, approving the Loan Agreement and pledging the Pledged Revenues to the payment of the Loan Agreement Payments as shown on the Term Sheet to the Loan Agreement, as supplemented from time to time in accordance with the provisions hereof.

"Parity Obligations" means any obligations of the Governmental Unit under the Loan Agreement and any other obligations now outstanding or hereafter issued or incurred, payable from or secured by a pledge of the Pledged Revenues and issued with a lien on the Pledged Revenues on a parity with the Loan Agreement, including any such obligations shown on the Term Sheet.

"Pledged Revenues" means the Net Revenues of the Governmental Unit pledged to payment of the Loan Agreement Payments pursuant to this Ordinance and described on the Term Sheet.

"Project" means the project described in the Term Sheet.

"Senior Obligations" means any bonds or other obligations of the Governmental Unit now outstanding or hereafter issued or incurred, payable from or secured by a pledge of the Pledged Revenues and issued with a lien on the Pledged Revenues superior to the lien created by the Loan Agreement, including any such obligations shown on the Term Sheet.

"State" means the State of New Mexico.

"Subordinated Obligations" means any bonds or other obligations of the Governmental Unit now outstanding or hereafter issued or incurred with a lien on the Pledged Revenues subordinate to the lien created by the Loan Agreement and subordinate to any other outstanding Parity Obligations having a lien on the Pledged Revenues, including any such obligations shown on the Term Sheet.

"Subsidy" means the subsidy in the form of principal forgiveness for the Governmental Unit, to be applied proportionally at the time of each Disbursement to the Governmental Unit, being fifty percent (50%) of such Disbursement.

"System" means the public utility designated as the Governmental Unit's joint water and wastewater system, and all improvements or additions thereto, including additions and improvements to be acquired or constructed with the proceeds of the Loan Agreement.

"Term Sheet" means Exhibit "A" to the Loan Agreement.

"Unrequisitioned Principal Amount" means the amount, if any, by which the Maximum Principal Amount exceeds the Aggregate Disbursements at the time the Governmental Unit submits the certificate of completion required pursuant to Section 6.3 of the Loan Agreement.

Section 2. Ratification. All action heretofore taken (not inconsistent with the provisions of this Ordinance) by the Governing Body and officers of the Governmental Unit directed toward the acquisition and completion of the Project, and the execution and delivery of the Loan Agreement shall be, and the same hereby is, ratified, approved and confirmed.

Section 3. Authorization of the Project and the Loan Agreement. The acquisition and completion of the Project and the method of financing the Project through execution and delivery of the Loan Agreement are hereby authorized and ordered. The Project is for the benefit and use of the Governmental Unit.

Section 4. Findings. The Governmental Unit hereby declares that it has considered all relevant information and data and hereby makes the following findings:

A. Moneys available and on hand for the Project from all sources other than the Loan Agreement are not sufficient to defray the cost of acquiring and constructing the Project.

B. The Pledged Revenues may lawfully be pledged to secure the payment of amounts due under the Loan Agreement.

C. It is economically feasible and prudent to defray, in whole or in part, the costs of the Project by the execution and delivery of the Loan Agreement.

D. The Project and the execution and delivery of the Loan Agreement in the Maximum Principal Amount pursuant to the DWSRLF Act to provide funds for the financing of the Project are necessary or advisable in the interest of the public health, safety, and welfare of the residents and the public served by the Governmental Unit.

E. The Governmental Unit will acquire and construct the Project, in whole or in part, with the net proceeds of the Loan.

F. Other than as described on the Term Sheet, the Governmental Unit does not have any outstanding obligations payable from Pledged Revenues which it has incurred or will incur prior to the initial execution and delivery of the Loan Agreement.

G. The net effective interest rate on the Maximum Principal Amount does not exceed the current market rate, which is the maximum rate permitted by federal law.

Section 5. Loan Agreement - Authorization and Detail.

A. Authorization. This Ordinance has been adopted by the affirmative vote of at least a three-fourths majority of all of the members of the Governing Body. For the purpose of protecting the public health, conserving the property, and protecting the general welfare and prosperity of the public served by the Governmental Unit and acquiring and constructing the Project, it is hereby declared necessary that the Governmental Unit, pursuant to the DWSRLF Act, execute and deliver the Loan Agreement evidencing a special limited obligation of the Governmental Unit to pay a principal amount of one million seventy-five thousand six hundred fifty dollars ($1,075,650) and interest thereon, and to accept a loan subsidy in the amount of one million seventy-five thousand six hundred fifty dollars ($1,075,650) and the execution and delivery of the Loan Agreement is hereby authorized. The Governmental Unit shall use the proceeds of the Loan and Subsidy (i) to finance the acquisition and completion of the Project and (ii) to pay the Administrative Fee and Expenses of the Loan Agreement and the costs of issuance of the Bonds, if any. The Project will be owned by the Governmental Unit.

B. Detail. The Loan Agreement shall be in substantially the form of the Loan Agreement presented at the meeting of the Governing Body at which this Ordinance was adopted. The Loan shall be in an amount not to exceed the Maximum Principal Amount of two million one hundred fifty-one thousand three hundred dollars ($2,151,300). The Loan Agreement Principal Amount shall be payable in installments of principal due on May 1 of the years designated in the Final Loan Agreement Payment Schedule and bear interest payable on May 1 and November 1 of each of the years designated in the Final Loan Agreement Payment Schedule, at the interest rate designated in the Loan Agreement, including Exhibit "A" thereto, which rate includes the Administrative Fee.

Section 6. Approval of Loan Agreement. The form of the Loan Agreement as presented at the meeting of the Governing Body at which this Ordinance was adopted is hereby approved. Authorized Officers are hereby individually authorized to execute, acknowledge and deliver the Loan Agreement with such changes, insertions and omissions as may be approved by such individual Authorized Officers, and the City Clerk is hereby authorized to affix the seal of the Governmental Unit on the Loan Agreement and attest the same. The execution of the Loan Agreement by an Authorized Officer shall be conclusive evidence of such approval.

Section 7. Special Limited Obligation. The Loan Agreement shall be secured by the pledge of the Pledged Revenues as set forth in the Loan Agreement and shall be payable solely from the Pledged Revenues. The Loan Agreement, together with interest thereon and other obligations of the Governmental Unit thereunder, shall be a special, limited obligation of the Governmental Unit, payable solely from the Pledged Revenues as provided in this Ordinance, and the Loan Agreement shall not constitute a general obligation of the Governmental Unit or the State, and the holders of the Loan Agreement may not look to any general or other fund of the Governmental Unit for payment of the obligations thereunder. Nothing contained in this Ordinance nor in the Loan Agreement, nor any other instruments, shall be construed as obligating the Governmental Unit (except with respect to the application of the Pledged Revenues) or as imposing a pecuniary liability or a charge upon the general credit of the Governmental Unit or against its taxing power, nor shall a breach of any agreement contained in this Ordinance, the Loan Agreement, or any other instrument impose any pecuniary liability upon the Governmental Unit or any charge upon its general credit or against its taxing power. The Loan Agreement shall never constitute an indebtedness of the Governmental Unit within the meaning of any State constitutional provision or statutory limitation and shall never constitute or give rise to a pecuniary liability of the Governmental Unit or a charge against its general credit or taxing power. Nothing herein shall prevent the Governmental Unit from applying other funds of the Governmental Unit legally available therefor to payments required by the Loan Agreement, in its sole and absolute discretion.

Section 8. Disposition of Proceeds; Completion of Acquisition and Completion of the Project.

A. Debt Service Account; Disbursements. The Governmental Unit hereby consents to creation of the Debt Service Account to be held and maintained by the Finance Authority as provided in the Loan Agreement.

The proceeds derived from the execution and delivery of the Loan Agreement shall be disbursed promptly upon receipt of an Approved Requisition (as defined in the Loan Agreement).

Until the acquisition and completion of the Project or the date of the Final Requisition, the money disbursed pursuant to the Loan Agreement shall be used and paid out solely for the purpose of acquiring and constructing the Project in compliance with applicable law and the provisions of the Loan Agreement.

B. Prompt Completion of the Project. The Governmental Unit will complete the Project with all due diligence.

C. Certification of Completion of the Project. Upon the acquisition and completion of the Project, the Governmental Unit shall execute and send to the Finance

Authority a certificate stating that the completion of and payment for the Project has been completed.

D. Finance Authority Not Responsible for Application of Loan Proceeds. The Finance Authority shall in no manner be responsible for the application or disposal by the Governmental Unit or by its officers of the funds derived from the Loan Agreement or of any other funds herein designated.

Section 9. Deposit of Pledged Revenues; Distributions of the Pledged Revenues and Flow of Funds.

A. Deposit of Pledged Revenues. Pledged Revenues shall be paid directly by the Governmental Unit to the Finance Authority in an amount sufficient to pay principal, interest, Administrative Fees, Expenses and other amounts due under the Loan Agreement, as provided in Section 5.2 of the Loan Agreement.

B. Termination on Deposits to Maturity. No payment shall be made into the Debt Service Account if the amount in the Debt Service Account totals a sum at least equal to the entire aggregate amount of Loan Agreement Payments to become due as to principal, interest on, Administrative Fees and any other amounts due under the Loan Agreement, in which case moneys in such account in an amount at least equal to such principal, interest and Administrative Fee requirements shall be used solely to pay such obligations as the same become due, and any moneys in excess thereof in such accounts shall be transferred to the Governmental Unit and used as provided in Section 9.C of this Ordinance.

C. Use of Surplus Revenues. After making all the payments required to be made by this Section and any payments required by outstanding Parity Obligations, any moneys remaining in the Debt Service Account shall be transferred to the Governmental Unit on a timely basis and applied to any other lawful purpose, including, but not limited to, the payment of any Parity Obligations or bonds or obligations subordinate and junior to the Loan Agreement, or purposes authorized by the Governmental Unit, the Constitution and laws of the State, as the Governmental Unit may from time to time determine.

Section 10. Lien on Pledged Revenues. Pursuant to the Loan Agreement, the Pledged Revenues are hereby authorized to be pledged, and are hereby pledged, and the Governmental Unit grants a lien on the Pledged Revenues and security interest therein, for the payment of the principal, interest, Administrative Fees, and any other amounts due under the Loan Agreement, subject to the uses thereof permitted by and the priorities set forth in this Ordinance. The Loan Agreement constitutes an irrevocable first lien, but not necessarily an exclusive first lien, on the Pledged Revenues as set forth herein and therein, and the Governmental Unit shall not create a lien on the Pledged Revenues superior to that of the Loan Agreement without the express prior written approval of the Finance Authority.

Section 11. Authorized Officers. Authorized Officers are hereby individually authorized and directed to execute and deliver any and all papers, instruments, opinions, affidavits and other documents and to do and cause to be done any and all acts and things necessary or proper for carrying out this Ordinance, the Loan Agreement and all other transactions contemplated hereby and thereby. Authorized Officers are hereby individually authorized to do all acts and things required of them by this Ordinance and the Loan Agreement for the full, punctual and complete performance of all the terms, covenants and agreements contained in this Ordinance and the Loan Agreement including, but not limited to, the execution and delivery of closing documents and reports in connection with the execution and delivery of the Loan Agreement, and the publication of the summary of this Ordinance set out in Section 17 of this Ordinance (with such changes, additions and deletions as may be necessary).

Section 12. Amendment of Ordinance. Prior to the Closing Date, the provisions of this Ordinance may be supplemented or amended by ordinance of the Governing Body with respect to any changes which are not inconsistent with the substantive provisions of this Ordinance. After the Closing Date, this Ordinance may be amended without receipt by the Governmental Unit of any additional consideration, but only with the prior written consent of the Finance Authority.

Section 13. Ordinance Irrepealable. After the Closing Date, this Ordinance shall be and remain irrepealable until all obligations due under the Loan Agreement shall be fully paid, canceled and discharged, as herein provided.

Section 14. Severability Clause. If any section, paragraph, clause or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

Section 15. Repealer Clause. All bylaws, orders, resolutions and ordinances, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any bylaw, order, resolution or ordinance, or part thereof, heretofore repealed.

Section 16. Effective Date. Upon due adoption of this Ordinance, it shall be recorded in the book of the Governmental Unit kept for that purpose, authenticated by the signatures of the Mayor and City Clerk, and the title and general summary of the subject matter contained in this Ordinance (set out in Section 17 below) shall be published in a newspaper which is of general circulation in the Governmental Unit, and the Ordinance shall be in full force and effect thereafter, in accordance with law.

Section 17. General Summary for Publication. Pursuant to the general laws of the State, the title and a general summary of the subject matter contained in this Ordinance shall be published in substantially the following form:

[*Remainder of page intentionally left blank.*]

[*Form of Summary of* Ordinance *for Publication.*]

City of Alamogordo, Otero County, New Mexico
Notice of Adoption of Ordinance

Notice is hereby given of the title and of a general summary of the subject matter contained in Ordinance No. 1626, duly adopted and approved by the Governing Body of the City of Alamogordo, New Mexico (the "Governmental Unit"), on March 9, 2021. Complete copies of the Ordinance are available for public inspection during normal and regular business hours in the office of the City Clerk, 1376 E. Ninth Street, Alamogordo 88310.

The title of the Ordinance is:

CITY OF ALAMOGORDO, OTERO COUNTY, NEW MEXICO
ORDINANCE NO. 1626

AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AND SUBSIDY AGREEMENT ("LOAN AGREEMENT") BY AND BETWEEN THE CITY OF ALAMOGORDO, OTERO COUNTY, NEW MEXICO (THE "GOVERNMENTAL UNIT") AND THE NEW MEXICO FINANCE AUTHORITY, EVIDENCING A SPECIAL LIMITED OBLIGATION OF THE GOVERNMENTAL UNIT TO PAY A PRINCIPAL AMOUNT OF NO MORE THAN ONE MILLION SEVENTY-FIVE THOUSAND SIX HUNDRED FIFTY DOLLARS ($1,075,650), TOGETHER WITH INTEREST, EXPENSES, IF ANY AND ADMINISTRATIVE FEES THEREON, AND TO ACCEPT A LOAN SUBSIDY OF NO MORE THAN ONE MILLION SEVENTY-FIVE THOUSAND SIX HUNDRED FIFTY DOLLARS ($1,075,650), FOR THE PURPOSE OF FINANCING THE COSTS OF MAKING IMPROVEMENTS TO BONITO LAKE SURFACE WATER RESERVOIR, TO REPAIR DAMAGE RESULTING FROM A FLOOD EVENT RELATED TO THE LITTLE BEAR FIRE, INCLUDING REPAIR AND REPLACEMENT OF THE MAIN VALVE MANIFOLD AND VALVES LOCATED INSIDE THE DAM HOUSE, INSTALLATION AND EQUIPPING OF A NEW INTERIOR LADDER AND SAFETY CLIMB, CATWALK FOR ACCESS, INSTALLATION OF THREE ADDITIONAL INTAKE PORTS AND A MEASURING STRIP LOCATED ON THE EXTERIOR OF THE DAM HOUSE; PROVIDING FOR THE PLEDGE AND PAYMENT OF THE PRINCIPAL, ADMINISTRATIVE FEES AND INTEREST DUE UNDER THE LOAN AGREEMENT SOLELY FROM THE NET REVENUES OF THE JOINT WATER AND SEWER SYSTEM OF THE GOVERNMENTAL UNIT; SETTING AN INTEREST RATE FOR THE LOAN; APPROVING THE FORM OF AND OTHER DETAILS CONCERNING THE LOAN AGREEMENT; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS ORDINANCE; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE LOAN AGREEMENT.

The title sets forth a general summary of the subject matter contained in the Ordinance.

This notice constitutes compliance with NMSA 1978, § 6-14-6.

[*End of Form of Summary for Publication*.]

[*Remainder of page intentionally left blank.*]

Section 18. <u>Execution of Agreements</u>. The City of Alamogordo through its Governing Body agrees to authorize and execute all such agreements with the New Mexico Finance Authority as are necessary to consummate the Loan contemplated herein and consistent with the terms and conditions of the Loan Agreement and this Ordinance.

PASSED, APPROVED AND ADOPTED THIS 9TH DAY OF MARCH, 2021.

CITY OF ALAMOGORDO,
OTERO COUNTY, NEW MEXICO

By____
Richard A. Boss, Mayor

[SEAL]

ATTEST:

By____________________________
Rachel Hughs, City Clerk

[*Remainder of page intentionally left blank.*]

Governing Body Member _______________ then moved adoption of the foregoing Ordinance duly seconded by Governing Body Member ________________.

The motion to adopt said Ordinance, upon being put to a vote, was passed and adopted on the following recorded vote:

Those Voting Aye: ____

____

____

____

____

____

Those Voting Nay: ____

____

Those Absent: ____

____

_____________ (______) members of the Governing Body having voted in favor of said motion, the Mayor declared said motion carried and said Ordinance adopted, whereupon the Mayor and the City Clerk signed the Ordinance upon the records of the minutes of the Governing Body.

After consideration of other matters not relating to the Ordinance, the meeting on motion duly made, seconded and carried, was adjourned.

CITY OF ALAMOGORDO,
OTERO COUNTY, NEW MEXICO

By____
Richard A. Boss, Mayor

[SEAL]

ATTEST:

By____________________________
Rachel Hughs, City Clerk

[*Remainder of page intentionally left blank.*]

STATE OF NEW MEXICO)
) ss.
COUNTY OF OTERO)

I, Rachel Hughs, the duly appointed, qualified, and acting City Clerk of the City of Alamogordo, New Mexico (the "Governmental Unit"), do hereby certify:

1. The foregoing pages are a true, perfect, and complete copy of the record of the proceedings of the City Commission (the "Governing Body"), constituting the governing body of the Governmental Unit, had and taken at a duly called regular meeting held at the City Commission Chambers, located at 1376 E. Ninth Street, Alamogordo, New Mexico. In compliance with COVID-19 Health Emergency Orders, the meeting was held virtually via https://www.youtube.com/channel/UCTTgU3xsQBqlyRaME7TaYrQ/live on March 9, 2021, at the hour of 6:00 p.m., insofar as the same relate to the adoption of the Ordinance and the execution and delivery of the proposed Loan Agreement, copies of which are set forth in the official records of the proceedings of the Governing Body kept in my office. None of the action taken has been rescinded, repealed, or modified.

2. Said proceedings were duly had and taken as therein shown, the meeting therein was duly held, and the persons therein named were present at said meeting, as therein shown.

3. Notice of the meeting was given in compliance with the permitted methods of giving notice of meetings of the Governing Body as required by the State Open Meetings Act, NMSA 1978, §§ 10-15-1 through 10-15-4, as amended, including, the Governing Body's Open Meetings Resolution No. 2021-01 presently in effect.

IN WITNESS WHEREOF, I have hereunto set my hand this 16th day of April, 2021.

CITY OF ALAMOGORDO,
OTERO COUNTY, NEW MEXICO

[SEAL]

By____
Rachel Hughs, City Clerk

EXHIBIT "A"

Affidavit of Publication of Notice of Public Hearing and Intent to Adopt Ordinance,
Notice and Agenda of Meeting and
Affidavit of Publication of Notice of Adoption of Ordinance

Alamogordo Daily News
PART OF THE USA TODAY NETWORK

Affidavit of Publication
Ad # 0004609368
This is not an invoice

VIRTUE & NAJJAR
2200 BROTHERS RD, 2 ND FLOOR

SANTA FE, NM 87505

I, being duly sworn, on my oath say that I am the Legal Coordinator of the **Alamogordo Daily News**, a newspaper of daily circulation,published and printed in the English language at the City of Alamogordo, Otero County, and State of New Mexico. That the Alamogordo Daily News has been regularly published and issued for more than nine months prior to the date of the first publication hereinafter mentioned.

02/21/2021

Legal Clerk

Subscribed and sworn before me this February 21, 2021:

State of WI, County of Brown
NOTARY PUBLIC

5.15.23

My commission expires

CITY OF ALAMOGORDO, NEW MEXICO
Notice of Public Hearing

Notice is hereby given that at its regular meeting on March 9, 2021, commencing at the hour of 6:00 p.m., being held virtually via zoom and livestreamed at https://www.youtube.com/channel/UCTTgU3xsQBqlyRaME7TaYrQ/live (the "City"), the City will conduct a public hearing to consider a proposed Ordinance, the title of which appears below. A complete copy of the Ordinance is available for public inspection during normal and regular business hours at the Office of the City Clerk, 1376 E. Ninth Street, Alamogordo, New Mexico 88310.

The title of the proposed Ordinance is:

AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AND SUBSIDY AGREEMENT ("LOAN AGREEMENT") BY AND BETWEEN THE CITY OF ALAMOGORDO, OTERO COUNTY, NEW MEXICO (THE "GOVERNMENTAL UNIT") AND THE NEW MEXICO FINANCE AUTHORITY, EVIDENCING A SPECIAL LIMITED OBLIGATION OF THE GOVERNMENTAL UNIT TO PAY A PRINCIPAL AMOUNT OF NO MORE THAN ONE MILLION SEVENTY-FIVE THOUSAND SIX HUNDRED FIFTY DOLLARS ($1,075,650), TOGETHER WITH INTEREST, EXPENSES, IF ANY AND ADMINISTRATIVE FEES THEREON, AND TO ACCEPT A LOAN SUBSIDY OF NO MORE THAN ONE MILLION SEVENTY-FIVE THOUSAND SIX HUNDRED FIFTY DOLLARS ($1,075,650), FOR THE PURPOSE OF FINANCING THE COSTS OFMAKING IMPROVEMENTS TO BONITO LAKE SURFACE WATER RESERVOIR, TO REPAIR DAMAGE RESULTING FROM A FLOOD EVEN RELATED TO THE LITTLE BEAR FIRE, INCLUDING REPAIR AND REPLACEMENT OF THE MAIN VALVE MANIFOLD AND VALVES LOCATED INSIDE THE DAM HOUSE, INSTALLATION AND EQUIPPING OF A NEW INTERIOR LADDER AND SAFETY CLIMB, CATWALK FOR ACCESS, INSTALLATION OF THREE ADDITIONAL INTAKE PORTS AND A MEASURING STRIP LOCATED ON THE EXTERIOR OF THE DAM HOUSE; PROVIDING FOR THE PLEDGE AND PAYMENT OF THE PRINCIPAL, ADMINISTRATIVE FEES AND INTEREST DUE UNDER THE LOAN AGREEMENT SOLELY FROM THE NET REVENUES OF THE JOINT WATER AND SEWER SYSTEM OF THE GOVERNMENTAL UNIT; SETTING AN INTEREST RATE FOR THE LOAN; APPROVING THE FORM OF AND OTHER DETAILS CONCERNING THE LOAN AGREEMENT; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS ORDINANCE; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE LOAN AGREEMENT.

A general summary of the subject matter of the Ordinance is contained in its title.
Publication of this notice constitutes compliance with NMSA 1978, § 3-17-3.
Daily News, Feb. 21, 2021, #0004609368

Ad # 0004609368
PO #: Notice
\# of Affidavits 1

This is not an invoice

NANCY HEYRMAN
Notary Public
State of Wisconsin

$2,151,300 Maximum Principal Amount

Maximum Forgiven Principal Amount $1,075,650

Maximum Repayable Principal Amount $1,075,650

DRINKING WATER STATE REVOLVING LOAN FUND
LOAN AND SUBSIDY AGREEMENT

dated

April 16, 2021

by and between the

NEW MEXICO FINANCE AUTHORITY

and the

CITY OF ALAMOGORDO,
OTERO COUNTY, NEW MEXICO

DRINKING WATER STATE REVOLVING LOAN FUND
LOAN AND SUBSIDY AGREEMENT

This LOAN AND SUBSIDY AGREEMENT (the "Loan Agreement"), dated as of April 16, 2021, is entered into by and between the **NEW MEXICO FINANCE AUTHORITY** (the "Finance Authority"), and the **CITY OF ALAMOGORDO**, OTERO COUNTY, New Mexico (the "Governmental Unit"), an incorporated municipality duly organized and existing under the laws of the State of New Mexico (the "State").

WITNESSETH:

Capitalized terms used in the following recitals of this Loan Agreement and not defined in the first Paragraph above or in these recitals shall have the same meaning as defined in Article I of this Loan Agreement, unless the context requires otherwise.

WHEREAS, the Finance Authority is authorized, pursuant to the Drinking Water State Revolving Loan Fund Act, NMSA 1978, §§ 6-21A-1 through 6-21A-9, as amended (the "DWSRLF Act") to implement a program to permit qualified local authorities, such as the Governmental Unit, to enter into agreements with the Finance Authority to provide financial assistance in the acquisition, design, construction, improvement, expansion, repair and rehabilitation of drinking water supply facilities as authorized by the Safe Drinking Water Act; and

WHEREAS, a portion of the Loan funds made available under this Agreement pursuant to the DWSRLF Act and the Safe Drinking Water Act may be forgiven and, if forgiven, will not be required to be repaid; and

WHEREAS, the Governing Body of the Governmental Unit has determined that it is in the best interests of the Governmental Unit and the public it serves that the Governmental Unit enter into this Loan Agreement with the Finance Authority and accept a loan and subsidy from the Finance Authority to finance the costs of the Project, as more fully described on the Term Sheet attached hereto as Exhibit "A"; and

WHEREAS, the Project appears on the Drinking Water Fundable Priority List; and

WHEREAS, the Project has been planned and authorized in conformity with the Intended Use Plan; and

WHEREAS, the New Mexico Environment Department (the "Department") has shall have determined that the Governmental Unit's Project plans and specifications comply with the provisions of 42 U.S.C. Section 300j-12 and the requirements of the laws and regulations of the State governing the construction and operation of drinking water systems prior to disbursement of any proceeds of the Loan for construction; and

WHEREAS, a portion of the funds made available under this Loan Agreement pursuant to the DWSRLF Act and the Safe Drinking Water Act are federal funds categorized as CFDA 66.468; and

WHEREAS, pursuant to information provided by the Governmental Unit and environmental review by applicable State and federal agencies, and in accordance with 40 C.F.R. Sections 6.204, 6.300(c)(1), and 6.301(f), and pursuant to the environmental review process of the State, the Finance Authority has determined that the Project meets the requirements for a Categorical Exclusion as defined in the State Environmental Review Process (SERP) for the Drinking Water State Revolving Loan Fund; and

WHEREAS, the Finance Authority has found and determined that the Governmental Unit is a disadvantaged community under the Intended Use Plan in that its median annual household income is $44,133, which is less than 100% of the State median annual household income of $48,059, and it has an affordability ratio determined as provided in the Intended Use Plan of greater than 1.5; and

WHEREAS, the New Mexico Environment Department Drinking Water Bureau has determined that the Governmental Unit has sufficient technical, managerial and financial capability to operate the Project for its useful life and ensure compliance with the requirements of the Safe Drinking Water Act.

NOW, THEREFORE, for and in consideration of the premises and the mutual promises and covenants herein contained, the Finance Authority and the Governmental Unit agree:

ARTICLE I

DEFINITIONS

Capitalized terms defined in this Article I shall have the meaning specified in this Article I wherever used in this Loan Agreement, including the foregoing recitals, unless the context clearly requires otherwise. Capitalized terms defined in the foregoing recitals, if not defined in this Article I, shall have the same meaning as therein stated when used in this Loan Agreement, unless the context clearly requires otherwise.

"Administrative Fee" or "Administrative Fee Component" means the 0.25% annual fee payable to the Finance Authority as 0.125% of the Loan Agreement Principal Amount then outstanding as a part of each Loan Agreement Payment for the costs of originating and servicing the Loan.

"Aggregate Disbursements" means, at any time after the Closing Date, the sum of all Disbursements.

"Aggregate Forgiven Disbursements" means the amount of Subsidy provided in the form of principal forgiveness, and shall at any time after the Closing Date be equal to the product of the Subsidy times the Aggregate Disbursements, up to the Maximum Forgiven Principal.

"Aggregate Program Amount" means, with respect to this Loan Agreement, the sum of two million one hundred thirty thousand dollars ($2,130,000) which amount shall be available for disbursal to the Governmental Unit to pay costs of the Project.

"Aggregate Repayable Disbursements" means, at any time after the Closing Date, the Aggregate Disbursements less the Aggregate Forgiven Disbursements.

"Approved Requisition" means a requisition in the form of Exhibit "C" to this Loan Agreement, together with the required supporting documentation set out in Exhibit "C" submitted to and approved by the Finance Authority pursuant to Section 4.2 of this Loan Agreement.

"Authorized Officers" means, with respect to the Governmental Unit, the Mayor, the Mayor Pro Tem, the Finance Manager, the City Manager and the City Clerk thereof; and with respect to the Finance Authority, any one or more of the Chairperson, Vice-Chairperson, Secretary and Chief Executive Officer of the Finance Authority, and any other officer or employee of the Finance Authority designated in writing by an Authorized Officer of the Finance Authority.

"Bonds" means drinking water state revolving loan fund revenue bonds, if any, issued hereafter by the Finance Authority and specifically related to this Loan Agreement and the Loan Agreement Payments.

"Closing Date" means the date of execution and delivery of this Loan Agreement as shown on the Term Sheet.

"Debt Service Account" means the debt service account established in the name of the Governmental Unit and administered by the Finance Authority to pay the Loan Agreement Payments under this Loan Agreement as the same become due.

"Department" means the New Mexico Environment Department.

"Disbursement" means an amount caused to be paid by the Finance Authority for an Approved Requisition for costs of the Project, including the Expense Fund Component calculated on the basis of the amount of such Approved Requisition.

"Drinking Water Fundable Priority List" means the list of drinking water projects compiled by the Department pursuant to the Memorandum of Understanding and the Intended Use Plan.

"DWSRLF Act" means the general laws of the State, particularly the Drinking Water State Revolving Loan Fund Act, NMSA 1978, §§ 6-21A-1 through 6-21A-9, as amended; NMSA 1978, §§ 3-31-1 through 3-31-12, as amended; and enactments of the Governing Body relating to this Loan Agreement including the Ordinance.

"Drinking Water State Revolving Loan Fund" means the drinking water state revolving loan fund established by the DWSRLF Act.

"Environmental Protection Agency" means the United States Environmental Protection Agency.

"Event of Default" means one or more events of default as defined in Section 10.1 of this Loan Agreement.

"Expense Fund" means the expense fund hereby created to be held and administered by the Finance Authority to pay Expenses.

"Expense Fund Component" means an amount equal to one percent (1%) of each disbursement for the Project, minus any amount forgiven under this Loan Agreement, simultaneously withdrawn and deposited in the Expense Fund to pay Expenses.

"Expenses" means the Finance Authority's costs of issuance of this Loan Agreement and the Bonds, if any, and periodic and regular fees and expenses incurred by the Finance Authority in administering this Loan Agreement, including legal fees.

"Final Loan Agreement Payment Schedule" means the schedule of Loan Agreement Payments due on this Loan Agreement following the Final Requisition, as determined on the basis of the Aggregate Repayable Disbursements.

"Final Requisition" means the final requisition of moneys to be submitted by the Governmental Unit, which shall be submitted by the Governmental Unit on or before the date provided for in Section 4.1(b) of this Loan Agreement.

"Finance Authority Act" means NMSA 1978, §§ 6-21-1 through 6-21-31, as amended.

"Fiscal Year" means the period commencing on July 1 of each calendar year and ending on the last day of June of the next succeeding calendar year, or any other twelve-month period which any appropriate authority may hereafter establish for the Governmental Unit as its fiscal year.

"Generally Accepted Accounting Principles" means the officially established accounting principles applicable to the Governmental Unit consisting of the statements, determinations and other official pronouncements of the Government Accounting Standards Board, Financial Accounting Standards Board, Federal Accounting Standards Board or other principle-setting body acceptable to the Finance Authority establishing accounting principles applicable to the Governmental Unit.

"Governing Body" means the duly organized City Commission of the Governmental Unit and any successor governing body of the Governmental Unit.

"Gross Revenues" means all income and revenues directly or indirectly derived by the Governmental Unit from the operation and use of the System, or any part of the System, for any particular Fiscal Year period to which the term is applicable, and includes, without limitation, all revenues received by the Governmental Unit, or any municipal corporation or agency succeeding to the rights of the Governmental Unit, from the System and from the sale and use of water and sanitary sewer services or facilities, or any other service, commodity or facility or any combination thereof furnished by the System.

Gross Revenues do not include:

(a) Any money received as (i) grants or gifts from the United States of America, the State or other sources or (ii) the proceeds of any charge or tax intended as a replacement therefore or other capital contributions from any source which are restricted as to use;

(b) Gross receipts taxes, other taxes and/or fees collected by the Governmental Unit and remitted to other governmental agencies; and

(c) Condemnation proceeds or the proceeds of any insurance policy, except any insurance proceeds derived in respect of loss of use or business interruption.

"Herein," "hereby," "hereunder," "hereof," "hereinabove" and "hereafter" refer to this entire Loan Agreement and not solely to the particular section or paragraph of this Loan Agreement in which such word is used.

"Independent Accountant" means (i) an accountant employed by the State and under the supervision of the State Auditor, or (ii) any certified public accountant or firm of such accountants duly licensed to practice and practicing as such under the laws of the State, appointed and paid by the Governmental Unit who (a) is, in fact, independent and not under the domination of the Governmental Unit, (b) does not have any substantial interest, direct or indirect, with the Governmental Unit, and (c) is not connected with the Governmental Unit as an officer or employee of the Governmental Unit, but who may be regularly retained to make annual or similar audits of the books or records of the Governmental Unit.

"Intended Use Plan" means the current plan prepared by the Finance Authority and the Department and approved by the Environmental Protection Agency pursuant to 42 U.S.C. Section 300j-12(b) which establishes criteria for extending drinking water improvements financial assistance to qualifying public drinking water utility systems.

"Interest Component" means the portion of each Loan Agreement Payment paid as interest accruing on the Aggregate Repayable Disbursements then outstanding, calculated from the date of each disbursement.

"Interest Rate" means the rate of interest on this Loan Agreement as shown on the Term Sheet.

"Interim Period" means the period no greater than twenty-seven (27) months, or a longer period as may be approved by the Finance Authority as provided in Section 4.1(b) of the Agreement, beginning on the Closing Date, during which the Finance Authority will disburse moneys to the Governmental Unit to pay costs of the Project, unless extended pursuant to Section 4.1(b) of this Loan Agreement.

"Interim Loan Agreement Payment Schedule" means the anticipated schedule of Loan Agreement Payments due on this Loan Agreement following the Final Requisition, assuming disbursement of the entire Aggregate Program Amount within twenty-seven (27) months of the Closing Date. The Interim Loan Agreement Payment Schedule is attached hereto as Exhibit “B”.

“Loan” means the funds to be loaned to the Governmental Unit by the Finance Authority pursuant to this Loan Agreement, up to the Maximum Principal Amount.

“Loan Agreement” means this loan and subsidy agreement and any amendments or supplements hereto, including the exhibits attached to this loan agreement.

“Loan Agreement Payment” means, collectively, the Principal Component, the Interest Component, Expenses, and the Administrative Fee Component to be paid by the Governmental Unit as payment on the Aggregate Repayable Disbursements under this Loan Agreement, as shown on Exhibit “B” hereto.

“Loan Agreement Payment Date” means each date a payment is due on this Loan Agreement as shown on the Interim Loan Agreement Payment Schedule, attached hereto as Exhibit “B,” or in the Final Loan Agreement Payment Schedule.

“Loan Agreement Principal Amount” means, as of any date of calculation, the Aggregate Repayable Disbursements then outstanding.

“Loan Agreement Term” means the term of this Loan Agreement as provided under Article III of this Loan Agreement.

“Maximum Forgiven Principal” means the maximum amount of loan subsidy available in the form of principal forgiveness, which is equal to fifty percent (50%) of the Maximum Principal Amount. The Maximum Forgiven Principal is one million seventy-five thousand six hundred fifty dollars ($1,075,650).

“Maximum Repayable Principal” means the maximum amount of Aggregate Repayable Disbursements repayable by the Governmental Unit pursuant to this Loan Agreement, and is equal to the Maximum Principal Amount less the Maximum Forgiven Principal. The Maximum Repayable Principal is one million seventy-five thousand six hundred fifty dollars ($1,075,650).

“Maximum Principal Amount” means two million one hundred fifty-one thousand three hundred dollars ($2,151,300).

“Memorandum of Understanding” means the current memorandum of understanding by and between the Finance Authority and the Department pursuant to the DWSRLF Act describing and allocating duties and responsibilities in connection with the Drinking Water State Revolving Loan Fund.

“Net Revenues” means the Gross Revenues of the System owned and operated by the Governmental Unit minus Operation and Maintenance Expenses of the System, indirect charges, amounts expended for capital replacements and repairs of the System, required set asides for debt and replacement requirements and any other payments from the gross revenues reasonably required for operation of the System.

"NMSA 1978" means the New Mexico Statutes Annotated, 1978 compilation, as amended and supplemented from time to time.

"Operating Agreement" means the operating agreement entered into between the Finance Authority and the Environmental Protection Agency, Region 6, for the Drinking Water State Revolving Loan Fund program.

"Operation and Maintenance Expenses" means all reasonable and necessary current expenses of the System, for any particular Fiscal Year or period to which such term is applicable, paid or accrued, related to operating, maintaining and repairing the System, including, without limiting the generality of the foregoing:

(a) Legal and overhead expenses of the Governmental Unit directly related and reasonably allocable to the administration of the System;

(b) Insurance premiums for the System, including, without limitation, premiums for property insurance, public liability insurance and workmen's compensation insurance, whether or not self-funded;

(c) Premiums, expenses and other costs (other than required reimbursements of insurance proceeds and other amounts advanced to pay debt service requirements on System bonds) for credit facilities;

(d) Any expenses described in this definition other than expenses paid from the proceeds of System bonds;

(e) The costs of audits of the books and accounts of the System;

(f) Amounts required to be deposited in any rebate fund;

(g) Salaries, administrative expenses, labor costs, surety bonds and the cost of water, materials and supplies used for or in connection with the current operation of the System; and

(h) Any fees required to be paid under any operation, maintenance and/or management agreement with respect to the System.

Operation and Maintenance Expenses do not include any allowance for depreciation, payments in lieu of taxes, franchise fees payable or other transfers to the Governmental Unit's general fund, liabilities incurred by the Governmental Unit as a result of its negligence or other misconduct in the operation of the System, any charges for the accumulation of reserves for capital replacements or any Operation and Maintenance Expenses payable from moneys other than Gross Revenues.

"Ordinance" means Ordinance No. 1626 adopted by the Governing Body of the Governmental Unit on March 9, 2021, approving this Loan Agreement and pledging the Pledged Revenues to the payment of the Loan Agreement Payments as shown on the Term Sheet, as supplemented from time to time.

"Parity Obligations" means any obligations of the Governmental Unit under this Loan Agreement and any other obligations now outstanding or hereafter issued or incurred, payable from or secured by a pledge of the Pledged Revenues and issued with a lien on the Pledged Revenues on a parity with this Loan Agreement, including any such obligations shown on the Term Sheet.

"Permitted Investments" means securities which are at the time legal investments of the Governmental Unit for the money to be invested, as applicable, including but not limited to the following if permitted by law: (i) securities that are issued by the United States government or by its agencies or instrumentalities and that are either direct obligations of the United States, the federal home loan mortgage association, the federal national mortgage association, the federal farm credit bank, federal home loan banks or the student loan marketing association or that are backed by the full faith and credit of the United States government; (ii) negotiable securities of the State; (iii) money market funds which invest solely in obligations described in clause (i) above which are rated in the highest rating category by Moody's Investors Service, Inc. or S & P Global Ratings; and (iv) the State Treasurer's short-term investment fund created pursuant to NMSA 1978, § 6-10-10.1, as amended, and operated, maintained and invested by the office of the State Treasurer.

"Pledged Revenues" means the Net Revenues of the Governmental Unit pledged to payment of the Loan Agreement Payments by the Ordinance and this Loan Agreement and described in the Term Sheet.

"Principal Component" means the portion of each Loan Agreement Payment paid as principal on this Loan Agreement, based upon the Aggregate Repayable Disbursements, as shown on Exhibit "B" attached to this Loan Agreement.

"Project" means the project(s) described on the Term Sheet.

"Safe Drinking Water Act" means 42 U.S.C. §§ 300f et seq.

"Senior Obligations" means any bonds or other obligations of the Governmental Unit now outstanding or hereafter issued or incurred, payable from or secured by a pledge of the Pledged Revenues and issued with a lien on the Pledged Revenues superior to the lien created by this Loan Agreement, including any such obligations shown on the Term Sheet.

"Service Area" means the area served by the System, whether situated within or without the limits of the Governmental Unit.

"State Environmental Review Process" or "SERP" means the environmental review process adopted by the Finance Authority, as required by and approved by the Environmental Protection Agency, pursuant to the Operating Agreement.

"Subordinated Obligations" means any bonds or other obligations of the Governmental Unit now outstanding or hereafter issued or incurred with a lien on the Pledged Revenues subordinate to the lien created by this Loan Agreement and subordinate to any other outstanding Parity Obligations having a lien on the Pledged Revenues, including any such obligations shown on the Term Sheet.

"Subsidy" means any subsidy in the form of principal forgiveness for the Governmental Unit, to be applied proportionally at the time of each Disbursement to the Governmental Unit, being fifty percent (50%) of such Disbursement.

"System" means the public utility designated as the Governmental Unit's joint water and sewer system, and all improvements or additions thereto, including additions and improvements to be acquired or constructed with the proceeds of this Loan Agreement.

"Term Sheet" means Exhibit "A" attached to this Loan Agreement.

"Unrequisitioned Principal Amount" means the amount, if any, by which the Maximum Principal Amount exceeds the Aggregate Disbursements at the time the Governmental Unit submits the certificate of completion required pursuant to Section 6.3 of this Loan Agreement.

"Utility Revenue Bonds" means any bonds and other similar indebtedness payable solely or primarily from the Pledged Revenues, including this Loan Agreement, and any Senior Obligations, Parity Obligations and Subordinated Obligations.

ARTICLE II

REPRESENTATIONS, COVENANTS AND WARRANTIES

Section 2.1 Representations, Covenants and Warranties of the Governmental Unit. The Governmental Unit represents, covenants and warrants as follows:

(a) Binding Nature of Covenants. All covenants, stipulations, obligations and agreements of the Governmental Unit contained in this Loan Agreement shall be deemed to be the covenants, stipulations, obligations and agreements of the Governmental Unit to the full extent authorized or permitted by law, and such covenants, stipulations, obligations and agreements shall be binding upon the Governmental Unit and its successors and upon any board or body to which any powers or duties affecting such covenants, stipulations, obligations and agreements shall be transferred by or in accordance with law. Except as otherwise provided in this Loan Agreement, all rights, powers and privileges conferred and duties and liabilities imposed upon the Governmental Unit by the provisions of this Loan Agreement and the Ordinance shall be exercised or performed by the Governmental Unit or by such members, officers, or officials of the Governmental Unit as may be required by law to exercise such powers and to perform such duties.

(b) Authorization of Loan Agreement and Readiness to Proceed. The Governmental Unit is an incorporated municipality, a political subdivision of the State, and is duly organized and existing under the statutes and laws of the State, including specifically the Municipal Code, NMSA 1978, §§ 3-1-1 through 3-66-11, as amended. The Governmental Unit is a local authority as defined in the DWSRLF Act. The Governmental Unit is authorized to enter into the transactions contemplated by this Loan Agreement and to carry out its obligations hereunder and thereunder. The Governmental Unit has duly authorized and approved the execution and delivery of this Loan Agreement and the other documents related to the transaction. The Governmental Unit has met all readiness to proceed requirements of the Finance Authority and has met and will continue to meet all requirements of law applicable to this Loan Agreement.

(c) Use of Loan Agreement Proceeds. The Governmental Unit shall proceed without delay in applying the Aggregate Program Amount, pursuant to Section 6.1 of this Loan Agreement to the acquisition and completion of the Project and to no other purpose, as follows:

(i) The Governmental Unit shall requisition moneys to pay for the costs of the Project not less frequently than quarterly following the Closing Date;

(ii) The Governmental Unit shall, within two (2) years after the Closing Date, have completed the acquisition of the Project, and shall within twenty-seven (27) months after the Closing Date have requisitioned the Aggregate Program Amount, or such portion thereof as shall be necessary to complete the Project, unless an extension is agreed to pursuant to Section 4.1(b) of this Loan Agreement.

(d) Payment of Loan Agreement Payments. The Governmental Unit meets and will continue to meet the requirements established by the Finance Authority to assure sufficient revenues to operate and maintain the System for its useful life and repay the Loan. The Governmental Unit shall promptly pay Loan Agreement Payments, as specified in the Interim Loan Agreement Payment Schedule or the Final Loan Agreement Payment Schedule, as applicable, according to the true intent and meaning of this Loan Agreement.

(e) Acquisition and Completion of Project; Compliance with Laws. The Project will be acquired and completed so as to comply with all applicable ordinances, resolutions and regulations, if any, and any and all applicable laws relating to the acquisition and completion of the Project and to the use of the Pledged Revenues.

(f) Necessity of Project. The acquisition and completion of the Project under the terms and conditions provided for in this Loan Agreement is necessary, convenient and in furtherance of the governmental purposes of the Governmental Unit and is in the best interests of the Governmental Unit and the public it serves.

(g) Legal, Valid and Binding Obligation. The Governmental Unit has taken all required action necessary to authorize the execution and delivery of this Loan Agreement. This Loan Agreement constitutes a legal, valid and binding special obligation of the Governmental Unit enforceable in accordance with its terms.

(h) Loan Agreement Term. The Loan Agreement Term does not exceed the anticipated useful life of the Project.

(i) Use of Project. During the Loan Agreement Term, the Project will at all times be used for the purpose of benefiting the Governmental Unit and the public it serves.

(j) No Breach or Default Caused by Loan Agreement. Neither the execution and delivery of this Loan Agreement , nor the fulfillment of or compliance with the terms and conditions in this Loan Agreement, nor the consummation of the transactions contemplated herein, conflicts with or results in a breach of terms, conditions or provisions of any restriction or any agreement or instrument to which the Governmental Unit is a party or by which the Governmental Unit is bound or any laws, ordinances, governmental rules or regulations or court or other governmental orders to which the Governmental Unit or its properties are subject, or constitutes a default under any of the foregoing.

(k) Irrevocable Enactments. While this Loan Agreement remains outstanding and unpaid, any ordinance, resolution or other enactment of the Governing Body applying the Pledged Revenues for the payment of this Loan Agreement shall be irrevocable until this Loan Agreement has been paid in full as to both principal and interest, and shall not be subject to amendment or modification in any manner which would in any way jeopardize the timely payment of Loan Agreement Payments.

(l) Outstanding and Additional Debt. Except for any Senior Obligations, and any Parity Obligations described on the Term Sheet, there are currently no outstanding bonds, notes or other obligations of the Governmental Unit which are payable from and secured by a lien on the Pledged Revenues superior to or on a parity with the lien of this Loan Agreement. No additional indebtedness, bonds or notes of the Governmental Unit, payable on a priority ahead of the indebtedness herein authorized out of Pledged Revenues, shall be created or incurred while this Loan Agreement remains outstanding without the prior written approval of the Finance Authority.

(m) No Litigation. To the knowledge of the Governmental Unit after due investigation, no litigation or proceeding is pending or threatened against the Governmental Unit or any other person affecting the right of the Governmental Unit to execute or deliver this Loan Agreement or to comply with its obligations under this Loan Agreement. Neither the execution and delivery of this Loan Agreement by the Governmental Unit nor compliance by the Governmental Unit with the obligations under this Loan Agreement requires the approval of any regulatory body, or any other entity, which approval has not been obtained or which is not reasonably expected to be obtained.

(n) No Event of Default. No event has occurred and no condition exists which, upon the execution and delivery of this Loan Agreement, would constitute an Event of Default on the part of the Governmental Unit under this Loan Agreement.

(o) Existing Pledges; Pledged Revenues Not Budgeted. Except as described on the Term Sheet the Pledged Revenues have not been pledged or hypothecated in any manner for any purpose at the time of execution and delivery of this Loan Agreement. The portion of the Pledged Revenues necessary to pay the Loan Agreement Payments, as and when due, is not needed or budgeted to pay current or anticipated operational or other expenses of the Governmental Unit.

(p) Expected Coverage Ratio. the average Pledged Revenues from the three Fiscal Years immediately preceding the Fiscal Year in which the Closing Date occurs were one hundred thirty percent (130%) and, on an ongoing basis during each year of the Loan Agreement Term are reasonably expected to equal or exceed, one hundred thirty percent (130%) of the maximum annual principal and interest due on all outstanding Parity Obligations of the Governmental Unit.

(q) Governmental Unit's Existence. The Governmental Unit will maintain its corporate identity and existence so long as this Loan Agreement is unpaid, unless another political subdivision by operation of law succeeds to the liabilities and rights of the Governmental Unit without adversely affecting to any substantial degree the privileges and rights of the Finance Authority.

(r) Continuing Disclosure. The Governmental Unit covenants that it shall provide continuing disclosure to the Finance Authority, as the Finance Authority may require, that shall include, but not be limited to: Project documents, annual audits, operational data required to update information in any disclosure documents used in connection with assignment or securitizing this Loan Agreement or the Loan Agreement Payments by issuance of Bonds by the Finance Authority, and notification of any event deemed material by the Finance Authority. For the purposes of this Loan Agreement, a material event shall include, without limitation, any violation or alleged violation by a state or federal agency of appropriate jurisdiction, of federal law, regulation, or policy which governs or applies to participants in the Drinking Water State Revolving Loan Fund.

(s) Single Audit Act Requirement. The Governmental Unit acknowledges that the funding provided pursuant to this Loan Agreement is derived in large part from federal grants to the Drinking Water State Revolving Loan Fund program pursuant to the Operating Agreement. During the Loan Agreement Term, the Governmental Unit shall annually, so long as the Governmental Unit expends more or equal to the threshold amount set forth in 2 C.F.R. Section 200.501 during any one Fiscal Year, cause an audit of the books and accounts of its operations in their entirety, or in the alternative an audit of the books and accounts of each of its departments, agencies and other organizational units which expended or otherwise administered the Loan or any other funds derived from the government of the United States, to be completed by an Independent Accountant in accordance with the Single Audit Act Amendments of 1996 (31 U.S.C. Section 7501 et seq.), and applicable regulations thereunder. The audit will be available for inspection by the Finance Authority and by the Environmental Protection Agency.

(t) Construction Requirements. The Governmental Unit shall require any contractor hired by it in connection with the construction of the Project to post a performance and payment bond as provided by NMSA 1978, § 13-4-18, as amended.

Section 2.2 Protective Covenants Regarding Operation of the System. The Governmental Unit further represents, covenants and warrants as follows:

(a) Rate Covenant. The Governmental Unit covenants that it will at all times fix, charge and collect such rates and charges as shall be required in order that in each Fiscal Year in which the Loan is outstanding the Gross Revenues shall at least equal the Operation and Maintenance Expenses of the System for the Fiscal Year, plus one hundred thirty percent (130%) of the maximum annual principal and interest payments due on all outstanding Parity Obligations.

(b) Efficient Operation. The Governmental Unit will maintain the System in efficient operating condition and make such improvements, extensions, enlargements, repairs and betterments to the System as may be necessary or advisable for its economical and efficient operation at all times and to supply reasonable public and private demands for System services within the Service Area of the System.

(c) Records. So long as this Loan Agreement remains outstanding, proper books of record and account will be kept by the Governmental Unit, separate from all other records and accounts, showing complete and correct entries of all transactions relating to the System. However, pursuant to NMSA 1978, § 6-14-10(E), as amended, records with regard to the ownership or pledge of Utility Revenue Bonds are not subject to inspection or copying.

(d) Right to Inspect. The Finance Authority, or its duly authorized agents, shall have the right to inspect at all reasonable times the Project and all records, accounts and data relating to the Project, the Pledged Revenues, and the System.

(e) Audits. Within two hundred seventy (270) days following the close of each Fiscal Year, the Governmental Unit will cause an audit of the books and accounts of the System and its separate systems to be made by an Independent Accountant and the audit to be made available for inspection by the Finance Authority. Each audit of the System shall comply with Generally Accepted Accounting Principles. The audit required by this section may, at the Governmental Unit's discretion, be performed as a part of or in conjunction with the audit required under the Single Audit Act as set forth in Section 2.1(s) of this Loan Agreement.

(f) Billing Procedure. Bills for water and sanitary sewer utility services or facilities, or any combination, furnished by or through the System shall be rendered to customers on a regular basis each month following the month in which the service was rendered and shall be due as required by the applicable ordinance of the Governmental Unit. To the extent permitted by law, if a bill is not paid within the period of time required by such ordinance, water and sanitary sewer utility services shall be discontinued as required by Governmental Unit regulation, policy or ordinance, and the rates and charges due shall be collected in a lawful manner, including, but not limited to, the cost of disconnection and reconnection. Water and sanitary sewer utility services may be billed jointly with each other, provided that each such joint bill shall show separately the water and sanitary sewer utility charges.

(g) Charges and Liens Upon System. The Governmental Unit will pay when due from Gross Revenues or other legally available funds all taxes and assessments or other municipal or governmental charges, lawfully levied or assessed upon the System and will observe and comply with all valid requirements of any municipal or governmental authority relating to the System. The Governmental Unit will not create or permit any lien or charge upon the System or the Gross Revenues or it will make adequate provisions to satisfy and discharge within sixty (60) days after the same accrue, all lawful claims and demands for labor, materials, supplies or other objects, which, if unpaid, might by law become a lien upon the System or the Gross Revenues. However, the Governmental Unit shall not be required to pay or cause to be discharged, or make provision for any tax assessment, lien or charge before the time when payment becomes due or so long as the validity thereof is contested in good faith by appropriate legal proceedings and there is no adverse effect on Finance Authority.

(h) Insurance. Subject, in each case, to the condition that insurance is obtainable at reasonable rates and upon reasonable terms and conditions, in its operation of the System, the Governmental Unit will procure and maintain or cause to be procured and maintained commercial insurance or provide Qualified Self Insurance with respect to the facilities constituting the System and public liability insurance in the form of commercial insurance or Qualified Self Insurance and, in each case, in such amounts and against such risks as are, in the judgment of the Governing Body, prudent and reasonable taking into account, but not being controlled by, the amounts and types of insurance or self-insured programs provided by entities which operate systems such as the System. "Qualified Self Insurance" means insurance maintained through a program of self insurance or insurance maintained with a fund, company or association in which the Governmental Unit may have a material interest and of which the Governmental Unit may have control, either singly or with others. Each plan of Qualified Self Insurance shall be established in accordance with law, shall provide that reserves be established or insurance acquired in amounts adequate to provide coverage which the Governmental Unit determines to be reasonable to protect against risks assumed under the Qualified Self Insurance plan, including any potential retained liability in the event of the termination of such plan of Qualified Self Insurance. In the event of property loss or damage to the System, insurance proceeds shall be used first for the purpose of restoring or replacing the property lost or damaged and thereafter, and any remainder may be used to redeem Utility Revenue Bonds or be treated as Gross Revenues and used in any legally permissible manner.

(i) Competing Utility System. Unless contrary to any provision of, or required by, applicable law, as long as this Loan Agreement is outstanding, the Governmental Unit prior to granting any franchise or license to a competing utility system, or permitting any person, association, firm or corporation to sell similar utility services or facilities to any consumer, public or private, within the Service Area of the System, shall obtain a written report from an independent utility rate consultant stating that in the opinion of the consultant the use charges in effect immediately prior to the approval of the franchise or license by the Governmental Unit are sufficient to meet the requirement of section 2.1(p) (expected coverage ratio) for the first full calendar year after the approval of the franchise or license, based on the new Service Area of the System.

(j) Alienating System. While this Loan Agreement is outstanding, the Governmental Unit shall not transfer, sell or otherwise dispose of the System, except that the Governmental Unit may dispose of inadequate, obsolete or worn out property. For purposes of this Section, any transfer of an asset over which the Governmental Unit retains or regains substantial control shall, for so long as the Governmental Unit has such control, not be deemed a disposition of the System.

(k) Management of the System. If an Event of Default shall occur or if the Pledged Revenues in any Fiscal Year fail to equal principal and interest due on the Senior Obligations and the Parity Obligations, the Governmental Unit shall retain an independent consultant qualified in the management of water and wastewater utility systems to assist in the management of the System so long as such default continues.

(l) Competent Management. The Governmental Unit shall employ experienced and competent personnel to manage the System.

(m) Performing Duties. The Governmental Unit will faithfully and punctually perform all duties with respect to the System required by the Constitution and laws of the State and the regulations, policies or ordinances and resolutions of the Governmental Unit relating to the System and this Loan Agreement, including, but not limited to, making and collecting reasonable and sufficient rates and charges for services rendered or furnished by the System as required by this Loan Agreement and the proper segregation and application of the Gross Revenues.

(n) Other Liens. Except for any Senior Obligations and Parity Obligations listed in the Term Sheet, there are no liens or encumbrances of any nature whatsoever, on or against the System or the Gross Revenues or Net Revenues on parity with or senior to the lien of this Loan Agreement.

Section 2.3 Representations, Covenants and Warranties of the Finance Authority. The Finance Authority represents, covenants and warrants for the benefit of the Governmental Unit:

(a) Legal Status and Authorization of Loan Agreement. The Finance Authority is a public body politic and corporate constituting a governmental instrumentality, separate and apart from the State, duly organized and created under and pursuant to the laws of the State, particularly the Finance Authority Act. The Finance Authority has all necessary power and authority to enter into and perform and observe the covenants and agreements on its part contained in this Loan Agreement and has duly authorized the execution and delivery of this Loan Agreement.

(b) No Breach or Default Caused by Loan Agreement. Neither the execution and delivery of this Loan Agreement, nor the fulfillment of or compliance with the terms and conditions of this Loan Agreement, nor the consummation of the transactions contemplated in this Loan Agreement, conflicts with or results in a breach of the terms, conditions and provisions of any restriction or any agreement or instrument to which the Finance Authority is a party or by which the Finance Authority is bound or constitutes a default under any of the foregoing and will not conflict with or constitute a violation of any constitutional or statutory provision or order, rule, regulation, decree or ordinance of any court, government or governmental authority having jurisdiction over the Finance Authority, or its property and which conflict or violation will have a material adverse effect on the Finance Authority or the financing of the Project.

(c) No Litigation. To the knowledge of the Finance Authority, there is no litigation or proceeding pending or threatened against the Finance Authority or any other person affecting the right of the Finance Authority to execute or deliver this Loan Agreement or to comply with its obligations under this Loan Agreement. To the knowledge of the Finance Authority, neither the execution and delivery of this Loan Agreement by the Finance Authority, nor compliance by the Finance Authority with its obligations under this Loan Agreement, requires the approval of any regulatory body, or any other entity, which approval has not been obtained.

(d) Legal, Valid and Binding Obligations. This Loan Agreement constitutes a legal, valid and binding obligation of the Finance Authority enforceable in accordance with its terms.

ARTICLE III

LOAN AGREEMENT TERM

The Loan Agreement Term shall commence on the Closing Date and shall not terminate until the Governmental Unit's obligations under this Loan Agreement have been paid in full or provision for payment of this Loan Agreement has been made pursuant to Article VIII hereof.

ARTICLE IV

LOAN; APPLICATION OF MONEYS

Section 4.1 Application of Loan Agreement Proceeds.

(a) On the Closing Date, the amount shown on the Term Sheet as the Aggregate Program Amount shall be made available for disbursal by the Finance Authority to the Governmental Unit pursuant to Section 6.2 of this Loan Agreement at the request of the Governmental Unit and as needed by the Governmental Unit to implement the Project.

(b) The Final Requisition shall be submitted by the Governmental Unit within twenty seven (27) months following the Closing Date, except only as otherwise approved in writing by an Authorized Officer of the Finance Authority, based on the Governmental Unit's demonstration, to the reasonable satisfaction of the Authorized Officer of the Finance Authority, that unanticipated circumstances beyond the control of the Governmental Unit resulted in delaying the acquisition and completion of the Project, and submission of the Governmental Unit's Final Requisition.

Section 4.2 Disbursements; Approval of Payment Requests. The Governmental Unit shall transmit payment requisitions in the form attached to this Loan Agreement as Exhibit "C" and the supporting documentation required pursuant to Exhibit "C" to the Finance Authority. The Finance Authority or its designee shall review each requisition for compliance with (i) the Project's construction plans and specifications and (ii) all applicable state and federal laws, rules and regulations, and shall approve or disapprove the requisition accordingly. The Finance Authority shall cause Approved Requisitions to be paid from the State Drinking Water Revolving Loan Fund.

Section 4.3 Expense Fund Deposit. The Finance Authority shall determine the amount of the Expense Fund Component at the time of each payment to the Governmental Unit pursuant to Section 6.2 of this Loan Agreement and deposit such amount to the Expense Fund.

ARTICLE V

LOAN TO THE GOVERNMENTAL UNIT; PAYMENTS BY THE GOVERNMENTAL UNIT

Section 5.1 Loan to the Governmental Unit; Payment Obligations Limited to Pledged Revenues; Pledge of Pledged Revenues. The Finance Authority hereby lends to the Governmental Unit and the Governmental Unit hereby borrows from the Finance Authority an amount not to exceed the Maximum Principal Amount. The Governmental Unit promises to pay, but solely from the sources pledged herein, the Loan Agreement Payments as herein provided. Subject to any outstanding Parity Obligations and Senior Obligations, the Governmental Unit does hereby grant a lien on and a security interest in and does hereby convey, assign and pledge unto the Finance Authority and unto its successors in trust forever all right, title and interest of the Governmental Unit in and to (i) the Pledged Revenues to the extent required to pay the Loan Agreement Payments on a parity with any Parity Obligations and subordinate to any Senior Obligations, (ii) the Debt Service Account, and (iii) all other rights hereinafter granted, for the securing of the Governmental Unit's obligations under this Loan Agreement, including payment of the Loan Agreement Payments, provided, however, that if the Governmental Unit, its successors or assigns, shall pay, or cause to be paid, all Loan Agreement Payments at the time and in the manner contemplated by this Loan Agreement, or shall provide as permitted by Article VIII of this Loan Agreement for the payment thereof, and shall pay all other amounts due or to become due under this Loan Agreement in accordance with its terms and provisions then, upon such final payment, this Loan Agreement and the rights created thereby shall terminate; otherwise, this Loan Agreement shall remain in full force and effect. The Loan Agreement Payments shall, in the aggregate, be sufficient to pay the Aggregate Repayable Disbursements, as set forth in the Final Loan Agreement Payment Schedule.

Within five (5) days after each payment of an Approved Requisition during the Interim Period, the Finance Authority shall recalculate on the basis of the Aggregate Repayable Disbursements to that date the Interest Component and Administrative Fee Component next coming due as set out in Section 5.2(a)(i) of this Loan Agreement and shall provide written notice to the Governmental Unit of the recalculated Interest Component and Administrative Fee Component. Within thirty (30) days after the final disbursement, the Finance Authority shall provide a Final Loan Agreement Payment Schedule. The schedule of Loan Agreement Payments, assuming the disbursal of the entire Aggregate Program Amount within twenty-seven (27) months after the Closing Date, identified as the Interim Loan Agreement Payment Schedule, is attached to this Loan Agreement as Exhibit "B". The Finance Authority shall provide a Final Loan Agreement Payment Schedule following the final disbursement which shall supersede the schedule attached as Exhibit "B".

The pledge of the Pledged Revenues and the lien thereon shall be effective upon the Closing Date. The Governmental Unit and the Finance Authority acknowledge and agree that the sources of the Loan Agreement Payments of the Governmental Unit hereunder are limited to the Pledged Revenues, and that the Loan Agreement shall constitute a special, limited obligation of the Governmental Unit. No provision of this Loan Agreement shall be construed or interpreted as creating a general obligation or other indebtedness of the Governmental Unit or the State within the meaning of any constitutional or statutory debt limitation. No provision of this Loan Agreement shall be construed to pledge or to create a lien on any class or source of Governmental Unit moneys other than the Pledged Revenues, nor shall any provision of this Loan Agreement restrict the future issuance of any bonds or obligations payable from any class or source of Governmental Unit moneys other than the Pledged Revenues. In addition, to the extent not required for the payment of obligations of the Governmental Unit hereunder, the Pledged Revenues may be utilized by the Governmental Unit for any other purposes permitted by law and the laws of the State.

Section 5.2 Payment Obligations of Governmental Unit. The Debt Service Account shall be established and held by the Finance Authority or its designee on behalf of the Governmental Unit. All Loan Agreement Payments received by the Finance Authority or its designee pursuant to this Loan Agreement shall be accounted for and maintained by the Finance Authority or its designee in the Debt Service Account, which account shall be kept separate and apart from all other accounts of the Finance Authority. The amounts on deposit in the Debt Service Account shall be expended and used by the Finance Authority only in the manner and order of priority specified herein.

(a) As a first charge and lien, but not an exclusive first charge and lien, on the Pledged Revenues (on a parity with the lien on the Pledged Revenues created by any outstanding Parity Obligations), the Governmental Unit shall remit to the Finance Authority and the Finance Authority shall collect and deposit into the Debt Service Account from the Governmental Unit the Pledged Revenues, in the manner specified herein.

(i) Payment of Interest Component and Administrative Fee Component during Interim Period.

(A) During the Interim Period, Interest and Administrative Fees shall accrue on the amount of Aggregate Repayable Disbursements, from the date of each Disbursement.

(B) During the Interim Period the Governmental Unit shall monthly, commencing on the first day of the month next following the first payment by the

Finance Authority of an Approved Requisition, pay to the Finance Authority for deposit into the Debt Service Account such amount as is necessary, in monthly installments, to pay the Interest Component and Administrative Fee Component on the Aggregate Repayable Disbursements as of each Loan Agreement Payment Date.

(ii) Loan Agreement Payments Following the Interim Period. After the Interim Period, the Governmental Unit shall pay to the Finance Authority for deposit into the Debt Service Account the following amounts:

(A) Interest and Administrative Fee Components. Monthly, commencing on the first day of the month next following the final disbursement, the Governmental Unit shall pay to the Finance Authority for deposit into the Debt Service Account an amount in equal monthly installments which is necessary to pay the first maturing Interest Component and Administrative Fee Component coming due on this Loan Agreement and monthly thereafter, commencing on each Loan Agreement Payment Date, one-sixth (1/6) of the amount necessary to pay the next maturing Interest Component and Administrative Fee Component on this Loan Agreement as described in the Final Loan Agreement Payment Schedule.

(B) Principal Payments. Monthly, commencing on the first day of the month next following the final disbursement, the Governmental Unit shall pay to the Finance Authority for deposit into the Debt Service Account an amount in equal monthly installments which is necessary to pay the first maturing Principal Component; and thereafter on the first day of each month thereafter, one-twelfth (1/12) of the amount which is necessary to pay the next maturing Principal Component on this Loan Agreement during the Loan Agreement Term, as described in the Final Loan Agreement Payment Schedule.

(iii) Method of Payment. The Governmental Unit shall transfer each month to the Finance Authority, from Pledged Revenues, the amounts set forth in Subsections (i)(C), (ii)(A) and (ii)(B) of this Section 5.2(a) during the time that this Loan Agreement is outstanding, provided, that in the event of any default in making the Loan Agreement Payments by the Governmental Unit, the Finance Authority shall be entitled to seek payment of the amounts due through any of the remedies provided in Article X of this Loan Agreement.

(b) In the event that the balance of payments held in the Debt Service Account should exceed the amount needed to cover Loan Agreement Payments then due, the Finance Authority shall use the balance of the Pledged Revenues received, at the request of the Governmental Unit (i) to credit against upcoming Loan Agreement Payments, or (ii) to distribute to the Governmental Unit for any other purpose permitted by law.

Section 5.3 Manner of Payment. All payments of the Governmental Unit hereunder shall be paid in lawful money of the United States of America to the Finance Authority or its designee at the address designated in Section 11.1 of this Loan Agreement. The obligation of the Governmental Unit to make payments hereunder, from and to the extent of the available Pledged Revenues, shall be absolute and unconditional in all events, except as expressly provided hereunder, and payment hereunder shall not be abated through accident or unforeseen circumstances. Notwithstanding any dispute between the Governmental Unit, the Finance Authority or its designee, any vendor or any other person, the Governmental Unit shall make all deposits hereunder, from and to the extent of the available Pledged Revenues, when due and shall not withhold any deposit hereunder pending final resolution of such dispute, nor shall the Governmental Unit assert any right of set-off or counterclaim against its obligation to make such deposits required hereunder.

Section 5.4. Additional Parity Obligations Payable from Pledged Revenues. No provision of this Loan Agreement shall be construed in such a manner as to prevent the issuance by the Governmental Unit of additional Parity Obligations payable from Pledged Revenues, nor to prevent the issuance of bonds or other obligations refunding all or a part of this Loan Agreement; provided, however, that before any such additional Parity Obligations are actually issued (excluding refunding bonds or refunding obligations which refund Parity Obligations but including parity refunding bonds and obligations which refund Subordinated Obligations as provided in Section 5.5 hereof), the Governmental Unit shall obtain the written consent of the Finance Authority and it must be determined that:

(a) The Governmental Unit is then current in all of the accumulations required to be made into the Debt Service Account as provided in this Loan Agreement.

(b) No default shall exist in connection with any of the covenants or requirements of the Resolution or this Loan Agreement.

(c) The Pledged Revenues received by or credited to the Governmental Unit for the Fiscal Year or for any twelve (12) consecutive months out of the twenty-four (24) months preceding the date of issuance of such additional Parity Obligations (the "Historic Test Period") shall have been sufficient to pay an amount representing one hundred thirty percent (130%) of the combined maximum annual principal, interest requirement and the Administrative Fee Component coming due in any subsequent Fiscal Year on the then outstanding Parity Obligations and the Parity Obligations proposed to be issued (excluding the accumulation of any reserves therefor).

(d) A written certification or opinion by the Governmental Unit's treasurer or chief financial officer or by an Independent Accountant that the Pledged Revenues for the Historic Test Period are sufficient to pay said amounts, shall be conclusively presumed to be accurate in determining the right of the Governmental Unit to authorize, issue, sell and deliver the Parity Obligations proposed to be issued.

(e) No provision of this Loan Agreement shall be construed in such a manner as to prevent the issuance by the Governmental Unit of additional bonds or other obligations payable from the Pledged Revenues constituting a lien upon such Pledged Revenues subordinate and junior to the lien of this Loan Agreement nor to prevent the issuance of bonds or other obligations refunding all or part of this Loan Agreement as permitted by Section 5.5 hereof.

(f) The Governmental Unit shall not issue bonds or other obligations payable from the Pledged Revenues having a lien thereon prior or superior to this Loan Agreement, without the written approval of the Finance Authority.

Section 5.5 Refunding Obligations Payable from Pledged Revenues. The provisions of Section 5.4 hereof are subject to the following exceptions:

(a) If at any time after the Closing Date, while this Loan Agreement, or any part thereof, is outstanding, the Governmental Unit shall find it desirable to refund any outstanding bonds or other outstanding obligations payable from the Pledged Revenues, this Loan Agreement, such bonds or other obligations, or any part thereof, may be refunded (but the holders of this Loan Agreement or bonds to be refunded may not be compelled to surrender this Loan Agreement or their bonds, unless this Loan Agreement, the bonds or other obligations, at the time of their required surrender for payment, shall then mature, or shall then be callable for prior redemption at the Governmental Unit's option), regardless of whether the priority of the lien for the payment of the refunding obligations on the Pledged Revenues is changed, except as provided in subparagraph (f) of Section 5.4 hereof and in subparagraphs (b) and (c) of this Section 5.5.

(b) No refunding bonds or other refunding obligations payable from the Pledged Revenues shall be issued on a parity with this Loan Agreement unless:

(i) The outstanding obligations so refunded have a lien on the Pledged Revenues on a parity with the lien thereon of this Loan Agreement and the refunding bonds or other refunding obligations do not increase any aggregate annual principal and interest obligations evidenced by such refunded obligations; or

(ii) The refunding bonds or other refunding obligations are issued in compliance with subparagraphs (a) through (f) of Section 5.4 of this Loan Agreement.

(c) The refunding bonds or other obligations so issued shall enjoy complete equality of lien on the Pledged Revenues with the portion of this Loan Agreement or any bonds or other obligations of the same issue which is not refunded, if any; and the holder or holders of such refunding bonds or such other refunding obligations shall be subrogated to all of the rights and privileges enjoyed by the holder or holders of this Loan Agreement or the bonds or other obligations of this same issue refunded thereby. If only a part of this Loan Agreement or the outstanding bonds and any other outstanding obligations of any issue or issues payable from the Pledged Revenues is refunded, then such obligations may not be refunded without the consent of the holder or holders of the unrefunded portion of such obligations, unless:

(i) The refunding bonds or other refunding obligations do not increase any aggregate annual principal and interest obligations evidenced by such last maturity date of such unrefunded obligations; or

(ii) The refunding bonds or other refunding obligations are issued in compliance with subparagraphs (a) through (f) of Section 5.4 hereof; or

(iii) The lien on the Pledged Revenues for the payment of the refunding obligations is subordinate to each such lien for the payment of any obligations not refunded.

(d) Any refunding bonds or other refunding obligations payable from the Pledged Revenues shall be issued with such details as the Governmental Unit may provide by ordinance or resolution, but without any impairment of any contractual obligations imposed upon the Governmental Unit by any proceedings authorizing the issuance of any unrefunded portion of such outstanding obligations of any one or more issues (including, but not necessarily limited to, this Loan Agreement).

Section 5.6 Investment of Governmental Unit Funds. Money on deposit in the Debt Service Account created hereunder may be invested by the Finance Authority or its designee in Permitted Investments at the written direction of the Governmental Unit or, in the absence of such written direction of the Governmental Unit, at the discretion of the Finance Authority. Any earnings on Permitted Investments shall be held and administered in the Debt Service Account and utilized in the same manner as the other moneys on deposit therein for the benefit of the Governmental Unit.

Section 5.7 Governmental Unit May Budget for Payments. The Governmental Unit may, in its sole discretion, but without obligation and subject to the Constitution of the State, governing laws, and its budgetary requirements, make available properly budgeted and legally available funds to defray any insufficiency of Pledged Revenues to pay Loan Agreement Payments; provided, however, the Governmental Unit has not covenanted and cannot covenant to make such funds available and has not pledged any of such funds for such purpose.

ARTICLE VI

THE PROJECT

Section 6.1 Agreement to Acquire and Complete the Project. The Governmental Unit hereby agrees that in order to effectuate the purposes of this Loan Agreement and to effectuate the acquisition and completion of the Project, it shall make, execute, acknowledge and transmit any contracts, orders, receipts, writings and instructions with any other persons, firms or corporations and, in general do all things which may be requisite or proper to acquire and complete the Project.

The Governmental Unit agrees to acquire and complete the Project through the application of moneys to be disbursed by the Finance Authority pursuant to Section 6.2 of this Loan Agreement.

Section 6.2 Disbursements. So long as no Event of Default shall occur and the requirements of Section 4.2 are satisfied, the Finance Authority or its designee shall disburse moneys to pay a requisition upon receipt and approval by the Finance Authority or its designee of a requisition substantially in the form of Exhibit “C” attached hereto signed by an Authorized Officer of the Governmental Unit, with required supporting documentation.

Section 6.3 Completion of the Acquisition of the Project. Upon completion of the acquisition of the Project, which shall occur no later than two (2) years after the Closing Date, unless a later date is approved as provided in Section 4.1(b) of this Agreement, an Authorized Officer of the Governmental Unit shall deliver a certificate to the Finance Authority, substantially in the form of Exhibit "D" attached hereto, stating that, to his or her knowledge, the acquisition of the Project has been completed and the Project has been accepted by the Governmental Unit, and all costs have been paid, except for any reimbursements requested pursuant to requisitions submitted prior to the end of the Interim Period. Notwithstanding the foregoing, such certificate shall state that it is given without prejudice to any rights against third parties which exist at the date of such certificate or which may subsequently come into being.

Section 6.4 Unrequisitioned Amounts. In the event that, (1) at the time of the delivery of the certificate of completion required by Section 6.3 hereof, there remains an Unrequisitioned Principal Amount, or (2) the Finance Authority shall not have received a Final Requisition, by the date that is twenty seven (27) months from the Closing Date, unless an extension is approved pursuant to Section 4.1(b) of this Loan Agreement, then the Governmental Unit shall have no right or title to the Unrequisitioned Principal Amount, nor any right to pledge, encumber or draw upon such Unrequisitioned Principal Amount, and the Finance Authority will not approve, honor, or enforce any requisition upon such Unrequisitioned Principal Amount pursuant to this Loan Agreement.

ARTICLE VII

COMPLIANCE WITH LAWS AND RULES; OTHER COVENANTS

Section 7.1 Further Assurances and Corrective Instruments. The Finance Authority and the Governmental Unit agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Project or of the Pledged Revenues, or for otherwise carrying out the intention hereof. Authorized Officers are authorized to execute, acknowledge and deliver any such supplements and further instruments.

Section 7.2 Finance Authority and Governmental Unit Representatives. Whenever under the provisions hereof the approval of the Finance Authority or the Governmental Unit is required, or the Governmental Unit or the Finance Authority is required to take some action at the request of the other, such approval or such request shall be given for the Finance Authority or for the Governmental Unit by an Authorized Officer of the Finance Authority or the Governmental Unit, as the case may be, and any party hereto shall be authorized to rely and act on any such approval or request.

Section 7.3 Compliance with Court Orders. During the Loan Agreement Term, the Governmental Unit and the Finance Authority shall observe and comply promptly with all current and future orders of all courts having jurisdiction over the parties hereto, the Project or the Pledged Revenues.

Section 7.4 Compliance with Applicable State and Federal Laws. During the Loan Agreement Term, the Governmental Unit shall comply with all applicable State and federal laws, including, without limitation, the following:

(a) For all contracts, the Governmental Unit shall comply with the New Mexico Procurement Code, NMSA 1978, §§ 13-1-28 through 13-1-199, as amended, or its local procurement ordinances and regulations, as applicable.

(b) For all construction contracts awarded in excess of $10,000, the Governmental Unit shall comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 12, 1967, and as supplemented in Department of Labor regulations (41 C.F.R. chapters 40 and 60). In addition, for all contracts, the Governmental Unit shall comply with all State laws and regulations and all executive orders of the Governor of the State pertaining to equal employment opportunity.

(c) For all contracts awarded for construction or repair, the Governmental Unit shall comply with the Copeland "Anti-Kickback" Act (18 U.S.C. § 874) as supplemented in Department of Labor regulations (29 C.F.R. part 3).

(d) For all construction subcontracts, and subgrants of amounts in excess of $100,000, the Governmental Unit shall comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. § 7606), Section 508 of the Clean Water Act (33 U.S.C. § 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 C.F.R. Part 15). In addition, for all contracts, the Contractor shall comply with all applicable State laws and regulations and with all executive orders of the Governor of the State pertaining to protection of the environment.

(e) For all contracts the Governmental Unit shall comply with the mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with section 362 of the Energy Policy and Conservation Act (42 U.S.C. § 6322).

(f) For all contracts in excess of $2,000 the Governmental Unit shall comply with applicable standards of the Davis-Bacon Wage Act (40 U.S.C. § 3141 et seq.), as amended and supplemented, relating to wages paid to laborers and mechanics employed by contractors and sub-contractors on a Project funded directly by or assisted in whole or in part by and through the Governmental Unit.

(g) For all contracts, the Governmental Unit shall comply with the requirements of the Environmental Protection Agency's Program for Utilization of Minority and Women's Business Enterprises set out in Title 40, Chapter I, Subchapter B, Part 33 of the Code of Federal Regulations.

(h) For all contracts, the Governmental Unit shall comply with the requirements of Executive Order 13502 on Use of Project Agreements for Federal Construction Projects.

(i) For all contracts, the Governmental Unit shall comply with the requirements of Executive Order dated September 25, 2012 on Strengthening Protections Against Trafficking in Persons in Federal Contracts.

(j) For all contracts, the Governmental Unit shall comply with all federal requirements applicable to the Loan (including those imposed by P.L. 113-76, 2014 Consolidated Appropriations Act, Section 436 and related SRF Policy Guidelines) which the Governmental Unit understands includes, among other, requirements that all of the iron and steel products used in the Project are to be produced in the United States ("American Iron and Steel Requirement") unless (i) the Governmental Unit has requested and obtained a waiver from the Finance Authority pertaining to the Project or (ii) the Finance Authority has otherwise advised the Governmental Unit in writing that the American Iron and Steel Requirement is not applicable to the Project.

(k) For all contracts, the Governmental Unit shall comply with all record keeping and reporting requirements under the Clean Water Act/Safe Drinking Water Act, including any reports required by a Federal agency or the Finance Authority such as performance indicators of program deliverables, information on costs and project progress. The Governmental Unit understands that (i) each contract and subcontract related to the Project is subject to audit by appropriate federal and state entities and (ii) failure to comply with the Clean Water Act/Safe Drinking Water Act and this Agreement may be a default under this Agreement.

(l) For all contracts, the Governmental Unit shall comply with Executive Order 12549 – Debarment and Suspension and all rules, regulations and guidelines issued pursuant to Executive Order 12549, including compliance with the requirement that each prospective participant in transactions related to the Loan execute a written certification that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in transactions related to the Loan.

(m) For all contracts, the Governmental Unit shall comply with the requirements of section 1450(e) of the Safe Drinking Water Act (42 U.S.C.300j-9(e)) in all procurement contracts, and the Governmental Unit and procurement contractors shall include such a term and condition in subcontracts and other lower tiered transactions. All contracts and subcontracts for the Project shall include in any contract in excess of $2,000 the contract clauses set out in the EPA publication entitled "Wage Rate Requirements Under the Clean Water Act, Section 513 and the Safe Drinking Water Act Section 1450(e)."

(n) The Governmental Unit shall comply with the requirement of the June 3, 2015 Guidelines for Enhancing Public Awareness of SRF Assistance Agreements issued by the United States Environmental Protection Agency relating to signage, posters, advertisements, website or press releases indicating that financial assistance was received from the EPA for the Project.

(o) The Governmental Unit acknowledges that it is subject to the terms of the Environmental Protection Agency Memorandum titled "Prohibition on Certain Telecommunication and Video Surveillance Services or Equipment in the SRF Programs" dated

December 11, 2020. The Governmental Unit shall comply with 2 CFR 200.216 and Section 889 of Public Law 115-232 and shall not use Loan or Subsidy funds to obtain or enter into a contract to obtain covered telecommunications equipment produced or provided by companies listed in the System for Award Management exclusion list at SAM.gov. The exclusion list includes, but is not limited to, Huawei Technologies Company or ZTE Corporation, or any subsidiary or affiliate of such entities.

The Finance Authority or its designee shall have the right to review all contracts, work orders and other documentation related to the Project that it deems necessary to assure compliance with applicable laws, rules and regulations, and may conduct such review as it deems appropriate prior to disbursing funds for payment of an Approved Requisition.

Section 7.5 First Lien Status. The Loan Agreement Payments constitute an irrevocable first lien (but not necessarily an exclusive first lien) upon the Pledged Revenues. The Governmental Unit covenants that the Loan Agreement Payments and any Parity Obligations herein authorized to be issued and from time to time outstanding shall be equitably and ratably secured by a first lien on the Pledged Revenues and shall not be entitled to any priority one over the other in the application of the Pledged Revenues regardless of the time or times of the issuance of such obligations, it being the intention of the Governmental Unit that there shall be no priority between the Loan Agreement Payments and any such Parity Obligations regardless of the fact that they may be actually issued and delivered at different times.

Section 7.6 Expeditious Completion. The Governmental Unit shall complete the Project with all practical dispatch.

ARTICLE VIII

PREPAYMENT OF LOAN AGREEMENT PAYMENTS

The Governmental Unit is hereby granted the option to prepay the Principal Component of this Loan Agreement in whole or in part on any day without penalty or prepayment premium, beginning one (1) year after the Closing Date. The Governmental Unit may designate the due date or due dates of the Principal Component or portions thereof being prepaid in the event of a partial prepayment. Any such prepayment shall include accrued interest to the redemption date of the corresponding Bonds to be redeemed, if any, and notice of intent to make such prepayment shall be provided to the Finance Authority or its designee by the Governmental Unit no less than forty-five (45) days prior to the prepayment date. The Finance Authority or its designee shall recalculate the Loan Agreement Payments due under this Loan Agreement in the event of a partial prepayment in a manner which is consistent with the manner in which the Bonds, if any, are prepaid.

ARTICLE IX

INDEMNIFICATION

From and to the extent of the Pledged Revenues and to the extent permitted by law, the Governmental Unit shall and hereby agrees to indemnify and save the Finance Authority and its designee, if any, harmless against and from all claims, by or on behalf of any person, firm, corporation or other legal entity arising from the acquisition or operation of the Project during the Loan Agreement Term, from: (i) any act of negligence of the Governmental Unit or breach of any covenant or warranty by the Governmental Unit hereunder; and (ii) the incurrence of any cost or expense in connection with the acquisition or operation of the Project in excess of the Loan Agreement proceeds and interest on the investment of the Loan Agreement proceeds. The Governmental Unit shall indemnify and save the Finance Authority and its designee, if any, harmless, from and to the extent of the available Pledged Revenues and to the extent permitted by law, from any such claim arising as aforesaid from (i) or (ii) above, or in connection with any action or proceeding brought thereon and, upon notice from the Finance Authority or its designee, shall defend the Finance Authority or its designee, if any, in any such action or proceeding.

ARTICLE X

EVENTS OF DEFAULT AND REMEDIES

Section 10.1 Events of Default Defined. Any one of the following shall be an Event of Default under this Loan Agreement:

(a) Failure by the Governmental Unit to pay any amount required to be paid under this Loan Agreement on the date on which it is due and payable; or

(b) Failure by the Governmental Unit to observe and perform any covenant, condition or agreement on its part to be observed or performed under this Loan Agreement, other than as referred to in paragraph (a), for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, is given to the Governmental Unit by the Finance Authority or its designee, if any, unless the Finance Authority or its designee, as applicable, shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice can be wholly cured within a period of time not materially detrimental to the rights of the Finance Authority or its designee but cannot be cured within the applicable thirty (30) day period, the Finance Authority or its designee will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the Governmental Unit within the applicable period and diligently pursued until the failure is corrected; and provided, further, that if by reason of force majeure the Governmental Unit is unable to carry out the agreements on its part herein contained, the Governmental Unit shall not be deemed in default under this paragraph (b) during the continuance of such inability (but force majeure shall not excuse any other Event of Default); or

(c) Any warranty, representation or other statement by or on behalf of the Governmental Unit contained in this Loan Agreement or in any instrument furnished in compliance with or in reference to this Loan Agreement is false or misleading in any material respect; or

(d) A petition is filed against the Governmental Unit under any bankruptcy, moratorium, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, and is not dismissed within thirty (30) days after such filing, but the Finance Authority shall have the right to intervene in the proceedings to protect the Finance Authority's interests; or

(e) The Governmental Unit files a petition in voluntary bankruptcy or seeking relief under any provision of any bankruptcy, moratorium, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, or consents to the filing of any petition against it under any such law; or,

(f) The Governmental Unit admits insolvency or bankruptcy or its inability to pay its debts as they become due or is generally not paying its debts as such debts become due, or becomes insolvent or bankrupt or makes an assignment for the benefit of creditors, or a custodian (including, without limitation, a receiver, liquidator or trustee) of the Governmental Unit for any of its property is appointed by court order or takes possession thereof and such order remains in effect or such possession continues for more than thirty (30) days, but the Finance Authority shall have the right to intervene in the proceedings to protect its interests.

Section 10.2 Remedies on Default. Whenever any Event of Default has occurred and is continuing and subject to Section 10.3 hereof, the Finance Authority may take any or all of the following actions as may appear necessary or desirable to collect the payments then due and to become due or to enforce performance of any agreement of the Governmental Unit in this Loan Agreement:

(a) By mandamus or other action or proceeding or suit at law or in equity to enforce the rights of the Finance Authority under this Loan Agreement against the Governmental Unit, and compel the Governmental Unit to perform or carry out its duties under the law and the agreements and covenants required to be performed by it contained herein; or

(b) By suit in equity enjoin any acts or things which are unlawful or violate the rights of the Finance Authority; or

(c) Intervene in judicial proceedings that affect this Loan Agreement or the Pledged Revenues; or

(d) Cause the Governmental Unit to account as if it were the trustee of an express trust for all of the Pledged Revenues and Aggregate Disbursements (except the Expense Fund Component); or,

(e) Take whatever other action at law or in equity may appear necessary or desirable to collect amounts then due and thereafter to become due under this Loan Agreement or enforce any other of its rights thereunder.

Section 10.3 Limitations on Remedies. A judgment requiring a payment of money entered against the Governmental Unit may reach only the available Pledged Revenues.

Section 10.4 No Remedy Exclusive. Subject to Section 10.3 of this Loan Agreement, no remedy herein conferred upon or reserved to the Finance Authority is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder as now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Finance Authority to exercise any remedy reserved in this Article X, it shall not be necessary to give any notice, other than such notice as may be required in this Article X.

Section 10.5 Waivers of Events of Default. The Finance Authority may in its discretion waive any Event of Default hereunder and the consequences of an Event of Default by written waiver; provided, however, that there shall not be waived (i) any Event of Default in the payment of principal of this Loan Agreement at the date when due as specified in this Loan Agreement, or (ii) any default in the payment when due of the interest on this Loan Agreement, unless prior to such waiver or rescission, all arrears of interest, with interest at the rate borne by this Loan Agreement on all arrears of payment of principal and all expenses of the Finance Authority, in connection with such Event of Default shall have been paid or provided. Such waiver shall be effective only if made by written statement of waiver issued by the Finance Authority. In case of any such waiver or rescission, or in case any proceeding taken by the Finance Authority on account of any such Event of Default shall have been discontinued or abandoned or determined adversely, then and in every such case, the Finance Authority shall be restored to its former position and rights hereunder, respectively, but no such waiver or rescission shall extend to any subsequent or other Event of Default, or impair any right consequent thereon.

Section 10.6 No Additional Waiver Implied by One Waiver. In the event that any agreement contained herein should be breached by either party and thereafter waived by the other party, such waiver shall be in writing and limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

Section 10.7 Agreement to Pay Attorneys' Fees and Expenses Related to Defaults. In the event that the Governmental Unit should default under any of the provisions hereof and the Finance Authority employs attorneys or incurs other expenses for the collection of payments hereunder, or the enforcement of performance or observance of any obligation or agreement on the part of the Governmental Unit contained in this Loan Agreement, the Governmental Unit agrees that it shall on demand therefor pay to the Finance Authority the fees of such attorneys and such other expenses so incurred, to the extent that such attorneys' fees and expenses may be determined to be reasonable by a court of competent jurisdiction; provided, however, that the obligation of the Governmental Unit under this Section shall be limited to expenditures from and to the extent of the available Pledged Revenues.

ARTICLE XI

MISCELLANEOUS

Section 11.1 Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered as follows:

If to the Governmental Unit, then to:

City of Alamogordo
Attn: City Manager
1376 E. Ninth Street
Alamogordo, New Mexico 88310

If to the Finance Authority, then to:

New Mexico Finance Authority
Attention: Chief Executive Officer
207 Shelby Street
Santa Fe, New Mexico 87501

And if to Finance Authority's designated servicing agent for this Loan Agreement, if any, at the address to be provided by the servicing agent. The Governmental Unit and the Finance Authority may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

Section 11.2 Binding Effect. This Loan Agreement shall inure to the benefit of and shall be binding upon the Finance Authority, the Governmental Unit and their respective successors and assigns, if any.

Section 11.3 Amendments. This Loan Agreement may be amended only with the written consent of the Finance Authority and the Governmental Unit, except as provided in Section 4.1(b) of this Loan Agreement. The consent of the Finance Authority for amendments not affecting the terms of payment of the loan component of this Loan Agreement may be given by an Authorized Officer of the Finance Authority. The execution of any such consent by an Authorized Officer of the Finance Authority shall constitute his or her determination that such amendment does not affect the terms of payment of the loan component of this Loan Agreement.

Section 11.4 No Liability of Individual Officers, Directors or Trustees. No recourse under or upon any obligation, covenant or agreement contained in this Loan Agreement shall be had against any member, employee, director or officer, as such, past, present or future, of the Finance Authority, either directly or through the Finance Authority or against any officer, employee, director or member of the Governing Body, past, present or future, as an individual so long as such individual was acting in good faith. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such officer, employee, director or member of the Governing Body or of the Finance Authority is hereby expressly waived and released by the Governmental Unit and by the Finance Authority as a condition of and in consideration for the execution of this Loan Agreement.

Section 11.5 Severability. In the event that any provision of this Loan Agreement, other than the requirement of the Governmental Unit to pay hereunder, shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 11.6 Execution in Counterparts. This Loan Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 11.7 Assignment by the Finance Authority. This Loan Agreement (except as to the Administrative Fee and Expense Fund Component) may be assigned and transferred by the Finance Authority to a trustee, which right to assign and transfer is hereby acknowledged and approved by the Governmental Unit.

Section 11.8 Compliance with Governing Law. It is hereby declared by the Governing Body that it is the intention of the Governmental Unit by the execution of this Loan Agreement to comply in all respects with the provisions of the New Mexico Constitution and statutes as the same govern the pledge of the Pledged Revenues to payment of all amounts payable under this Loan Agreement.

Section 11.9 Applicable Law. This Loan Agreement shall be governed by and construed in accordance with the laws of the State.

Section 11.10 Captions. The captions or headings herein are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Loan Agreement.

[*Remainder of page intentionally left blank.*]

[*Signature pages follow*.]

IN WITNESS WHEREOF, the Finance Authority, on behalf of itself has executed this Loan Agreement, which was approved by the Finance Authority's Board of Directors on September 24, 2020, in its corporate name by its duly authorized officers; and the Governmental Unit has caused this Loan Agreement to be executed in its corporate name and the seal of the Governmental Unit affixed hereto and attested by duly authorized officers. All of the above are effective as of the date first above written.

NEW MEXICO FINANCE AUTHORITY

By___________________________________
Marquita D. Russel, Chief Executive Officer

Prepared for Execution by Officers of the Finance Authority:

VIRTUE & NAJJAR, PC
As Loan Counsel to the Finance Authority

By _________________________________
Richard L. C. Virtue

Approved for Execution by Officers of the Finance Authority:

By _________________________________
Daniel C. Opperman, Chief Legal Officer
New Mexico Finance Authority Legal and Compliance Department

CITY OF ALAMOGORDO,
OTERO COUNTY, NEW MEXICO

By___________________________________
Richard A. Boss, Mayor

[SEAL]

ATTEST:

By_________________________________
Rachel Hughs, City Clerk

EXHIBIT "A"

TERM SHEET

LOAN NO. DW-5357
TO THE CITY OF ALAMOGORDO, OTERO COUNTY, NEW MEXICO

Governmental Unit:	City of Alamogordo, New Mexico
Project Description:	Financing the costs of making improvements to the Bonito Lake Surface Water Reservoir, to repair damage resulting from a flood event related to the Little Bear Fire, including repair and replacement of the main valve manifold and valves located inside the dam house, installation and equipping of a new interior ladder and safety climb, catwalk for access, installation of three additional intake ports and a measuring strip located on the exterior of the dam house
Pledged Revenues:	The Net Revenues of the Governmental Unit's joint water and sewer system pledged to payment of the Loan Agreement Payments by the Resolution and the Loan Agreement.
Currently Outstanding Parity Obligations for Pledged Revenues:	NMFA PPRF Loan No. PPRF-2641, matures 2031; NMFA DW Loan No. DW-2880, matures 2037; NMFA DW Loan No. DW-2881, matures 2037; NMFA PPRF Loan No. PPRF-3494, matures 2025; NMFA PPRF Loan No. PPRF-5013, matures 2029.
Currently Outstanding Senior Obligations:	None.
Currently Outstanding Subordinate Obligations:	NMFA WPF Loan No. WPF-0080, matures 2030.
Authorizing Legislation:	Governmental Unit Ordinance No. 1626 adopted March 9, 2021.
Closing Date:	April 16, 2021
Interest Rate:	0.34% (which includes the Administrative Fee)
Maximum Forgiven Program Fund Component:	$1,075,650

Maximum Repayable Program Fund Component:	$1,075,650
Aggregate Program Fund Amount:	$2,130,000
Maximum Forgiven Expense Fund Component:	$10,765
Maximum Repayable Expense Fund Component:	$10,765
Maximum Expense Fund Component:	$21,300
Maximum Principal Amount:	$2,151,300
Subsidy Percent:	50%

<u>EXHIBIT “B”</u>

LOAN AGREEMENT PAYMENT SCHEDULE

[SEE ATTACHED]

BOND DEBT SERVICE

City of Alamogordo
2020 Bonito Lake Surface Water Reservoir Improvements

Period Ending	*Principal*	*Coupon*	*Interest*	*Debt Service*	*Annual Debt Service*
11/01/2021			1,763.94	1,763.94	
05/01/2022			1,628.25	1,628.25	3,392.19
11/01/2022			1,628.25	1,628.25	
05/01/2023			1,628.25	1,628.25	3,256.50
11/01/2023			1,628.25	1,628.25	
05/01/2024	52,516	0.250%	1,628.25	54,144.25	55,772.50
11/01/2024			1,562.61	1,562.61	
05/01/2025	52,648	0.250%	1,562.61	54,210.61	55,773.22
11/01/2025			1,496.80	1,496.80	
05/01/2026	52,779	0.250%	1,496.80	54,275.80	55,772.60
11/01/2026			1,430.82	1,430.82	
05/01/2027	52,911	0.250%	1,430.82	54,341.82	55,772.64
11/01/2027			1,364.68	1,364.68	
05/01/2028	53,043	0.250%	1,364.68	54,407.68	55,772.36
11/01/2028			1,298.38	1,298.38	
05/01/2029	53,176	0.250%	1,298.38	54,474.38	55,772.76
11/01/2029			1,231.91	1,231.91	
05/01/2030	53,309	0.250%	1,231.91	54,540.91	55,772.82
11/01/2030			1,165.27	1,165.27	
05/01/2031	53,442	0.250%	1,165.27	54,607.27	55,772.54
11/01/2031			1,098.47	1,098.47	
05/01/2032	53,576	0.250%	1,098.47	54,674.47	55,772.94
11/01/2032			1,031.50	1,031.50	
05/01/2033	53,710	0.250%	1,031.50	54,741.50	55,773.00
11/01/2033			964.36	964.36	
05/01/2034	53,844	0.250%	964.36	54,808.36	55,772.72
11/01/2034			897.06	897.06	
05/01/2035	53,979	0.250%	897.06	54,876.06	55,773.12
11/01/2035			829.58	829.58	
05/01/2036	54,114	0.250%	829.58	54,943.58	55,773.16
11/01/2036			761.94	761.94	
05/01/2037	54,249	0.250%	761.94	55,010.94	55,772.88
11/01/2037			694.13	694.13	
05/01/2038	54,385	0.250%	694.13	55,079.13	55,773.26
11/01/2038			626.15	626.15	
05/01/2039	54,521	0.250%	626.15	55,147.15	55,773.30
11/01/2039			558.00	558.00	
05/01/2040	54,657	0.250%	558.00	55,215.00	55,773.00
11/01/2040			489.68	489.68	
05/01/2041	54,793	0.250%	489.68	55,282.68	55,772.36
11/01/2041			421.19	421.19	
05/01/2042	54,930	** %	421.19	55,351.19	55,772.38
11/01/2042			275.34	275.34	
05/01/2043	55,068	1.000%	275.34	55,343.34	55,618.68
	1,075,650		46,300.93	1,121,950.93	1,121,950.93

EXHIBIT "C"

FORM OF REQUISITION

RE: $2,151,300 Loan Agreement by and between the Finance Authority and the City of Alamogordo, New Mexico (the "Loan Agreement")

TO: DW@nmfa.net; or
New Mexico Finance Authority
207 Shelby Street
Santa Fe, New Mexico 87501
Attn: Client Services

LOAN NO. DW-5357 CLOSING DATE: April 16, 2021

You are hereby authorized to disburse to the City of Alamogordo or its payee with regard to the above-referenced Loan Agreement the following:

REQUISITION NUMBER:		☐ Interim Request ☐ Final Request
AMOUNT OF PAYMENT:	$	

For Period (work encumbered) ________________ to ___________________

PURPOSE OF PAYMENT: ____
____
____
____

☐ This is a request of REIMBURSEMENT of incurred and paid project expenses. (Attach proof of payment, e.g. check stubs, and corresponding invoices)

☐ This is a request of DIRECT PAYMENT to vendor or service provider of incurred project expenses. (Attach invoices)

PAYEE INFORMATION

NAME:	
CONTACT NAME:	
ADDRESS:	
PHONE NUMBER:	
FAX NUMBER:	
E-MAIL ADDRESS:	

WIRING INFORMATION

BANK NAME:	
ACCOUNT NUMBER:	
ROUTING NUMBER:	

Please indicate if this Business is considered a

☐ SBE (Small Business Entrepreneur)	☐ MBE (Minority Business Entrepreneur)	☐ WBE (Women owned business Entrepreneur)	☐ N/A

(Attach SBE/MBE/WBE Certification)

Each obligation, item of cost or expense mentioned herein is for costs of the Project, is due and payable, has not been the subject of any previous requisition and is a proper charge for requisition and payment.

Each obligation, item of cost or expense mentioned herein is not for costs related to the purchase of land or easement.

All representations contained in the Loan Agreement and the related closing documents remain true and correct and the City of Alamogordo is not in breach of any of the covenants contained therein.

If this is the final requisition, payment of costs of the Project is complete or, if not complete, the City of Alamogordo understands its obligation to complete the acquisition and installation of the Project and shall complete the acquisition and installation of the Project from other legally available funds.

Capitalized terms used herein, are used as defined or used in the Loan Agreement.

DATED:_________________ By:____

Authorized Officer

____

(Print name and title)

EXHIBIT "D"

FORM OF CERTIFICATE OF COMPLETION

RE: $2,151,300 Loan Agreement by and between the Finance Authority and the City of Alamogordo, New Mexico (the "Loan Agreement")

Loan No. DW-5357

Closing Date: April 16, 2021

TO: NEW MEXICO FINANCE AUTHORITY

I, ______________________________, the ______________________________ of the
[Name] [Title or position]

City of Alamogordo, New Mexico, hereby certify as follows:

1. The project described in the Loan Agreement (the "Project") was completed and placed in service on ________________________, 20___.

2. The total cost of the Project was $ ___________.

3. Cost of the Project paid from the Loan was $ _____________.

4. The portion of the Maximum Principal Amount unexpended for the Project is $ ___________.

5. The Project was completed and is and shall be used consistent with and subject to the covenants set forth in the Loan Agreement.

This certificate shall not be deemed to prejudice or affect any rights of or against third parties which exist at the date of this certificate or which may subsequently come into being.

CITY OF ALAMOGORDO,
OTERO COUNTY, NEW MEXICO

By: __________________________________

Its: __________________________________

AGENDA REPORT
CITY OF ALAMOGORDO
CITY COMMISSION

Meeting Date: 3/9/2021 **Report Date:** 2/19/2021 **Report No:** 5.

Submitted By: Josh Sides

Subject: Consider, and act upon, Resolution 2021-07 to apply for the New Mexico Department of Tourism's Clean and Beautiful Grant for FY 22. This will provide funding for the Keep Alamogordo Beautiful program. *(Joshua Sides, Keep Alamogordo Beautiful Program Coordinator)* **(Roll Call Vote Required)**

Fiscal Impact:
Amount Budgeted: $0.00
Fund: 037

Additional Fiscal Impact:

Recommendation: Approve Resolution No. 2021-07.

Background: By approving this resolution, the City Commission will voice support for the annual beautification grant proposal. Each year, the New Mexico Department of Tourism assists local and tribal governments by awarding grant funding to reduce litter by involving the public during local community and statewide events, programs and projects.

The objective of the grant proposal as written is not only to reduce litter, but offer youth groups and individual youth to receive financial incentives and experience for employment. In addition, business owners and patrons benefit from having a litter free environment in which to do business. Finally, visitors and tourists to Alamogordo receive an enhanced impression of the City of Alamogordo due to cleaner public spaces and roadways.

RESOLUTION NO. 2021-07

A RESOLUTION SUPPORTING APPLICATION FOR THE NEW MEXICO DEPARTMENT OF TOURISM CLEAN AND BEAUTIFUL GRANT FOR THE KEEP ALAMOGORDO BEAUTIFUL PROGRAM

WHEREAS, the City Commission of the City of Alamogordo of Otero County, State of New Mexico recognizes the need for litter control through elimination, prevention, reduction, beautification, education and recycling;

WHEREAS, the New Mexico Department of Tourism, received legislative authority through the Litter Control and Beautification Act of 1985 to create the *New Mexico Clean and Beautiful* Grant Program, to prevent litter in our state from becoming a public nuisance and damage the economy by making it less attractive to tourists and newcomers;

WHEREAS, the New Mexico Department of Tourism, through the *New Mexico Clean and Beautiful* Grant Program, is soliciting proposals for community involvement for FY22 grant, which objective is to prevent, control and eliminate litter, reduce waste and recycle materials, beautify and eliminate graffiti and weeds from public spaces; educate citizens on solid waste handling and raise overall awareness; involve more New Mexicans by enlisting them as volunteers in program and community sponsored activities and build and/or continue partnerships especially with the Tourism Industry;

WHEREAS, the governing body of the City of Alamogordo seeks to receive grant funding from the New Mexico Department of Tourism for education, litter eradication projects and beautification/ improvement programs.

NOW THEREFORE, BE IT RESOLVED by the City Commission of the City of Alamogordo that the New Mexico Department of Tourism's Clean and Beautiful Grant application is hereby supported and endorsed;

BE IT FURTHER RESOLVED that Veronica Ortega, Community Services Director, or her designee is the GRANTEE REPRESENTATIVE and shall be authorized to submit any documents pertaining to the project and act as the point of contact; and,

PASSED, APPROVED AND ADOPTED this _____ day of __________, 2021.

CITY OF ALAMOGORDO, NEW MEXICO
a New Mexico municipal corporation

____
Richard Boss, Mayor

ATTEST:

____
Rachel Hughs, City Clerk

APPROVED AS TO FORM:

____
Petria Bengoechea, City Attorney

AGENDA REPORT
CITY OF ALAMOGORDO
CITY COMMISSION

Meeting Date: 3/9/2021 **Report Date:** 2/25/2021 **Report No:** 6.

Submitted By: Debbie Osborne

Subject: Consider, and act upon, acceptance of grant agreement from NMDOT, Aviation Division, to Alamogordo-White Sands Regional Airport in the amount of $88,000.00 to purchase a tractor and attachments. *(JimTalbert, Airport Manager)*

Fiscal Impact: $88,000.00
Amount Budgeted: $88,000.00
Fund: 091

Additional Fiscal Impact: Grant funding will be used rather than funds in airport budget.

Recommendation: Accept grant from NM DOT Aviation Division in the amount of $88,000.

Background: The airport currently has two utility tractor type units, one a 1986 Case tractor with a 16 foot brush hog as an implement, the other a 1994 Case loader with scarfires and a bucket on the front. The Case tractor is operable but requires extensive maintenance to keep it in operation and the Case loader is down for a hydraulic leak. The brush hog is no longer supported by its manufacture and any repair parts must be built independently. Both units have been non-serviceable for months due to these and other maintenance situations.

The State of New Mexico DOT Aviation Division has offered a 100% grant to purchase a new John Deere 5090E (all wheel drive) tractor with a bucket loader on front, a 15 foot rotary cutter (another name for brush hog) and a drag as implements. The tractor will have an enclosed cab with air conditioning for the operator's safety and comfort. The tractor will be purchased through the state pricing agreement. Coordination with Procurement and Fleet maintenance has been initiated. This will reduce the number of units owned by the airport. The two Case units will be auctioned off by procurement.

Funding to cover the initial purchase is in and will be transferred from 091-0006-459-57-57 to the appropriate account until the 100% reimbursement is received.

I am requesting that the City Commission approve this State 100% grant to purchase the John Deere 5090E tractor and implements.

NEW MEXICO DEPARTMENT OF TRANSPORTATION

Aviation Grant Agreement Form

Date: Feb 22, 2021

Project Location: ALM - ALAMOGORDO MUNICIPAL AIRPORT

Sponsor: ALAMOGORDO, CITY OF

Address: 1376 EAST 9TH ST

City: ALAMOGORDO NM Zip Code: 88310

The Sponsor must sign and send a digital PDF copy to their Airport Development Administrator at the NMDOT Aviation Division.

Participation STATE ONLY

Funding Breakdown 100-0

Contract No._______________

Project No. ALM-21-05

Vendor No. 0000054303-5

Expiration Date_____________

Purchase Order No:________________________________

AVIATION GRANT AGREEMENT

This Agreement is between the New Mexico Department of Transportation, acting through its Aviation Division (Department), and the Sponsor. This Agreement is effective as of the date of the last party to sign on the signature page below.

Now Therefore, pursuant to the New Mexico Aviation Act, NMSA 1978, Section 64-1-11 et seq., and the New Mexico Municipal Airport Law, NMSA 1978 Sections 3-39-1 et seq., the parties agree as follows:

1. Purpose.
The purpose of this Agreement is to provide funding, authorized in Section 64-1-13, NMSA 1978, to the Sponsor to assist in financing an aviation project.

a. Project Description:

TRACTOR & ATTACHMENTS

b. Site of Development.The site of development is identified on the property map, attached as Exhibit A.
c. Funding.Below is the funding for the Project. The State's contribution is the maximum amount that the Department will contribute. Attached as Exhibit B is the engineer's cost estimate.

State	Sponsor	Other	Total
$ 88,000	$ 0	$ 0	$ 88,000

2. The Sponsor Shall:

a. Pay all costs, perform all labor, and supply all material, except as described in the Engineers Estimate attached as EXHIBIT B.
b. Provide a representative from its organization who shall serve as the single point of contact for the Department.
c. Establish and maintain a resolution by which the Sponsor agrees to establish an airport maintenance program and appoint an individual to be responsible for management of the program.
d. Initiate engineering, survey, and all other design activities, inspect Project construction and, coordinate all meetings.
e. Be responsible for all design and pre-construction activities.
f. Initiate and cause to be prepared all necessary documents including plans, specifications, estimates (PS&E), and reports for this Project.
g. Assure that all design and PS&E are performed under the direct supervision of a Registered New Mexico Professional Engineer.
h. Design the Project in accordance with State and Federal guidelines and/or advisory circulars, hereby incorporated into this Agreement. Construction projects will be accomplished in accordance with the Federal Aviation Administration's Standards for Specifying Construction of Airports (Advisory Circular 150/5370-10, current edition).

i. Notify the Department when the plans and specifications are sufficiently complete for review.
j. Make no changes in design or scope of work without documented approval of the Department.
k. Advertise for and contract for the construction of the Project in accordance with federal and state laws or local ordinances.
l. Require the Engineer to prepare a final detailed estimate of the work, indicating the bid items, the quantity in each item, the unit bid price and cost of the items based on low acceptable bid prices. Progress estimates shall be submitted to the Department in acceptable form so that details of quantities allowed on various items of work shall be shown on each progress payment.
m. The Sponsor shall submit to the Department one complete set of plans and specifications which incorporate all comments and recommendations received during pre-bid activities and which have been fully executed by all involved parties.
n. The Sponsor shall take all steps, including litigation if necessary, to recover State funds spent in violation of state laws and rules. The Sponsor shall return any recovered state funds to the Department. It shall furnish to the Department, upon request, all documents and records pertaining to the determination of the amount of the state's share of any settlement, litigation, negotiation, or the efforts taken to recover such funds. All settlements or other final dispositions by the Sponsor, in court or otherwise, involving the recovery of such state funds shall be approved in advance by the Department.
o. The Sponsor shall, upon reasonable notice, allow the Department the right to inspect the Project for the purposes of determining if it is being constructed in a good and workmanlike manner, and if the approved plans and specifications are being complied with satisfactorily. If an inspection discloses a failure to substantially meet such requirements and standards the Department may terminate payment or payments until a mutually satisfactory remedy is reached.

3. The Department Shall:

a. Assign a contact person for this project.
b. Provide timely reviews of all submittals of scopes, plans, specifications, investigations or other documents.
c. The Department shall not provide an extensive check of any plans submitted by the Sponsor. The Department's concurrence of the Project plans does not relieve the Sponsor or its Consultant of their responsibility for errors and omissions.

4. Both Parties Agree:

a. The allowable costs of this Project shall not include costs determined by the Department to be ineligible for consideration under the Aviation Act.
b. The expenditure of any State money is subject to approval by the Department.
c. Funds granted under the Local Governments Road Fund, NMSA 1978 Section 67-3-28.2, shall not be used to administer this Project or used to meet the local match.

5. Method of Payment - Reimbursement.

The Department shall reimburse the Sponsor in accordance with the terms of this agreement. Claims for reimbursement shall be completed on form A-1159, Request for Reimbursement. Each request for reimbursement shall contain proof of payment for valid expenditures for services rendered by a third party or items of tangible property received by the Sponsor for the implementation of the Project. The Department reserves the right to withhold reimbursement on requests that are incorrect and/or incomplete. The Final reimbursement request must be received no later than thirty (30) days after completion of the project or the expiration of this Agreement.

The Sponsor shall not be reimbursed for any costs incurred prior to the full execution of the Agreement, after the expiration of the Agreement or in excess of the maximum dollar amount of the agreement unless the maximum dollar amount is duly amended prior to incurring the service or deliverable. Any unexpended portion of funds subject to this Agreement shall revert to the State Aviation Fund.

6. Accountability of Receipts and Disbursements.

There shall be strict accountability for all receipts and disbursements. The Sponsor shall maintain all records and documents relative to the Project for a minimum of three (3) years after completion of said Project. The Sponsor shall furnish the Department or State Auditor, upon demand, all records which support the terms of this Agreement.

7. Term.
The Agreement becomes effective upon signatures of all parties. The effective date is the date when the last party signed the Agreement on the signature page below. This agreement shall expire two (2) years from the effective date, unless terminated pursuant to Sections 8 and 17, below.

8. Termination for Cause.
The Department has the option to terminate this Agreement if the Sponsor fails to comply with any provision of this Agreement. A written notice of termination shall be given at least thirty (30) days prior to the intended date of termination and shall identify all of the Sponsor's breaches on which the termination is based.

The Department may provide the Sponsor a reasonable opportunity to correct the breach. If within ten (10) days after receipt of a written notice of termination, the Sponsor has not corrected the breach or, in the case of a breach which cannot be corrected in ten (10) days, the Sponsor has not begun and proceeded in good faith to correct the breach, the Department may declare the Sponsor in default and terminate the Agreement. The Department shall retain any and all other remedies available to it under the law.

By such termination neither party may nullify obligations already incurred for performance or failure to perform for the work rendered prior to the date of termination. However, neither party shall have any obligation to perform services or make payment for services rendered after such date of termination.

9. Disposition of Property.

a. Upon termination of this Agreement, the Sponsor shall account for any remaining property, materials or equipment belonging to the Department and dispose of them as directed by the Department.
b. Any equipment, materials or supplies procured under this Agreement shall be used solely for aviation purposes maintained according to the manufacturers guidelines and stored at the airport.

10. Representations and Certification.
The Sponsor, by signing this Agreement, represents and certifies the following:

a. <u>Legal Authority</u> - The Sponsor has the legal power and authority to: (1) do all things necessary in order to undertake and carry out the Project in conformity with the provisions stated in the New Mexico Aviation Act and Rules and Regulations pursuant thereto; (2) accept, receive and disburse grant funds from the State of New Mexico in aid of the Project; and (3) carry out all provisions stated in this Aviation Grant Agreement.

b. <u>Defaults</u> - The Sponsor is not in default on any obligation to the State of New Mexico relative to the development, operation or maintenance of any airport or aviation project.

c. <u>Possible Disabilities</u> - The Sponsor states, by execution of this Agreement, there are no facts or circumstance (including the existence of effective or proposed leases, use agreements, or other legal instruments affecting use of the airport or the existence of pending litigation or other legal proceedings) which in reasonable probability might make it impossible for the Sponsor to carry out and complete the Project.

d. <u>Land</u> - The Sponsor holds the property interest in the areas of land which are to be developed or used as part of or in connection with the Project and is identified in a current Airport Property Map. The Sponsor further certifies that the aforementioned is based on a title examination by a qualified attorney or title company who has determined that the Sponsor holds the stated property interests.

11. Assurances.
The Sponsor, by signing this Agreement, covenants and agrees to the following Assurances:

a. That it will operate the airport for the use and benefit of the public on fair and reasonable terms and without unjust discrimination.
b. That it will keep the airport open to all types, kinds and classes of aeronautical use without discrimination between such types, kinds, and classes. The Sponsor shall establish fair, equal and not unjustly discriminatory conditions to be met by all users of the airport as may be necessary for the safe and efficient operation.

c. Neither it nor any person or organization occupying space at the airport will discriminate against any person or class of persons by reason of race, color, creed, or national origin in the use of the facility and, further that any person, firm or corporation rendering service to the public on the airport will do so on a fair, equal and not unjustly discriminatory basis.
d. Operate and maintain in a safe and serviceable condition the airport and all facilities which are necessary to serve the aeronautical users and will not permit any activity which would interfere with its use for airport purposes.
e. By acquisition of land interest, acquisition of easements, airspace zoning, or other accepted means, protect the runway approaches and the airspace in the immediate vicinity of the airport from the construction, alteration, erection or growth of any structure which would interfere with the use or operation of the airport.
f. Comply with the New Mexico Aviation Act and associated provisions, NMSA 1978 Sections 64-1-1 to 64-5-4 and the New Mexico Municipal Airport Law, NMSA 1978 Sections 3-39-1 et seq.
g. That it shall not award the contract nor give bidding documents to any contractor who is subject to suspension or debarment by the U.S. Department of Transportation or the Department at the time of the bidding or award of the contract. Violation of this provision shall void this Agreement.

12. Third Party Beneficiaries.
It is not intended by any of the provisions of any part of this Agreement to create in the public or any member thereof a third party beneficiary or to authorize anyone not a party to the Agreement to maintain a suit(s) for wrongful death(s), bodily and/or personal injury(ies) to person(s), damage(s) to property(ies), and/or any other claim(s) whatsoever pursuant to the provisions of this Agreement.

13. New Mexico Tort Claims Act.
As between the Department and the Sponsor, neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1, *et seq*. This paragraph is intended only to define the liabilities between the parties and it is not intended to modify, in any way, the parties' liabilities as governed by common law or the New Mexico Tort Claims Act.

14. Scope of Agreement.
This Agreement incorporates all the agreements, covenants, and understandings between the parties concerning the subject matter. All such covenants, agreements, and understandings have been merged into this written Agreement. No prior Agreement or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

15. Terms of this Agreement.
The terms of this Agreement are lawful; performance of all duties and obligations shall conform with and do not contravene any state, local, or federal statutes, regulations, rules, or ordinances.

16. Equal Opportunity Compliance.
The parties agree to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, the parties agree to assure that no person in the United States shall, on the grounds of race, color, national origin, ancestry, sex, sexual preference, age or handicap, be excluded from employment with, or participation in, any program or activity performed under this Agreement. If the parties are found to not be in compliance with these requirements during the term of this Agreement, the parties agree to take appropriate steps to correct these deficiencies.

17. Appropriations and Authorizations of State and Federal Funds.
The terms of this Agreement are contingent upon sufficient appropriations and authorizations being made by the governing board of the Sponsor, the Legislature of New Mexico, or the Congress of the United States if federal funds are involved, for performance of the Agreement. If sufficient appropriations and authorizations are not made by the Sponsor, Legislature or the Congress of the United States if federal funds are involved, this Agreement shall terminate upon written notice being given by one party to the other. The Department and the Sponsor are expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered, and approved for expenditure.

18. Severability.
In the event that any portion of this Agreement is determined to be void, unconstitutional or otherwise unenforceable, the remainder of this Agreement shall remain in full force and effect.

19. Applicable Law.
The Laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with NMSA 1978, Section 38-3-1(G).

20. Principal Contacts and Notices.
The principal contacts for this Agreement are listed below. Except as otherwise specified, all notices shall be in writing (including notice by facsimile or E-mail) and shall be given to the principal contacts listed below.

Name: Daniel R. Moran
Title: Finance & Administrative Manager

Address: New Mexico Department of Transportation - Aviation Division
3501 Access Rd C.
Albuquerque, NM 87106
Office: (505) 244-1788 ext. 9112
Fax: (505) 244-1790
E-mail: dan.moran@state.nm.us

Name: JIM TALBERT
Title: AIRPORT MANAGER
Sponsor: ALAMOGORDO, CITY OF
Address: 1376 EAST 9TH ST
City: ALAMOGORDO NM Zip Code: 88310
Office Phone: +1 (575) 439-4110 Fax:
E-Mail: JTAIRPORTMANAGER@CI.ALAMOGORDO.NM.US

21. Amendment.
This Agreement shall not be altered, modified, or amended except by an instrument in writing and executed by the parties.

In witness whereof, each party is signing this Agreement on the date stated opposite of that party's signature.

NEW MEXICO DEPARTMENT OF TRANSPORTATION

By:_______________________________ Date: _______________
Cabinet Secretary or Designee

Recommended by:

By:________________________________ Date: ________________
Aviation Division Director
or Designee

Approved as to form and legal sufficiency by the New Mexico Department of Transportation's Office of General Counsel

By:_______________________________ Date: _________________
Assistant General Counsel

SPONSOR

Print Name:_______________________________

By:______________________________________ Date:________________

Title: ___________________________________

AGENDA REPORT
CITY OF ALAMOGORDO
CITY COMMISSION

Meeting Date: 3/9/2021 **Report Date:** 3/3/2021 **Report No:** 7.

Submitted By: Josh Sides

Subject: Consider, and act upon, Resolution 2021-08 to apply for the UPS Community & Recovery Tree Planting Grant through Keep America Beautiful. This will provide additional funding for the Keep Alamogordo Beautiful program. *(Joshua Sides, Keep Alamogordo Beautiful Program Coordinator)* **(Roll Call Vote Required)**

Fiscal Impact: Increase to fund 37.
Amount Budgeted: $5,000.00
Fund: 037

Additional Fiscal Impact:

Recommendation: Approve Resolution No. 2021-08.

Background: By approving this resolution, the City Commission will voice support for the application to the UPS Community & Recovery Tree Planting Grant through Keep America Beautiful. This grant gives Keep Alamogordo Beautiful additional funding to purchase and plant trees, purchase mulch and other needed supplies for the trees, and purchase and install any needed irrigation for the trees.

RESOLUTION NO. 2021-08

A RESOLUTION SUPPORTING APPLICATION FOR THE UPS COMMUNITY AND RECOVERY TREE PLANTING GRANT

WHEREAS, the City Commission of the City of Alamogordo of Otero County, State of New Mexico recognizes the need for continual planting of trees in the community;

WHEREAS, Keep America Beautiful along with United Postal Service equally recognize the need for continual tree planting across America;

WHEREAS, the planting of trees reduce the levels of carbon dioxide (CO_2) and greenhouse gas emissions and reduce heat islands near or around concrete or asphalt;

WHEREAS, the governing body of the City of Alamogordo seeks to receive grant funding from the UPS Community and Recovery Tree Planting Grant through Keep America Beautiful;

NOW THEREFORE, BE IT RESOLVED by the City Commission of the City of Alamogordo that the UPS Community and Recovery Tree Planting Grant application is hereby supported and endorsed;

BE IT FURTHER RESOLVED that Veronica Ortega, Community Services Director, or her designee is the GRANTEE REPRESENTATIVE and shall be authorized to submit any documents pertaining to the project and act as the point of contact; and,

PASSED, APPROVED AND ADOPTED this _____ day of __________, 2021.

CITY OF ALAMOGORDO, NEW MEXICO
a New Mexico municipal corporation

____
Richard Boss, Mayor

ATTEST:

____
Rachel Hughs, City Clerk

APPROVED AS TO FORM:

____
Petria Bengoechea, City Attorney

AGENDA REPORT
CITY OF ALAMOGORDO
CITY COMMISSION

Meeting Date: 3/9/2021 **Report Date:** 3/3/2021 **Report No:** 8.

Submitted By: Heather Casebolt

Subject: Consider, and act upon, the proposed phase of the Alamogordo Family Recreation Center opening and personnel changes. *(Heather Casebolt, AFRC Manager)*

Fiscal Impact:
Amount Budgeted:
Fund:

Additional Fiscal Impact:

Recommendation: Approve.

Background: Alamogordo Family Recreation Center will gradually open pool and youth recreation programs this spring following state COVID-19 health code guidelines ensuring patron safety while providing recreation and fitness opportunities to the community. Variety and quantity of opportunities will be based on NM Red-Yellow-Green-Turquoise System that determines allowed mass gatherings and occupancy.

Proposed Phased AFRC Opening

OPENING BASED ON COVID-19 HEALTH CODE PARAMETERS

POSITIVE COMMUNITY IMPACT

Alamogordo Family Recreation Center will gradually open pool and youth recreation programs this spring following state COVID-19 health code guidelines ensuring patron safety while providing recreation and fitness opportunities to the community. Variety and quantity of opportunities will be based on NM Red-Yellow-Green-Turquoise System that determines allowed mass gatherings and occupancy.

Pool Program Opportunities

- APS Swim Team Site
- Lap Swim Sessions
- Aqua Fitness Sessions (*individual only*)
- Swim Lessons (*private and/or small-group*)
- Small-Group Recreation Swim Sessions (*Turquoise only)*

Youth Programs Opportunities

- Summer AM/PM Camps
- Small-group sport camps (*non-contact)*
- Babysitter Training Classes
- Arts & Crafts Classes

Park Rental Opportunities
(Yellow/*Green/Turquoise only*)

- Park Pavilions
- Sports Fields
    - Youth Leagues
    - Adult Leagues
- Special Events

BUDGET IMPACT

PERSONNEL COSTS - no significant budget impact due to current FT position vacancies that are budgeted but will remain unfilled during FY21.

COA will realize an overall personnel savings approximately $12,000

PROGRAM COSTS – already budgeted, significant expense line budget savings due to facility closure during FY21

COA will realize an overall expense savings of approximately $104,000

PROGRAM REVENUE – approximately $28,000 from phased program opening

NECESSARY PERSONNEL CHANGES

- Adding 5 seasonal positions
    - 3 Lifeguards – estimated start late April (*earlier if possible based on hiring process*).
    - 2 Youth Staff – estimated start early May

**Reminder: No increased budget impact*

PHASED POOL OPENINGS

- Limited Pool Opening – Mid-March 2021
  - March Programming*
    - APS Swim Team
  - April Programming*
    - APS Swim Team
    - Fitness & Lap Swim Sessions (once fully staffed)
  - May/June Programming*
    - APS Swim Team
    - Fitness & Lap Swim Sessions
    - Swim Lessons

**Pool can open in the red level at 25% capacity following social distancing and sanitation practices. Programming may be expanded or reduced based on Otero County's changing color level.*

PHASED YOUTH PROGRAM OPENINGS

- Limited Youth Program Opening – Mid-May 2021
  - May/June Programming*
    - Summer AM/PM Camps
    - Small-group sport camps (*non-contact)*
    - Babysitter Training Classes
    - Arts & Crafts Classes

**Program participant numbers may be expanded or reduced based on changing health code guidelines. Please note that youth programs benefit working adults by providing a form of child-care.*

PHASED PARK RENTAL OPENINGS

- Limited Rental Openings – April 2021
  - Park Pavilions
  - Sports Fields
    - Youth Leagues
    - Adult Leagues
  - Special Events

**Park rentals would only resume once Otero County enters Yellow level or better. Sports Fields Rentals/Use would only resume once Otero enters Green/Turquoise.*

COMMISSION ACTION REQUESTED

Asking for commission approval to proceed with proposed AFRC phased opening plan as well as the required personnel to do so.

PLEASE!

AGENDA REPORT
CITY OF ALAMOGORDO
CITY COMMISSION

Meeting Date: 3/9/2021 **Report Date:** 3/2/2021 **Report No:** 9.

Submitted By: Teresa Gutierrez

Subject: Appointments to Boards and Committees. *(Richard Boss, Mayor)*

Fiscal Impact:
Amount Budgeted:
Fund:

Additional Fiscal Impact:

Recommendation: Appoint to the Alamogordo Promotion Board, the Mayor's Committee on Aging, the Planning & Zoning Commission, and the Senior Volunteer Programs Advisory Council.

Background: Alamogordo Promotion Board - One (1) vacancy (Tourism Representative). This vacancy is due to the expiring term of Christopher Orwoll. *Staff Liaison-M. Brideaux.*
The following individual is interested in being reappointed:
Christopher Orwoll - if reappointed, this will be his third term.
The following individual is interested in being appointed:
Yenia Perez - if appointed, this will be her first term.

Housing Authority Advisory Board - Two (2) vacancies. *Staff Liaison - M. Ruiz.*
No applications received.

Mayor's Committee on Aging - Two (2) vacancies. These vacancies are due to the expiring terms of Shirley Dakin and Barbara Jo Telles. *Staff Liaison - B. Courtier.*
The following individuals are interested in being reappointed:
Shirley Dakin - if reappointed, this will be her second term.

Planning & Zoning Commission - One (1) vacancy. This vacancy is due to the expiring term of Raymond Nejeres. *Staff Liaison - S. Rael.*
The following individual is interested in being reappointed:
Raymond Nejeres - if reappointed, this will be his second term.

Senior Volunteer Programs Advisory Council - Four (4) vacancies. These vacancies are due to the expiring terms of Xochitl Valenzuela, Paul Farrant, Stephen Butler, and Marina de Mireles. *Staff Liaison: N. McFarland.*
The following individuals are interested in being reappointed:
Xochitl Valenzuela - if reappointed, this will be her second term.

If anyone is interested in serving on a board or committee, you may apply with the City Clerk's office, or online at the City's website.

RECEIVED
MAR 01 2021
CITY CLERK

PLEASE COMPLETE THE FOLLOWING INFORMATION AND RETURN TO:

tgutierrez@ci.alamogordo.nm.us

Or mail to: *Teresa Y. Gutierrez*
Deputy City Clerk
City of Alamogordo
1376 E. Ninth Street
Alamogordo, NM 88310

Alamogordo Promotion Board

☒ *Yes, I am interested in reappointment.*

☐ *No, I am no longer interested in serving on this Board.*

Printed Name: CHRISTOPHER ORWOLL

Home Phone: 575-434-1372 Work Phone: 575-437-2840 x 41112

Cell Phone: 575-430-7099

E-mail address: CHRIS.ORWOLL@STATE.NM.US

Physical Address: 24 RODEO DRIVE, LA LUZ, NM 88337

Is the above address within City limits? Yes ____ No X

Mailing Address: SAME AS ABOVE

Present Employer: STATE OF NEW MEXICO Job Title: EXECUTIVE DIRECTOR, NM MUSEUM OF SPACE HISTORY

Are you related to anyone who is presently employed by the City of Alamogordo?

Yes ____ No X If so, what is their relation to you? ____

Are you related to any Elected Official of the City of Alamogordo?

Yes ____ No X If so, what is their relation to you? ____

C Orwoll
Signature

3/1/2021
Date

Print

Application to serve on a Board/Committee - Submission #231

Date Submitted: 2/13/2019

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FEB 14 2019
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First Name*
Yenia

Last Name*
Perez

Address*
42 BENT RD

City*
BENT

State*
NM

Zip Code*
88314

Phone Number*
5752149167

Email Address*
yenia.e.perez@gmail.com

Is the above address within City Limits?*
( ) Yes
(•) No

Present Employer:*
Self employed

Board/Committee you would like to serve on (1st choice):*
Alamogordo Promotion Board

Board/Committee you would like to serve on (2nd choice):
-- Select One --

Are you related to anyone who is presently employed by the City of Alamogordo*
( ) Yes
(•) No

If so, what is their relation to you?

Are you related to an Elected Official of the City of Alamogordo?*

- Yes
- No (selected)

Is so, what is their relation to you?

Experience and education relating to the Board/Committee:

AS in Tourism and Hospitality Management, Digital Marketing strategist for Destinations and brick and mortar businesses that cater to travelers.

Please indicate your interest in serving on a City Board/Committee:

Currently volunteering with the Alamogordo Action Team in a couple of projects aimed at promoting Alamogordo as a destination.

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CITY CLERK

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1376 E. Ninth Street
Alamogordo, NM 88310

Mayor's Committee on Aging

✓ *Yes, I am interested in reappointment.*

No, I am no longer interested in serving on this Board.

Printed Name: SHIRLEY DAKIN
Home Phone: 228 243-1847 Work Phone: 575-464-3861
Cell Phone: 228 243 1847
E-mail address: DAKIN5725@gmail.com
Physical Address: 1431 TIERRA ROJOS
Is the above address within City limits? Yes X No ____
Mailing Address: 1431 TIERRA ROJOS, ALAMOGORDO, NM 88310
Present Employer: MESCALERO SERVICE UNIT Job Title: SUPERVISORY DIETITIAN

Are you related to anyone who is presently employed by the City of Alamogordo?
Yes ____ No X If so, what is their relation to you? ____

Are you related to any Elected Official of the City of Alamogordo?
Yes ____ No X If so, what is their relation to you? ____

[signature] 2/24/21
Signature Date

RECEIVED

FEB 23 2021

CITY CLERK

PLEASE COMPLETE THE FOLLOWING INFORMATION AND RETURN TO:

tgutierrez@ci.alamogordo.nm.us

Or mail to: *Teresa Y. Gutierrez*
Deputy City Clerk
City of Alamogordo
1376 E. Ninth Street
Alamogordo, NM 88310

Planning & Zoning Commission

X *Yes, I am interested in reappointment.*

☐ *No, I am no longer interested in serving on this Board.*

Printed Name: Raymond J. Nejeres

Home Phone: ________ Work Phone: 575-585-3700

Cell Phone: 575-443-4248

E-mail address: docnejeres@msn.com

Physical Address: 2626 St. Andrews Ct.

Is the above address within City limits? Yes X No ____

Mailing Address: Same

Present Employer: TCI Job Title: Telecom. Tech.

Are you related to anyone who is presently employed by the City of Alamogordo?

Yes ____ No X If so, what is their relation to you? ________

Are you related to any Elected Official of the City of Alamogordo?

Yes ____ No X If so, what is their relation to you? ________

[signature]
Signature

2/23/21
Date

Teresa Gutierrez

From: xochitl valenzuela <xoval@yahoo.com>
Sent: Friday, February 12, 2021 10:06 AM
To: Teresa Gutierrez; Teresa Gutierrez
Cc: Rachel Hughs; Magdalena Morales; Neil W. McFarland
Subject: Re: Senior Volunteer Programs Advisory Council

Yes I will be happy to do so. Are you meeting again soon?

Sent from Yahoo Mail on Android

On Fri, Feb 12, 2021 at 9:38 AM, Teresa Gutierrez
<tgutierrez@ci.alamogordo.nm.us> wrote:

Ms. Valenzuela,

I have left a voice mail for you and am also following up with this second email, as I have not received a response from you regarding your interest in serving a second term on the Senior Volunteer Programs Advisory Council. I am placing this item before the Mayor and City Commission at their upcoming meeting of February 23, 2021 in order that they can make an appointment to fill the upcoming vacancy. I would love to hear from you regarding whether you are interested in serving another term or not. Please let me know your wishes at your earliest convenience. If you have any questions, you can reach me at (575) 439-4100.

Thank you,

Teresa Gutierrez

From: Teresa Gutierrez
Sent: Thursday, January 28, 2021 11:11 AM
To: xoval@yahoo.com
Cc: Rachel Hughs <rhughs@ci.alamogordo.nm.us>; Neil W. McFarland <nmcfarland@ci.alamogordo.nm.us>
Subject: Senior Volunteer Programs Advisory Council

Dear Ms. Valenzuela,

Your first term on the Senior Volunteer Programs Advisory Council will be expiring effective April 9, 2021. I am writing to see if you are interested in serving a second term. If so, please complete the attached application and return to my attention either via email or postal service. Once I receive your completed application, it will go before the Mayor and City Commission for official reappointment, and I will notify you thereafter. If you are no longer interested in serving another term, please let me know accordingly.

Thank you,