



# Alamogordo City Commission

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## NOTICE OF MEETING

### Regular Meeting Agenda

September 14, 2021 - 6:30 PM  
City Hall, City Commission Chambers  
1376 E. Ninth St.

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 Hughes ..... 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 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 by Alamogordo MainStreet giving a program update. *(Mark Garnes, Executive Director of Alamogordo MainStreet)*
2. Presentation on Otero County Development Economic Council project update quarterly report. *(Laurie Anderson, OCEDC Interim Executive Director)*

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**PUBLIC COMMENT**

*Residents must sign up with the City Clerk to address the City Commission. Comments are limited to 3 minutes, and there will be a maximum of 21 minutes allowed for Public Comment.*

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**CITY MANAGER'S REPORT**

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**REMARKS AND INQUIRIES BY THE CITY COMMISSION**

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**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.*

3. Approve the minutes for the August 24, 2021 Regular meeting. *(Rachel Hughs, City Clerk)*
4. Consider, and act upon, approval of Resolution No. 2021-34 Certifying the City of Alamogordo Fixed Asset Inventory Count for FY 2021. *(Evelyn Huff, Finance Director)* **(Roll Call Vote Required)**
5. Consider, and act upon, adoption and final publication of Ordinance 1636, an Ordinance creating Chapter 34 in the Alamogordo Code of Ordinances concerning Marijuana. *(Petria Bengoechea, City Attorney)* **(Roll Call Vote Required)**
6. Consider, and act upon, accepting capital outlay grant agreement 21-F2820, in the amount of \$300,000.00, to purchase and equip vehicles for APD. *(Richard Denton, Chief of Police)*
7. Consider, and act upon, accepting capital outlay grant agreement 21-F2819, in the amount of \$524,000.00, to purchase and install building security measures for APD. *(Richard Denton, Chief of Police)*
8. Consider, and act upon, accepting capital outlay grant agreement 21-F2818, in the amount of \$490,000.00, to plan, design and renovate Fire Station #7. *(Richard Adler, Fire Chief)*
9. Consider, and act upon, accepting grant agreement from U.S. DOT, FAA, to Alamogordo White Sands Regional Airport, in the amount of \$186,865.00, to design the reconstruction of taxiway A. *(Jim Talbert, Airport Manager)*
10. Consider, and act upon, an agreement with Otero County for Alamo Senior Center services to County residents, the total amount budgeted is \$34,787.50 (\$22,537.50 for home-delivered meals and \$12,250.00 for transportation). *(Magdalena Morales, ASC Manager)*

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**ITEMS REMOVED FROM CONSENT AGENDA**

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**NEW BUSINESS**

11. Consider, and act upon, Drought Adaptation Industries LEDA request. *(Laurie Anderson, Interim Executive Director, OCEDC and Jean and Glenn Bell, Drought Adaptation Industries)*
12. Consider, and act upon, approval of final settlement in the amount of \$468,326.44 from *City of Albuquerque, et al v. New Mexico Taxation and Revenue Department*. *(Petria Bengoechea, City Attorney)*



13. Consider, and act upon, a Commissioner being appointed to the Tularosa Basin Regional Dispatch Authority (public safety answering point). (*Richard Denton, Chief of Police*)

14. Consider, and act upon, approval of Resolution No. 2021-35 Requesting approval for the establishment of a new special revenue fund for the American Rescue Plan Act funds totaling \$7,905,784. (*Evelyn Huff, Finance Director*) **(Roll Call Vote Required)**

15. Notification of vacancies for Boards and Committees. (*Richard Boss, Mayor*)

## **ADJOURNMENT**

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# AGENDA REPORT

## CITY OF ALAMOGORDO

### CITY COMMISSION

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**Meeting Date:** 9/14/2021

**Report Date:** 9/7/2021

**Report No:** 1.

**Submitted By:** Teresa Gutierrez

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**Subject:** Presentation by Alamogordo MainStreet giving a program update. *(Mark Garnes, Executive Director of Alamogordo MainStreet)*

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**Fiscal Impact:**

Amount Budgeted:

Fund:

Additional Fiscal Impact:

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**Recommendation:** Presentation only.

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**Background:** Mark Garnes, Executive Director of Alamogordo MainStreet, will update the Commission on statistics of the program.



RECEIVED  
SEP 03 2021  
CITY CLERK

City of Alamogordo City Commission Meeting  
AGENDA REQUEST FORM

Today's Date: 09-03-2021

Request Date  
of Meeting:

September 14, 2021

Name and Title:

MARK GARVER - EXECUTIVE DIRECTOR - ALAMOGORDO MAIN STREET

Address:

2350 Union Alamogordo, NM

ZIP 88310

Phone Number:

575-415-4194

E-Mail Address:

director@alamogordomainstreet.org

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**

update city commission on status of ALAMOGORDO MAIN STREET,  
a community non-profit, as per our agreement with the  
City of Alamogordo

Signature: \_\_\_\_\_

Please return to:

Rachel Hughs, CMC, City Clerk  
City of Alamogordo  
1376 E. 9<sup>th</sup> Street  
Alamogordo, NM 88310

Phone: (575) 439-4100

Fax: (575) 439-4396

E-mail: [rhughs@ci.alamogordo.nm.us](mailto:rhughs@ci.alamogordo.nm.us)

Revised 6/16/2020



## PROOF OF CONCEPT

Holloman airframe spotter card murals

Suggested size: 6' tall or larger.

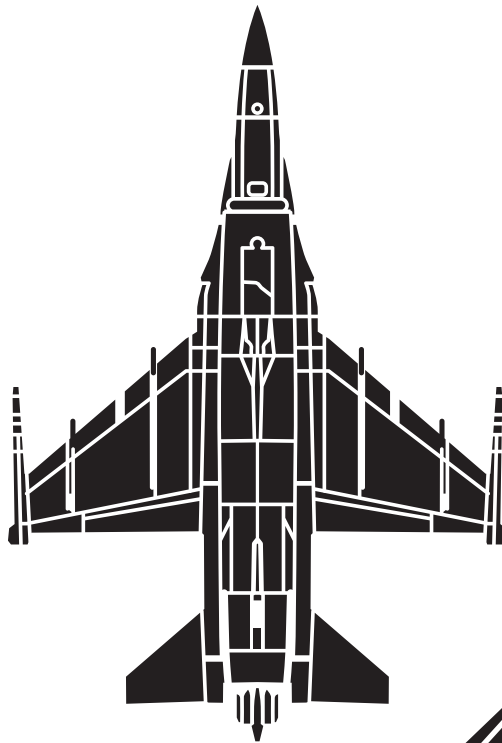
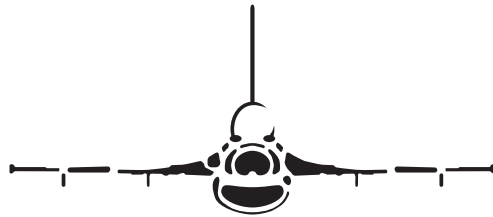
All text is editable. Might be neat to show stats specific to Holloman (years aircraft active, etc.)

Budget for black, white, (red for other card suits?) paint and paint for contrasting background if needed (white card on white or light wall wouldn't have the same impact, so consider painting wall behind card(s). Additionally, will need stencil created to scale (approximately \$10 for each card painting if final cards would be 6 feet tall).

Additional needs: tape, brushes, razors (to cut stencil), measuring tape, long straight edge, time and volunteers

Sample images only.

7



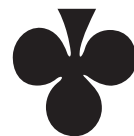
**F-16 FIGHTING FALCON (USA)**

**WINGSPAN — — — 9 METERS**

**LENGTH — — — — 14 METERS**

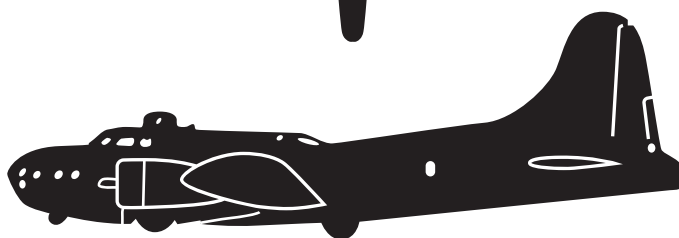
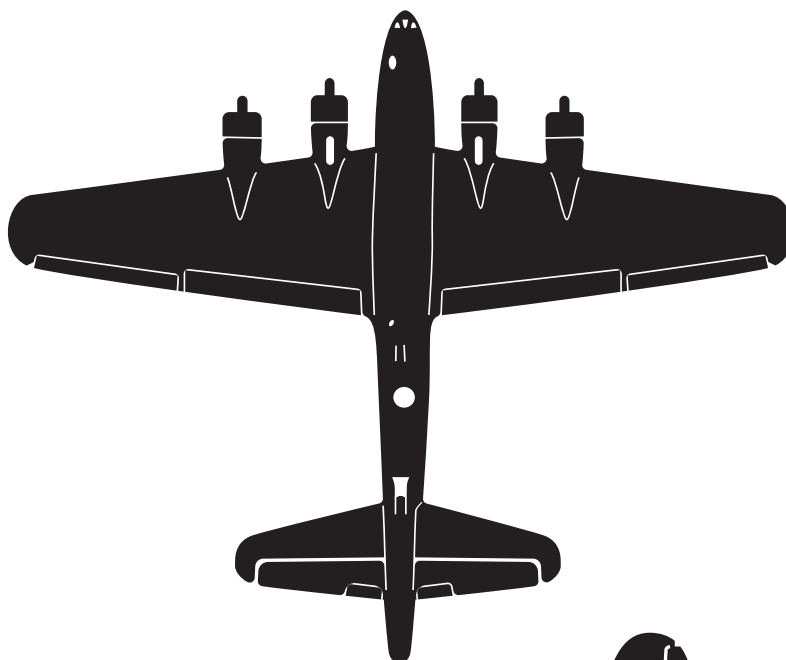
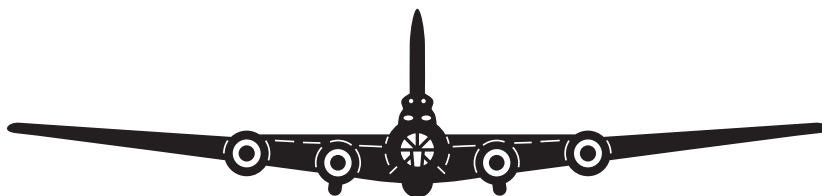
**SPEED — — — — — 1500 KNOTS**

**RANGE — — — — — 1100 KILOMETERS**



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A



**U. S. Bomber B-17E "Flying Fortress"**

**WINGSPAN — — — 9 METERS**

**LENGTH — — — — 14 METERS**

**SPEED — — — — — 1500 KNOTS**

**RANGE — — — — — 1100 KILOMETERS**



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# AGENDA REPORT

## CITY OF ALAMOGORDO

### CITY COMMISSION

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**Meeting Date:** 9/14/2021

**Report Date:** 9/7/2021

**Report No:** 2.

**Submitted By:** Rachel Hughs

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

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**Fiscal Impact:**

Amount Budgeted:

Fund:

Additional Fiscal Impact:

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**Recommendation:** Presentation only.

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**Background:** This a presentation on the Otero County Development Economic Council project update.



City of Alamogordo City Commission Meeting  
AGENDA REQUEST FORM

Today's Date: 9/7/21

**Request Date  
of Meeting:**

September 14, 201

**Name and Title:**

Laurie Anderson OCEDC

**Address:**

2400 N. Scenic Drive

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**

OCEDC project update

Signature: Laurie Anderson

**Please return to:**

Rachel Hughs, CMC, City Clerk  
City of Alamogordo  
1376 E. 9<sup>th</sup> Street  
Alamogordo, NM 88310

**Phone:** (575) 439-4100

**Fax:** (575) 439-4396

**E-mail:** [rhughs@ci.alamogordo.nm.us](mailto:rhughs@ci.alamogordo.nm.us)





# 1<sup>st</sup> Quarterly Report

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OTERO COUNTY ECONOMIC DEVELOPMENT COUNCIL, INC.

SEPTEMBER 2021

# Projects

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- Project Gold
- DAI
- Project Pine
- **Project Leads**
  - July – 2 (NM Partnership) 7 (GSLI)
  - August – 2 (NM Partnership) 8 (GSLI)

# Project Gold



- The nation's largest cannabis cultivation, manufacturing, and distribution center
- 15 acres of land dedicated to R&D and cultivation research
- 75 acres of land dedicated to outdoor cannabis cultivation
- Indoor cultivation
- New expanded Ultra Health Panaxia lab to manufacture smokeless, pharmaceutical-grade cannabis products
- Sustainable energy: wind and solar
- Seeking a DEA research license
- Likely will employ 200+ individuals from the southern New Mexico area. Employment opportunities include cultivation, manufacturing, R&D, packaging, security, and administration
- Also operating as a processor/manufacturer for local New Mexico cannabis farmers
- \$100M worth of cannabis products being produced, processed, and manufactured at the site



# BRE/Recruiting

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- New Business Welcome Card
  - 38 Welcome Cards mailed out
- Phone Calls/Socially Distanced Visits
  - 23
- Prospective Recruitment Opportunities
  - 10

# Marketing Campaign/Collateral



## Updated & New Materials

- Six commercials produced by NMCO Media
  - Main video: 31K people reached to date/18K views/301 shares
  - Advantages for Business Owners: 1.9K people reached/923 views
  - Workforce: 580 people reached/270 views
  - Academic Opportunities: 75 people reached/43 views
  - Quality of Life: 1.1K people reached/515 views
  - Healthcare Evolution: 391 people reached/171 views
- Expansion Solutions Magazine ¼ page ad (June/July 2021)
- Social Media Ads, as needed

A brochure for the Otero County Economic Development Council, Inc. The top section has the title "Otero County Economic Development Council, Inc." in blue. Below it, "Target Industries" are listed: Air &amp; Space, Research &amp; Design, Manufacturing, Unmanned Systems &amp; Robotics, Desalination &amp; Water Treatment Technologies, and Food Processing &amp; Manufacturing. A central image shows two people working on a machine. To the right, it says "Welcome to YOUR City, YOUR Community, YOUR Home. Welcome to Alamogordo, NM!". Below this are three smaller images: a car engine, a person working on a machine, and a map of Otero County showing Alamogordo and Ciudad Juarez, Mexico. The bottom section features the council's logo and contact information for Laurie Anderson, Interim Executive Director, at 2400 N. Scenic Dr., #113, Alamogordo, NM 88310. Contact details include email (l.anderson@ocedc.com), phone ((575) 439-3688), and website (OCEDC.com).

OCEDC is a resource center for COVID-19 outreach and recovery





# Social Media

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## Facebook

- July – 28 posts
- August – 23 posts

## LinkedIn

- July – 1 posts
- August – 2 posts

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

- July – 4 posts
- August – 5 posts

## Website

- Six produced commercials uploaded
- News – 6 posts (Resources, updates, webinar announcements, etc.)



# Questions?

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LAURIE ANDERSON, INTERIM EXECUTIVE DIRECTOR

(575) 439-3688

L.ANDERSON@OCEDC.COM

# AGENDA REPORT

## CITY OF ALAMOGORDO

### CITY COMMISSION

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**Meeting Date:** 9/14/2021

**Report Date:** 9/7/2021

**Report No:** 3.

**Submitted By:** Rachel Hughs

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**Subject:** Approve the minutes for the August 24, 2021 Regular meeting. *(Rachel Hughs, City Clerk)*

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**Fiscal Impact:**

Amount Budgeted:

Fund:

Additional Fiscal Impact:

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**Recommendation:** Approve the minutes.

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**Background:** This is required by the Open Meetings Act.



**CITY OF ALAMOGORDO, NEW MEXICO  
CITY COMMISSION REGULAR MEETING MINUTES  
6:30 P.M., COMMISSION CHAMBERS  
AUGUST 24, 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 BENGOCHEA, CITY ATTORNEY  
RACHEL HUGHS, CITY CLERK**

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

Mayor Boss called the meeting to order at 6:33 p.m. Roll Call was taken by the Deputy Clerk. Deputy Clerk Gutierrez announced there was a quorum present. Invocation was given by Bishop Joseph Westover and the Pledge of Allegiance was led by Commissioner Wright.

City Manager Cesar removed Items 6 and 7 from the agenda.

**APPROVAL OF AGENDA**

**Mayor Pro-Tem Sikes moved to approve the agenda as amended.  
Commissioner Baldwin seconded the motion.  
Motion carried with a vote of 7-0-0.**

**PRESENTATIONS**

**1. Presentation on What is Happening in the Alamogordo Police Department. (*Richard Denton, Chief of Police*)**

Police Chief Denton shared a PowerPoint presentation which covered current staffing levels at the Police Department, call response times, crime and traffic statistics, and predictions on how the new marijuana laws would affect the department and the community. He also introduced a new online reporting feature which the Department would offer in the next few months. The program would hopefully allow some crimes to be reported online without the need to wait for an Officer to arrive to take the information. Finally, through State funding they would be able to fence off the station parking area which would be added security for APD.

Mayor Pro-Tem Sikes asked who would see the online reports where a victim reported a list of items stolen. Police Chief Denton said a Lieutenant would see it first. As far as who saw these reports, it was in the Statutes that once they were filed, they became public record. With this new system, emails could be sent to the victim to request further information. Also, a Lieutenant could spot items that might need to be changed and could contact the victim to make sure certain items were more realistic. Anyone could currently come to the station and request a report. It was the videos which took an enormous amount of time to supply because of the process to view them and redaction time.

Commissioner Payne asked how the new public records employee was working out. Police Chief Denton said that person was currently out on leave, but there was a Lieutenant who was doing her job. Commissioner Payne asked how long it would take for all problems to catch up with the new marijuana laws. Police Chief Denton said it would be a while before they could put any

numbers together. His problem with it right now was that you could possess it, but you couldn't legally buy it. However, once it became fully legal it became more available, and he felt the numbers would go up a bit especially in looking at data from Colorado.

#### PUBLIC COMMENT

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**Cuoy Griffin commented on the following:**

Mr. Griffin brought a letter from the Otero County Commission regarding Martin Luther King, Jr. Drive. The letter read, "With this letter, Otero County is formally requesting that the City Commission rededicate Dr. Martin Luther King Drive to another City street of Alamogordo. The Board of County Commissioners feels that the memory of Martin Luther King, Jr. would be better honored on a street more traversed in the City of Alamogordo and not a street ending at the Otero County Detention Center. If you would like to discuss further, please contact anyone of us". Whether this street was intentionally named through maliciousness or whether it was an honest mistake, he didn't feel it was fitting that the only address on it was the Otero County Detention Center. He did not feel it honored the legacy of Dr. King, and the Otero County Commission would appreciate the Alamogordo City Commission considering this request.

**Eugene Downer commented on the following:**

Mr. Downer personally acknowledged Mr. Cesar's amazing job at Alameda Park and bringing this City back to life again. Also, he wanted to discuss antique pickups, and deer and elk herds in High Rolls. This City had a Space Museum, the Alameda Park Zoo, and a railroad museum. He felt we should start to promote those in cooperation with Cloudcroft and Ruidoso. The City could offer rides up to Cloudcroft to view the visible, beautiful herds of elk. Sending out pictures of the elk, especially in the wintertime, would get a lot of free publicity. Also, antique pickup trucks would be outstanding as props in different parks or at the Zoo.

**Melissa Dominguez commented on the following:**

Ms. Dominguez said she and her parents resided on Ocotillo Drive, and within the last five years the traffic had become horrendous. There were a lot of people speeding and passing other cars on a road that wasn't wide enough. Back in April her father was almost hit just pulling into their property. After speaking with Police Chief Denton and others, stop signs were placed at Ocotillo Drive and La Codorniz Drive. She wished to thank the following staff: Cheryl Otero-Baker, Police Chief Denton, Commissioner Wright, City Manager Cesar, Public Works Director Garner, and the two City workers who installed the signs. On behalf of her family, they were thankful for the stop signs. However, they knew it wasn't going to solve the problems as they still saw speeders and people running the signs. Possibly placing another sign at Los Lomas Subdivision would help deter the problem.

#### CITY MANAGER'S REPORT

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**City Manager Cesar made the following remarks:**

1. City Manager Cesar extended Eugene Downer's thanks to Community Services Director Ortega and Parks Supervisor Erik Marion and his staff as they were the ones who did the work at Alameda Park.
2. City Manager Cesar announced Public Works Director Larry Garner had worked with the City for over 28 years, and just yesterday he brought in his letter of intent to retire. Public Works

Director Garner said he enjoyed working with everyone here at the City. He made a lot of friends here at the City and the Public Works crew was a tremendous bunch. His official retirement date was September 30<sup>th</sup>. Commissioner Payne noted that Public Works Director Garner never failed them and always responded to their questions. She was happy for him, but at the same time she was sad he was leaving. Mayor Boss said 28 years was a long time and we'd been very fortunate to have had him as a Public Works Director.

#### REMARKS AND INQUIRIES BY THE CITY COMMISSION

**Commissioner Rardin made the following comments:**

Commissioner Rardin noted the recent passing of Mr. Harv Hamilton, a citizen who used to come to the Commission meetings regularly.

**Mayor Pro-Tem Sikes made the following comments:**

Mayor Pro-Tem Sikes said she had the opportunity over the past weekend to present a Proclamation for the Native Plant Society of New Mexico. They held their Annual Conference here in Alamogordo at the Sgt. Willie Estrada Civic Center, and they had well over 150 people in attendance. She wished to thank Special Events Manager Josh Sides and his employee, Joseph Piedra. They had done an outstanding job helping set it all up, and there were many compliments from the attendees. Of those present, approximately 90 percent of them were from out of town. They were all very complimentary of our town and looked forward to returning in the future.

#### CONSENT AGENDA

**2. Approve the minutes for the August 10, 2021 Regular meeting. (*Rachel Hughs, City Clerk*)**

**3. Approve Resolution 2021-30 designating the City Clerk as the Custodian of Records and including the method of destruction for City records as witnessed shredding. (*Rachel Hughs, City Clerk*) (Roll Call Vote required)**

**4. Consider, and act upon, Resolution 2021-32 requesting written approval from the Local Government Division of the Department of Finance and Administration, State of NM for the revised budget numbers computed as of August 24, 2021. (*Evelyn Huff, Finance Director*) (Roll Call Vote Required)**

#### ITEMS REMOVED FROM CONSENT AGENDA

**Mayor Boss pulled item No. 5 from the Consent Agenda.**

**Commissioner Baldwin moved to approve the Consent Agenda as amended.**

**Commissioner Wright seconded the motion.**

**Roll Call Vote was taken.**

**Motion carried with a vote of 7-0-0.**

#### NEW BUSINESS

**5. Consider, and act upon, acceptance of donation from Mr. Tom Springer to honor his late wife, Mrs. Barbara Springer, in the amount of \$17,100 to be used for a new storage building at the Oregon Tennis Courts on Oregon Ave., adjacent to Court 7. (Veronica Ortega, Community Services Director)**

Mayor Pro-Tem Sikes noted that we were considering and acting upon a donation from Mr. Tom Springer to honor his late wife in the amount of \$17,100 for a new building at the Oregon Tennis Courts. She was very touched by this donation.

Mr. Grady Nicholson, representative for Tom Springer, was present. Mr. Nicholson stated that he only wanted to point out that Tom was a good tennis player. He was a nationally ranked player most of his life. He very generously wanted to do something for his late wife and wished to donate this building for everyone to use. He felt it was a nice addition for the tennis area of the park. Mayor Boss said this donation was very appreciated.

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

**6. Consider, and act upon, the placement of a second Resident Parking Only sign for home located at 1322 Vermont Avenue. (Teresa Gutierrez, Deputy Clerk)**

This item was removed from the agenda.

**7. Consider, and act upon, the placement of a new Resident Parking Only sign for home located at 1332 Vermont Avenue. (Teresa Gutierrez, Deputy Clerk)**

This item was removed from the agenda.

**8. Consider, and act upon, Resolution No. 2021-31 adopting an Infrastructure Capital Improvement Plan (ICIP) and identifying the top five (5) recommendations projects for Fiscal Years 2023-2027. (Debbie Osborne, Grant Coordinator) (Roll Call Vote Required)**

Grant Coordinator Osborne gave an overview of the 5-year Infrastructure Capital Improvement Projects (ICIP). This plan was submitted annually to the New Mexico Department of Finance. It established priorities for any anticipated capital improvement projects to help prevent emergency situations. Projects must exceed \$10,000 and have a life span of at least ten years. In addition to the Governor's office using the ICIP to vet projects, other funding agencies used it when reviewing grant applications. The City Manager had met with department directors, and together they reviewed each department's proposed capital improvement projects and had developed an ICIP for fiscal years 2023 through 2027. That plan prioritized the top five projects. A public meeting was held on August 11<sup>th</sup> to receive input from the public. However, no members of the public attended the meeting, and therefore, there were no other project suggestions. Later this year she would be submitting Capital Outlay Grant applications for the top five projects that were selected and they would be considered for funding approval at the 2022 Legislative Session. The top five projects were as follows:

1. Procurement of Police Vehicles & Equipment, Alamogordo Police Department, \$400,000
2. Design and Construction of ADA-Compliant Corridors, Engineering, \$300,000

3. Design, Construction and Improvement of Monte Vista Cemetery Entrances and Perimeter Fencing, Community Services, \$340,000
4. Designing, Construction and installation of hospital pens, fencing and exhibits at Alameda Park Zoo, Community Services, \$300,000
5. Design and Replacement of Irrigation Systems at Desert Lakes Golf Course, Community Services, \$500,000

Mayor Pro-Tem Sikes said she was present at the meeting, and she would like to be thought of as a member of the public. She noted that over the years the ICIP meetings were always well put together by staff, and this year was no exception. The PowerPoint presentation by Ms. Osborne was exceptional. These were the projects we would plead with our local representatives to fund. From her past recollection of time that the City had been holding these meetings, she was usually the only one in attendance. The list was long, but staff seemed to select the projects that were the most important to the community.

**Commissioner Rardin moved to approve.**

**Mayor Pro-Tem Sikes seconded the motion.**

**Roll Call Vote was taken.**

**Motion carried with a vote of 7-0-0.**

**9. Consider, and act upon, approval for the Mobile Crisis Response Team Clinician to be funded by the City and no longer grant funded. (*Richard Denton, Chief of Police*)**

Police Chief Denton said the Commission had approved a grant for the Mobile Crisis Response Team in 2019. With that, the grant was now slowly starting to go away, and as a City, we needed to accept this project.

CIT Clinical Director Jeanette Borunda gave a PowerPoint presentation. She stated that this team had gone live on August 30, 2020, so they were approaching one full year of being in commission. She reviewed their numbers through May 31, 2021, as well as the types of services they offered.

Commissioner Rardin asked where this position would be funded out of. City Manager Cesar said out of Fund 11 as the Police Department was primarily funded from the General Fund. However, this program was still grant funded through November 1<sup>st</sup> of this year, and obviously next year it would need to be fully funded out of the General Fund. Commissioner Rardin asked what the total funding amount would be for next year. Police Chief Denton said approximately \$110,000 for the whole year.

Mayor Pro-Tem Sikes asked if there was still a possibility that it would be grant funded again in the future. Police Chief Denton said no as they had not put this position in the Paso del Norte Grant funding application. Because of the shortage of Officers at the present time, he'd pulled an Officer out of that program due to having so many CIT certified Officers on the street now. The positions put into the grant were Case Manager, peer support people, and money for additional trainings. Mayor Pro-Tem Sikes said it appeared to be a program that was not only necessary, but it had been a success so far. Clinical Director Borunda said they were one of four mobile crisis teams in the State at this point, and they had been contacted from other counties regarding rural mobile crisis because nobody else was doing that right now.

Commissioner Payne asked for some perspective on the program so people could better understand it. Police Chief Denton said what they were seeing less of was the Officers having to deal with the same people over and over. When there was a call, the Officers still referred to the Mobile Crisis Response Team, and they still reached out to that person. So once these people became enrolled in the program, they now called a CRT peer support person instead. That alleviated the Officers and might even prevent that person from committing a crime before things got out of hand. When Officers actually were called out, presence of the MCRT allowed the Officers to leave and go back out on the street quicker.

Mayor Pro-Tem Sikes talked about Mr. Al Hernandez, who was going to make a comment on this item, and she thanked him for bringing this item to the forefront. He was a former City Commissioner and spoke to the need when people had a mental crisis and needed a mobile crisis intervention and not necessarily a police intervention.

**Al Hernandez commented on the following:**

Mr. Hernandez said years ago he had asked Chief Duncan to bring in additional training to our Officers as their training at that time was not good enough. At that time, he was having issues with his father who was starting to fall into the realms of dementia. Because he was his father's closest ally, his father turned against him and would go to the Police Department every day. Each time, a different Officer would come to talk to him about his dad. At first, he would talk to the Officers, but after 15 to 20 times of them showing up at his house, he started to consider it harassment. That was when he talked to Chief Duncan and told him that this was enough, and if it didn't stop then he was going to sue him. Finally, Officer Guinn became the main Officer involved and his father was to go to Officer Guinn all the time. His main point with this was that the Officers couldn't identify that there was something wrong with his dad. That was why he was, and still is, a strong advocate of this program. These people worked hard at the program, but it wasn't working because it was not enough. The resources they had were not enough. Currently, CIT would not be brought out until they made three contacts in one physical day with the person. His wife was currently having a problem with a cousin that was way off, and there was no help. Mr. Hernandez was a Security Officer at Gerald Champion Hospital, and they saw as many as 10 to 15 callouts per day. Last week a nurse and doctor were assaulted, and the police came quickly, but they were not there all the time. They were currently building a substation at the hospital and were hoping to man it with the Police Department, or possibly with the CIT team. Our community supplied mental health help through Gerald Champion, the Counseling Center, and Presbyterian. Right now, Gerald Champion's house was full. They had patients who had to sit in the ER for 15 days before they could get placed. That was extremely difficult on their staff. He wholeheartedly supported increasing what we did for this program because it was getting worse in the community, and this program did work.

**Mayor Boss moved to approve.**

**Commissioner Payne seconded the motion.**

**Motion carried with a vote of 7-0-0.**

**10. Consider, and act upon, amending the Project Participation Agreement for Medlin Ramps. (Petria Bengoechea, City Attorney)**

City Attorney Bengoechea said this request was from Mark Medlin, the owner of Medlin Ramps. He owned 26 acres purchased with a LEDA grant. He had been approached by Maverick, which was a gas station out of Utah, to purchase up to six acres of that property. They would not lease

it and only wanted to purchase it. The property was now worth \$3.5 million, and he had done about a half million dollars in upgrades as well. In March 2020, Supply Corps USA was about to open its doors when Covid happened. They were now pushing forward with that, and they had hired 44 employees and currently had 16 full time employees. They had made 80 to 90 ramps this past year. The land proposed to be purchased was not surveyed yet, but that survey would be a part of the Agreement. It would be no more than six acres. We had recently done a job audit, and the LEDA award had been reduced to just over \$2 million. He had at least another \$100,000 in payroll this year, but we only did full annual audits. Mayor Boss pointed out that there had been almost a half million dollars paid down on the original. City Attorney Bengoechea said yes, and his current outstanding obligation was \$2,044,926.00 at the end of 2020.

Mayor Boss asked if there was any downside to this. City Attorney Bengoechea said she didn't see any legal downside. The property appraisal showed that the raw land itself would secure that amount. They would take down the old Showbiz Video store which had just been boarded, and it would bring in more business to the community.

Commissioner Baldwin said when Medlin first came in, they had always talked about developing that property. Part of the original plan was to develop that frontward facing property and intersecting the two highways. He felt this was good news. City Attorney Bengoechea pointed out Mr. Medlin was going to take the proceeds from this sale and develop another business on the site as well.

Commissioner Rardin clarified that the \$3.5 million appraisal was for the entire property, and that they were just asking to break out the 5.5 to 6 acres. City Attorney Bengoechea said yes. Mayor Boss said this sounded like a win-win situation.

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

**11. Consider, and act upon, first publication of Ordinance 1636, an Ordinance creating Chapter 34 in the Alamogordo Code of Ordinances concerning Marijuana. (Petria Bengoechea, City Attorney) (Roll Call Vote Required)**

City Attorney Bengoechea said this Ordinance only restricted marijuana and did not allow for it anywhere. What was put together just restricted the zoning and where marijuana could be consumed, in line with our alcohol Ordinance. It restricted marijuana use on City property or in the public walking down the sidewalk. There had to be distance regulations. The State had requested we do this by September 1<sup>st</sup>, which was when they were going to start issuing licenses. All we were doing here was regulating where cannabis could go. There were some rules about how much we could do, and we had pushed as much as we could as far as the 300 feet from a school or daycare that was already existing. The Commission could make it less or limit density.

Mayor Boss thought the important thing was that this was us putting more restrictions on it. We had nothing to do with whether marijuana was going to be sold in our community. Now we were putting restrictions on those sales. City Attorney Bengoechea said that was correct. The Legislature severely limited what local communities could regulate with their Bill that was passed in Special Session, so we could not just outlaw it in our limits. Mayor Boss clarified it could not be sold right up next to a school. City Attorney Bengoechea said yes, and this Ordinance was



saying that it had to be at least 300 feet away, which was the same for alcohol currently. It matched our alcohol laws. The Agenda Report outlined what the legislation prohibited us from doing, and one of those things was completely prohibiting the operation of a cannabis license. The Legislature through State law preempted us from doing that.

Commissioner Rardin said we could pass this Ordinance and try it for a year and if we found we needed to change it, then we could always bring it back before the Commission. Even in his business, insurance companies were trying to find a way around it because it was legal for people to consume at home. However, if they were to get in an on-the-job accident, they would test dirty but may have not been consuming at that time. It was kind of a trial and error.

Mayor Pro-Tem Sikes said if someone lived next door to a school and each adult was allowed to grow six plants, who was going to enforce the fact that they were not 300 feet away. City Attorney Bengoechea said it stated that we could not prohibit an adult New Mexican from producing homegrown cannabis. You could live within 300 feet and grow the number of plants the State allowed, but you could not open a store that sold cannabis and had a consumption area. Of course, we still had zoning regulations as well, so you couldn't open a shop in the middle of a residential area. Just like you could consume alcohol in your home if you lived next to a school, you could not open a bar and sell alcohol next to a school, which is what we could regulate. We did not regulate conduct on private property, generally. Marijuana had been legalized so we were in between a rock and a hard spot. Mayor Boss said we couldn't do anything about that. Commissioner Payne said she knew that, but just for the record, she thought this was ridiculous.

**Commissioner Rardin moved to approve.**

**Commissioner Payne seconded the motion.**

**Roll Call Vote was taken.**

**Motion carried with a vote of 7-0-0.**

**12. Consider, and act upon, Resolution 2021-33, a Resolution Declaring Support for the Floyd School Board. (Susan Payne, City Commissioner) (Roll Call Vote Required)**

**John Block commented on the following:**

Mr. Block said he was a resident of Alamogordo. He wished to thank the Commission for considering this Resolution, as well as Commissioner Rardin for putting forth a similar item at the last meeting. The Floyd School Board had stood by itself and went against Governor Lujan Grisham and her PED (Public Education Department). The Board had stood by itself and made a brave public decision based on the need they saw for their community and the health and safety of their children. Standing up to this allowed the Commissioners to keep their finger on the pulse of their community and better understand the needs of Alamogordo. He was here to support this proposal and we must stand strong along with the Floyd School District and other New Mexicans who were fighting for freedom for our State, especially now as our Governor was doing everything in her power to destroy New Mexico's children by one Executive Order after another. He appreciated the Commission taking this up and he felt it was super important that we affirm our support for the Floyd School Board.

Commissioner Payne said at the last meeting Commissioner Rardin brought up an item that she felt was a little confusing. She understood the sentiment behind it, but it was a little confusing. She could not understand what it was that he wanted. About halfway through the item he stated he wanted support for the School Board, but that was not what she understood at the beginning.

She thought about it because she did agree with his sentiment, and she felt what our State did was wrong. She was trying to figure out a way that we could show our support without telling another elected body what to do. If you owned a business in Alamogordo, you wouldn't want a competing business telling you what to do or how to do it. That was how she felt about what they were doing at the last meeting. Then about halfway through, Commissioner Rardin had said something about a letter of support. She felt what had happened in the Floyd School District was wrong, and it had nothing to do with the fact that it was a School District necessarily as it did with the State coming in and removing a duly elected body. We all needed to be concerned about that. As Commissioners, we all needed to be concerned that if we made a decision which the State didn't like, that they would come in here and remove us for it. If we said it couldn't happen, then we were fooling ourselves because it did happen. It happened and they did nothing more than make decisions that they felt were best for the constituents they represented. It was government overreach and should never have happened. You should never have an appointed person removing an elected official. That was ridiculous. That was why she brought this forward in the way she did. It had less to do specifically with the Floyd School District, and more to do with the fact that the Floyd School District was targeted and removed from their duly elected positions. Every single one of us should be concerned about that because we were representing our constituents and our community, which was different than the communities of Santa Fe, Albuquerque, or Las Cruces. We lived in Alamogordo, and we were very specific to our community. It was not like other communities. She thought this item was very clear, and she did think it was something that we all needed to be concerned about. This was not a Republican-Democrat issue. It was government overreach.

Mayor Pro-Tem Sikes said last week there were three meetings held by Dr. Ken Moore. The people who showed up at those meetings were, naturally, the people who did not want to mask. The people who were concerned about the health of our County, the people who were concerned about the numbers going up on a daily basis, and the people who were concerned about the public health mandates did not show up and that was very unfortunate. She had received a lot of emails, and there was one which came across to all the Commissioners today and it was requested that it be read into the record, and it was written by a person who was adamantly against this particular Resolution. When a School Board member was elected, they complied with the rules of the Public Education Department. She had spent time with the American Federation of Teachers, with the NEA (National Education Association), and with the Public Education Department representatives, one of which was in Las Cruces. Everyone was welcome to call Patty Gibson and she could explain this to them. The School Board members were very aware of how far their jurisdiction extended and how far the PED jurisdiction extended. When the Floyd School Board was called out, they immediately appealed. She read the Decision, which stated, "The New Mexico First Judicial District Court denied the Floyd School Board's request for a Temporary Restraining Order stemming from the New Mexico Public Education Department's suspension of the Board on August 4<sup>th</sup>. The five-member Board was suspended after twice voting to disregard Public Education Department's Covid-19 safe practices for school reentry. Floyd filed for a Temporary Restraining Order after the Public Education Department filed suit against the Floyd School Board seeking the Court's intervention when the Board refused to step down following the suspension." Should we continue stepping out of our lane, we faced the same type of punitive action, and she felt we should not be doing that. We were a City Commission and did not control the School Board. Although we respected everyone's opinion on the no-mask issue, she was very disappointed that when the crowds got together to talk about the non-masking issue, they neglected to talk about the disease. They only talked about their rights. She felt it was time

in this community based on the overflow at the hospital and based on the numbers throughout the State, that we recognized it was time to take this a little more seriously.

Commissioner Payne said nowhere in here did she talk about masks. That was not the point. The point was that we needed to do what was best for our community. We were a diverse group and would have different opinions, but we needed to be very concerned when their only alternative was to remove elected officials. It didn't have to be about masks. This was about our rights and our duty to do what was best for our constituents. She was at the three school meetings and the majority of the people spoke against masks. If this could happen to the Floyd School Board, then it could happen to us. We needed to tell people that we supported an elected body's individual right to do what was best for their community. This was about government overreach.

Mayor Boss said this was political sounding, but we had a border where we were allowing people to come over that we knew were affected with the disease and we were not requiring them to wear masks and we were not giving them the vaccine and we were putting them into our entire country. Why was that being neglected by these same people that were telling us we needed to wear the masks. Commissioner Baldwin felt that was probably a discussion for another topic. Commissioner Rardin said he agreed wholeheartedly with the Mayor. Those of us against the masks would take this a little more seriously if we would lock that border and stop letting them in.

Commissioner Rardin said he agreed with Commissioner Payne. There was a bigger picture here. The PED, who were hired, should not have the authority to remove a duly elected body. He agreed with the intent here. He had attended two of the three meetings at the school, and Commissioner Payne had spoken at one of the meetings. He also attended the other night at the other School Board Meeting when they did what they did to Ms. Cadwallader. At that meeting they did support a Resolution which he felt we should support as well. It was kind of weak a little bit and was worded in a way that would let them go either way, but it was a step in the right direction.

Commissioner McDonald said she hesitated to comment on issues that got people riled up, but she had done a little background study on the Floyd Schools. It was a very small community of about 103 people. When we were making decisions for groups of people, even if they were being suspended, then we needed to be careful with the situation. She looked at the information to see what was there, and she read in the paper where the School Board was going to do the investigating and they were going to look at other communities, all 89 of them. She felt we would overstep our bounds here if we made a decision when the School Board was already in line to listen to the other 89 communities. This was a very small community, and she was looking at the fact that we needed to stay in line with communities of our size and what we were doing for the School Board here.

Commissioner Wright said if they read the Resolution, it stated, "Whereas, the City Commission of the City of Alamogordo believes that the best knowledge of what is right for local issues lies within local elected leaders." That was saying we should have control over our community which is our size. Floyd understood the concern of their community of their size. We were trying to say we knew our size and we knew the community we were in, and we needed to have control over that. Albuquerque was a completely different ballgame from our 30,000 people, and Floyd was different from Alamogordo. Commissioner Payne had brought this item forward because we needed to locally make our own decisions. Albuquerque had different numbers, different outbreaks, and different health backgrounds that we didn't have. There were so many different

areas we needed to understand locally. Floyd didn't know our numbers here and Albuquerque didn't understand our numbers. That was why we needed local control.

Commissioner Payne felt we were missing the point; this was not about masks. She was against masks, but she also did not have a problem with people who wanted to wear masks. She felt we should all have that freedom of choice. This was about the State coming in, an appointed person coming in and removing a duly elected body, and we should all be concerned about it. It didn't have to be masks; it could be anything. It didn't have to be Democrat vs. Republican. We could have a Republican Governor removing for a different reason. That was not the point. The point was that we needed to be concerned, and we should have local control over local issues. This was government overreach. She didn't care if it was a community of 100 or a community of 100,000. It was government overreach and shame on the State, and we should take a stand, period. This whole thing started with the Floyd School Board being removed for nothing more than wanting to make local decisions for their local community. She understood why they didn't want to wear masks. There were 100 people in the whole town, so what were we so worried about. And if this could happen to Floyd, it could happen to us. Would we really be having this discussion if the situation were reversed. This was government overreach and we needed to take a stand against government overreach regardless of who was in charge of the government. We were a local community, and we needed to make local decisions.

Mayor Boss said we shouldn't be wearing masks because they claim if you go more than fifteen minutes in an environment like we were in right now, that the masks don't work. Commissioner Payne said she was wearing hers out of respect for the Mayor and that was it.

**Commissioner Rardin moved to approve.**  
**Commissioner Wright seconded the motion.**

Commissioner Baldwin said he was one of the Commissioners who voted no last time because he felt for a public body to be engaging in a School Board issue in reference to their agenda and their safety policies and gender issues was way out of line. He kind of realized toward the end of that meeting that if that item would have been worded differently, then it was something he probably could have supported. If it was in support of whatever our School Board decided based on the actions of what they felt was best for the community and based on the comments they were getting, then that was something he could have stood behind. Based on the language in this Resolution, it basically matched a letter we already sent to our Governor at the start of the Covid. That letter was basically complaining about not having enough control over our communities as the people elected to protect and represent our communities. We all agreed on that letter and it seemed like it was the right plan. About four months after all the shutdowns began, we got a color-coded system, so it sounded like they had listened to us a little bit. So, this was different in that it was worded differently, and we were supporting the School Board that was removed. It also backed up the same kind of information we had already sent to our Governor in reference to how we believed we should be representing our communities and not really being told what to do. So, he did support this.

Mayor Pro-Tem Sikes said we wouldn't even be discussing this if there wasn't a pandemic, if there wasn't disease in every community, and if the numbers hadn't continued to go up. Whether they believed it or not, each day when people passed away, she found it tragic. She found it tragic when she talked to people she knew who had family members pass away and friends die, when people wound up in the hospital, and when the doctors and nurses who were so overworked said

that the least we could be doing was wearing masks and getting vaccinated. We would not even be here talking about this if the Floyd School Board did not defy a Health Order. The only reason they were suspended was because they defied a health mandate. Keep the disease in mind when children started dying or when their loved ones started dying, as it may be different. She asked everyone to keep in mind that this was about disease because that was why they were suspended.

**Mayor Boss called for the vote on the motion.**

**Roll Call Vote was taken.**

**Motion carried with a vote of 5-2-0. Mayor Pro-Tem Sikes and Commissioner McDonald voted "nay".**

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

Mayor Boss read the openings and appointed Karl Melton to the Alamogordo Public Library Board. No one was opposed. Mayor Boss thanked Mr. Melton for signing up to serve on this Board, and thanked Mr. William Dennis for his prior service on the Board.

**ADJOURNMENT**

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**Commissioner Rardin moved to adjourn at 8:19 p.m.**

**Commissioner Wright seconded the motion.**

**Motion carried with a vote of 7-0-0.**

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*Mayor Richard Boss*

*ATTEST:*

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*City Clerk Rachel Hughs*

(Prepared by Teresa Gutierrez, Deputy Clerk)

Approved at the Regular Meeting held on September 14, 2021.

# AGENDA REPORT

## CITY OF ALAMOGORDO

### CITY COMMISSION

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**Meeting Date:** 9/14/2021

**Report Date:** 8/24/2021

**Report No:** 4.

**Submitted By:** Diane Malone

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**Subject:** Consider, and act upon, approval of Resolution No. 2021-34 Certifying the City of Alamogordo Fixed Asset Inventory Count for FY 2021. *(Evelyn Huff, Finance Director)* **(Roll Call Vote Required)**

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**Fiscal Impact:**

Amount Budgeted:

Fund:

Additional Fiscal Impact:

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**Recommendation:** Approve Resolution No. 2021-34 FY2021 Fixed Asset Inventory.

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**Background:** As per NM Statute 12-6-10 Annual Inventory, the auditors have requested Commission Approval of the City of Alamogordo Department Fixed Asset Inventory FY 2021.

**City of Alamogordo Department Fixed Asset Inventory FY 2021**

| Department                                              | Signed Verification by: | Fixed Asset Inventory Sheet Returned | Signed (Y/N) | Signed Date | Dept. Fixed Asset ListingTotal |
|---------------------------------------------------------|-------------------------|--------------------------------------|--------------|-------------|--------------------------------|
| Administration Inventory                                | Cheryl Otero-Baker      | 4/15/2021                            | Y            | 4/14/2021   | 5,000.00                       |
| Airport Inventory                                       | Jim Talbert             | 4/15/2021                            | Y            | 4/15/2021   | 13,445,349.44                  |
| Alamogordo Fire Department Inventory                    | Richard Adler           | 4/15/2021                            | Y            | 4/15/2021   | 7,114,052.13                   |
| Alamogordo Police Department                            | Maria Herndon           | 4/21/2021                            | Y            | 4/20/2021   | 5,497,540.09                   |
| Animal Control Inventory                                | Maria Herndon           | 4/21/2021                            | Y            | 4/20/2021   | 525,185.90                     |
| APD - Dispatch Inventory                                | Maria Herndon           | 5/25/2021                            | Y            | 5/24/2021   | 630,698.25                     |
| APD - Training Inventory                                | Maria Herndon           | 4/21/2021                            | Y            | 4/20/2021   | 282,805.04                     |
| Bonito Lake Campground Inventory                        | Veronica Ortega         | 4/27/2021                            | Y            | 4/26/2021   | 1,996,035.16                   |
| Cemetery Inventory Listing                              | Erik Marion             | 6/23/2021                            | Y            | 6/23/2021   | 361,661.41                     |
| Central Receiving Inventory                             | Barbara Pyeatt          | 4/29/2021                            | Y            | 4/29/2021   | 207,537.55                     |
| Chamber of Commerce Inventory                           | Paul Bennett            | 6/21/2021                            | Y            | 6/21/2021   | 434,216.93                     |
| City Clerk Inventory                                    | Rachel Hughs            | 4/14/2021                            | Y            | 4/14/2021   | 236,801.00                     |
| City Location Inventory                                 | Paul Bennett            | 6/21/2021                            | Y            | 6/21/2021   | 13,140,973.82                  |
| Civic Center Inventory                                  | Josh Sides              | 6/21/2021                            | Y            | 6/21/2021   | 1,257,590.77                   |
| Code Enforcement Inventory - Alamogordo Fire Department | Richard Adler           | 4/15/2021                            | Y            | 4/15/2021   | 106,623.00                     |
| Community Services Administration                       | Veronica Ortega         | 4/21/2021                            | Y            | 4/20/2021   | 19,066.00                      |
| Community Services Parks Inventory                      | Erik Marion             | 6/23/2021                            | Y            | 6/23/2021   | 10,669,276.22                  |
| Community Services Zoo Inventory                        | Kate Unterweger         | 6/21/2021                            | Y            | 6/21/2021   | 1,772,890.97                   |
| Convenience Center Inventory                            | Darrell Grah            | 6/21/2021                            | Y            | 6/21/2021   | 1,253,441.17                   |
| Engineering Inventory                                   | Bob Johnson             | 4/14/2021                            | Y            | 4/14/2021   | 32,735.00                      |
| Facility Maintenance Inventory                          | Paul Bennett            | 6/21/2021                            | Y            | 6/21/2021   | 1,425,863.29                   |
| Finance MIS Inventory                                   | Mark Graham             | 5/3/2021                             | Y            | 5/3/2021    | 1,358,649.46                   |
| Finance Utility Billing Inventory                       | Nichole Sierra          | 4/30/2021                            | Y            | 4/30/2021   | 108,080.66                     |
| Fleet Inventory                                         | Robert Williams         | 4/15/2021                            | Y            | 4/15/2021   | 1,152,959.60                   |
| General Government & Land Location Inventory            | Tony Pistilli           | 4/28/2021                            | Y            | 4/28/2021   | 1,502,980.96                   |
| GIS Inventory                                           | Tony Pistilli           | 4/28/2021                            | Y            | 4/28/2021   | 93,007.00                      |
| Golf Course Club House Inventory                        | Grant Dalpes            | 4/28/2021                            | Y            | 4/28/2021   | 2,800,311.54                   |

**City of Alamogordo Department Fixed Asset Inventory FY 2021**

| Department                               | Signed Verification by: | Fixed Asset Inventory Sheet Returned | Signed (Y/N) | Signed Date | Dept. Fixed Asset Listing Total |
|------------------------------------------|-------------------------|--------------------------------------|--------------|-------------|---------------------------------|
| Golf Course Maintenance Inventory        | Mac Blevins             | 4/28/2021                            | Y            | 4/28/2021   | 4,661,147.40                    |
| Human Resources Inventory                | Kim Torres              | 4/14/2021                            | Y            | 4/14/2021   | 15,484.00                       |
| La Luz Filter Plant Inventory            | David Nunnelley         | 7/30/2021                            | Y            | 7/30/2021   | 49,400,575.47                   |
| Landfill Inventory                       | Thomas Bramble          | 4/27/2021                            | Y            | 4/27/2021   | 8,574,036.03                    |
| Library Inventory                        | Kim Underwood           | 4/23/2021                            | Y            | 4/21/2021   | 2,911,146.06                    |
| Municipal Court Inventory                | Patricia Doportio       | 5/4/2021                             | Y            | 5/4/2021    | 96,711.39                       |
| Planning & Zoning Inventory              | Shelbe Abbott-Leyva     | 6/21/2021                            | Y            | 6/21/2021   | 12,752.00                       |
| Purchasing Inventory                     | Barbara Pyeatt          | 4/29/2021                            | Y            | 4/29/2021   | 122,309.60                      |
| Recreation Center Inventory              | Heather Casebolt        | 4/23/2021                            | Y            | 4/21/2021   | 5,707,510.38                    |
| RSVP Inventory                           | Julie Baker             | 5/3/2021                             | Y            | 5/3/2021    | 56,984.20                       |
| Senior Center Inventory                  | Britney Ybarra          | 5/5/2021                             | Y            | 4/27/2021   | 4,507,601.01                    |
| Senior Center Kitchen Inventory          | Violet Norman           | 5/3/2021                             | Y            | 5/3/2021    | 154,699.32                      |
| Street Department Inventory              | Burnis Davis            | 4/19/2021                            | Y            | 4/16/2021   | 9,787,685.08                    |
| Streets Infrastructure (Pave) Inventory  | Burnis Davis            | 4/19/2021                            | Y            | 4/15/2021   | 164,163,885.18                  |
| Utilities Department Inventory           | Larry Garner            | 4/15/2021                            | Y            | 4/15/2021   | 156,754.32                      |
| Utility Construction Equipment Inventory | Burnis Davis            | 4/19/2021                            | Y            | 4/15/2021   | 2,061,192.08                    |
| Utility Maintenance Inventory            | Toby Torres             | 7/29/2021                            | Y            | 7/29/2021   | 31,336,286.54                   |
| Utility Water Inventory                  | David Nunnelley         | 7/30/2021                            | Y            | 7/30/2021   | 4,990,818.34                    |
| Waste Water Treatment Plant Inventory    | David Weyandt           | 6/21/2021                            | Y            | 6/21/2021   | 37,261,293.54                   |
| Weed & Drainage Equipment Inventory      | Burnis Davis            | 4/19/2021                            | Y            | 4/15/2021   | 2,116,222.60                    |
| Weed Inventory                           | Burnis Davis            | 4/19/2021                            | Y            | 4/15/2021   | 19,901,689.50                   |

415,428,116.40

415,428,116.40

0.00

City Manager

Date

Finance Director

Date



**All Asset Total Reconciliation from 04/14/2021 to FYE 06/30/2021**

|                                                |                       |                           |
|------------------------------------------------|-----------------------|---------------------------|
| <b>All Asset Total as of 04/14/2021</b>        | <b>415,428,116.40</b> | <b>Through Batch 5054</b> |
| Asset Acquisitions                             | 5,366,038.42          | Batch 5508 Forward        |
| Asset Disposals                                | -174,256.48           | Batch 5508 Forward        |
| <b>New All Asset Total as of 06/30/2021 YE</b> | <b>420,619,898.44</b> |                           |
|                                                |                       |                           |
| <b>Current 06/30/2021 YE All Asset Total</b>   | <b>420,619,898.44</b> |                           |
|                                                |                       |                           |
| <b>Difference</b>                              | <b>0.00</b>           |                           |

| Type       | Contra |       | Period | Fund | Warnings/Errors | Updated | Asset/Infra   | Disposal      | Adj Batch     | Running       |
|------------|--------|-------|--------|------|-----------------|---------|---------------|---------------|---------------|---------------|
|            | Batch  | Accts |        |      |                 |         |               |               |               |               |
|            | #      | Y/N   | Y/N    |      |                 | Y/N     | Batch Total   | Batch total   | Total         | Balance       |
| FA & Infra | 3938   | N     | N      | 14   | 10              | Date    | Y             | 104,167.97    |               | 104,167.97    |
| FA & Infra | 3949   | N     | N      | 14   | 10              | Date    | Y             | 975,436.36    |               | 1,079,604.33  |
| FA & Infra | 4152   | N     | N      | 14   | 10              | Date    | Y             | 250,026.35    |               | 1,329,630.68  |
| FA & Infra | 4162   | N     | N      | 14   | 10              | Date    | Y             | 171,119.91    |               | 1,500,750.59  |
| FA & Infra | 4204   | Y     | N      | 13   | 81              | Date    | Y             | 543,182.32    |               | 2,043,932.91  |
| FA & Infra | 4205   | Y     | N      | 13   | 81              | Date    | Y             | 8,602,199.10  |               | 10,646,132.01 |
| FA & Infra | 4210   | Y     | N      | 13   | 81              | Date    | Y             | 2,435,579.07  |               | 13,081,711.08 |
| FA & Infra | 4211   | Y     | N      | 13   | 90              | Date    | Y             | 6,464.59      |               | 13,088,175.67 |
| FA & Infra | 4212   | Y     | N      | 13   | 94              | Date    | Y             | 12,300.00     |               | 13,100,475.67 |
| Transfers  | N/A    | N     | N      | 13   | 81 to 81        |         | N/A           |               |               | 13,100,475.67 |
| Transfers  | 4415   | N     | Y-0's  | 13   | 81 to 90        | Date    | Y             |               |               | 13,100,475.67 |
| Disposals  | 4416   | N     | N      | 14   | 10              | Date    | Y             |               | 809,073.42    | 13,100,475.67 |
| Disposals  | 4428   | N     | N      | 14   | 10              | Date    | Y             |               | 12,760,786.75 | 13,100,475.67 |
| Disposals  | 4429   | N     | N      | 14   | 10              | Date    | Y             |               | 219,458.33    | 13,100,475.67 |
| Disposals  | 4430   | N     | N      | 14   | 10              | Date    | Y             |               | 148,568.00    | 13,100,475.67 |
| FA & Infra | 4431   | N     | N      | 13   | 81              | Date    | Y             |               | 7,379.00      | 13,100,475.67 |
| FA & Infra | 4990   | Y     | N      | 13   | 81              | Date    | Y             | 8,335.00      |               | 13,108,810.67 |
| FA & Infra | 4992   | Y     | N      | 13   | 94              | Date    | Y             | 12,801.50     |               | 13,121,612.17 |
| FA & Infra | 4993   | N     | N      | 14   | 10              | Date    | Y             | 128,771.50    |               | 13,250,383.67 |
| FA & Infra | 5053   | N     | N      | 14   | 10              | Date    | Y             | 865,316.73    |               | 14,115,700.40 |
| Disposals  | 5054   | N     | N      | 14   | 10              | Date    | Y             |               | 14,056.67     | 14,115,700.40 |
|            |        |       |        |      |                 |         | 14,115,700.40 | 13,959,322.17 |               |               |
| FA & Infra | 5508   | Y     | N      | 13   | 81              | Date    | Y             | 35,721.50     |               | 14,151,421.90 |
| FA & Infra | 5509   | N     | N      | 14   | 10              | Date    | Y             | 5,410.00      |               | 14,156,831.90 |
| Disposals  | 5510   | N     | N      | 14   | 10              | Date    | Y             |               | 49,440.47     | 14,156,831.90 |
| FA & Infra | 6662   | Y     | N      | 13   | 81              | None    | Y             | 46,982.95     |               | 14,203,814.85 |
| FA & Infra | 6663   | Y     | N      | 13   | 91              | None    | Y             | 197,537.31    |               | 14,401,352.16 |
| FA & Infra | 6664   | N     | N      | 14   | 10              | None    | Y             | 74,791.53     |               | 14,476,143.69 |
| Transfers  | 7198   | N     | N      | 14   | 10              | Date    | Y             |               |               | 14,476,143.69 |
| FA & Infra | 7199   | Y     | N      | 13   | 81              | Date    | Y             | 9,140.00      |               | 14,485,283.69 |
| FA & Infra | 7200   | N     | N      | 14   | 10              | Date    | Y             | 416,148.95    |               | 14,901,432.64 |
| FA & Infra | 7232   | N     | N      | 14   | 10              | Date    | Y             | 470,175.20    |               | 15,371,607.84 |
| Transfers  | 7233   | N     | Y-0'S  | 13   | 10 TO 91        | Date    | Y             |               |               | 15,371,607.84 |
| Disposals  | 7234   | N     | N      | 13   | 86              | Date    | Y             |               | 76,009.00     | 15,371,607.84 |
| Disposals  | 7235   | N     | N      | 13   | 90              | Date    | Y             |               | 21,306.01     | 15,371,607.84 |
| Disposals  | 7236   | N     | N      | 14   | 10              | Date    | Y             |               | 17,501.00     | 15,371,607.84 |
| Disposals  | 7237   | N     | N      | 13   | 81              | Date    | Y             |               | 10,000.00     | 15,371,607.84 |
| FA & Infra | 7239   | N     | N      | 14   | 10              | Date    | NY            | 4,110,130.98  |               | 19,481,738.82 |
|            |        |       |        |      |                 |         | 5,366,038.42  | 174,256.48    |               |               |
|            |        |       |        |      |                 |         | 19,481,738.82 | 14,133,578.65 |               |               |

Total of batches before 4/14/2021  
(Annual Inventory Verifications)



AS OF APRIL 14, 2021

## ALL FIXED ASSET TOTAL

ADMINISTRATION, AIRPORT, ALAMOGORDO FIRE DEPT, ALAMOGORDO POLICE DEPT, ANIMAL CONTROL, APD-DISPATCH, APD-TRAINING, BONITO LAKE CAMPGROUND, CEMETERY, CENTRAL RECEIVING, CHAMBER OF COMMERCE, CITY CLERK, CITY LOCATION, CIVIC CENTER, CODE ENFORCEMENT, COMM SERV ADMINISTRATION, COMMUNITY SERV PARKS DEPT, COMMUNITY SERVICES PARKS, COMMUNITY SERVICES ZOO, CONVENIENCE CENTER, ENGINEERING, FACILITY MAINTENANCE, FINANCE UTILITY BILLING, FLEET MAINTENANCE, GENERAL GOVT/LAND LOCATE, GIS/LAND MANAGEMENT, GOLF COURSE CLUB HOUSE, GOLF COURSE MAINTENANCE, GRIGGS FIELDS, HOOSER PARK, HUMAN RESOURCES, KAB, LA LUZ FILTER PLANT, LANDFILL, LEISURE SERVICES, LIBRARY, LONGRIDGE, MIS-DPS, MIS-FINANCE, MIS-MUNICIPAL COURT, MUNICIPAL COURT, OREGON PARK, PLANNING & ZONING, PURCHASING, RECREATION CENTER, RSVP, SENIOR CENTER, SENIOR CENTER KITCHEN, STREET DEPARTMENT, STREETS INFRASTRUCTURE, UTILITIES DEPARTMENT, UTILITY CONSTRUCTION, UTILITY MAINTENANCE, UTILITY WATER, WASHINGTON PARK, WASTE WATER TREAT. PLANT, WEED & DRAINAGE, WEED DEPARTMENT INVENTORY LISTING

| Asset ID        | Asset Tag Number | Asset Description             | Asset Serial ID  | Asset Model ID | Asset Purchase Cost | Asset Funding Sub Account | Asset Location Code | Asset Status Code | Asset Group |
|-----------------|------------------|-------------------------------|------------------|----------------|---------------------|---------------------------|---------------------|-------------------|-------------|
| 000000000003383 |                  | ZOO/POWER IMPROVEMENTS-FY05   | POWER POLES/CANS |                | \$8,678.81          | 168ZO                     | ZOO                 | Fully Depreciated | GD          |
| 000000000003628 |                  | ZOO/SIDEWALK CONSTRUCTION     |                  |                | \$7,095.00          |                           | ZOO                 | Active            | GD          |
| 000000000004530 |                  | ZOO FENCE/CMU W/WROUGHT IRON  |                  |                | \$230,593.97        |                           | ZOO                 | Active            | GD          |
| 000000000004586 |                  | ZOO/WALKING PATH              |                  |                | \$99,442.27         |                           | ZOO                 | Active            | GD          |
| 000000000004622 |                  | PLAYGRND SHADE STRUCT/ALAMEDA | 55' X 32' X 15'  | ALAMEDA ZOO    | \$43,040.05         |                           | ZOO                 | Active            | GD          |
| 000000000004696 |                  | ZOO/SIDEWALK                  |                  |                | \$23,673.60         |                           | ZOO                 | Active            | GD          |
| 000000000004697 |                  | ZOO/PARKING LOT LIGHTING      |                  |                | \$9,990.57          |                           | ZOO                 | Active            | GD          |
| 168ZO - Total   |                  |                               |                  |                | \$617,250.35        |                           |                     |                   |             |
| Overall - Total |                  |                               |                  |                | \$415,428,116.40    |                           |                     |                   |             |

\* This is the total as of 04/14/2021. when Inventory Listings were sent out for the Annual Verification. There were additional asset acquisitions, transfers, & disposals, therefore, the balance is different from FYE 06/30/2021.

An inventory of the above listed items has been completed. Corrections have been noted and initialed. I certify the above inventory is correct for the reflected



As of 06/30/2021 FYE.

ALL FIXED ASSET TOTAL

**ADMINISTRATION, AIRPORT, ALAMOGORDO FIRE DEPT, ALAMOGORDO POLICE DEPT, ANIMAL CONTROL, APD-DISPATCH, APD-TRAINING, CEMETERY, CENTRAL RECEIVING, CHAMBER OF COMMERCE, CITY CLERK, CITY LOCATION, CIVIC CENTER, CODE ENFORCEMENT, COMM SERV ADMINISTRATION, COMMUNITY SERV PARKS DEPT, COMMUNITY SERVICES PARKS, COMMUNITY SERVICES ZOO, CONVENIENCE CENTER, ENGINEERING, FACILITY MAINTENANCE, FINANCE UTILITY BILLING, FLEET MAINTENANCE, GENERAL GOVT/LAND LOCATE, GIS/LAND MANAGEMENT, GOLF COURSE CLUB HOUSE, GOLF COURSE MAINTENANCE, GRIGGS FIELDS, HOOSER PARK, HUMAN RESOURCES, KAB, LA LUZ FILTER PLANT, LANDFILL, LEISURE SERVICES, LIBRARY, LONGRIDGE, MIS-DPS, MIS-FINANCE, MIS-MUNICIPAL COURT, MUNICIPAL COURT, OREGON PARK, PLANNING & ZONING, PURCHASING, RECREATION CENTER, RSVP, SENIOR CENTER, SENIOR CENTER KITCHEN, STREET DEPARTMENT, STREETS INFRASTRUCTURE, UTILITIES DEPARTMENT, UTILITY CONSTRUCTION, UTILITY MAINTENANCE, UTILITY WATER, WASHINGTON PARK, WASTE WATER TREAT. PLANT, WEED & DRAINAGE, WEED DEPARTMENT, BONITO LAKE CAMPGROUND INVENTORY LISTING**

| Asset ID        | Asset Tag Number | Asset Description             | Asset Serial ID | Asset Model ID | Asset Purchase Cost | Asset Funding Sub Account | Asset Location Code | Asset Status Code | Asset Group |
|-----------------|------------------|-------------------------------|-----------------|----------------|---------------------|---------------------------|---------------------|-------------------|-------------|
| 000000000003628 |                  | ZOO/SIDEWALK CONSTRUCTION     |                 |                | \$7,095.00          | 168ZO                     | ZOO                 | Active            | GD          |
| 000000000004530 |                  | ZOO FENCE/CMU W/WROUGHT IRON  |                 |                | \$230,593.97        |                           | ZOO                 | Active            | GD          |
| 000000000004586 |                  | ZOO/WALKING PATH              |                 |                | \$99,442.27         |                           | ZOO                 | Active            | GD          |
| 000000000004622 |                  | PLAYGRND SHADE STRUCT/ALAMEDA | 55' X 32' X 15' | ALAMEDA ZOO    | \$43,040.05         |                           | ZOO                 | Active            | GD          |
| 000000000004696 |                  | ZOO/SIDEWALK                  |                 |                | \$23,673.60         |                           | ZOO                 | Active            | GD          |
| 000000000004697 |                  | ZOO/PARKING LOT LIGHTING      |                 |                | \$9,990.57          |                           | ZOO                 | Active            | GD          |
| 168ZO - Total   |                  |                               |                 |                | \$617,250.35        |                           |                     |                   |             |
| Overall - Total |                  |                               |                 |                | \$420,619,898.44    |                           |                     |                   |             |

An inventory of the above listed items has been completed. Corrections have been noted and initialed. I certify the above inventory is correct for the reflected location.

Aug 18, 2021

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## #CA 2 ROLL FORWARD OF CAPITAL ASSETS FY20 DETAIL SUMMARY OF ASSET ACTIVITY (Recap)

| Asset Account<br>6/30/2020<br>Fixed Assets               |      | FY20 Ending<br>6/30/2020<br>Fixed Assets | FY2021 Additions    |                    |                      |                       | Unadjusted            | Period 13/14        | Period 13/14          | Period 13/14 | Adjusted              |
|----------------------------------------------------------|------|------------------------------------------|---------------------|--------------------|----------------------|-----------------------|-----------------------|---------------------|-----------------------|--------------|-----------------------|
| Number                                                   | Fund | Balance                                  | FY2021 Additions    | Net Transfers      | Retirements          | Total                 | FY21 Ending 6/30/2021 | CIP                 | CIP                   | Fixed Assets | FY21 Ending 6/30/2021 |
|                                                          |      |                                          | Acquisitions        | IN/(OUT)           |                      |                       | GL Balance            | Additions           | Deletions             | Adjustments  | GL Balance            |
| <b>GOVERNMENTAL ACTIVITIES (Set up in Memo Fund 010)</b> |      |                                          |                     |                    |                      |                       |                       |                     |                       |              |                       |
| <b>Non Depreciable Assets</b>                            |      |                                          |                     |                    |                      |                       |                       |                     |                       |              |                       |
| LAND                                                     | 11   | 2,297,910.03                             | 401,556.35          |                    |                      | 2,699,466.38          | 2,699,466.38          |                     |                       |              | 2,699,466.38          |
|                                                          | 20   | 67,844.00                                |                     |                    |                      | 67,844.00             | 67,844.00             |                     |                       |              | 67,844.00             |
|                                                          | 27   | -                                        |                     |                    |                      | -                     | -                     |                     |                       |              | -                     |
|                                                          | 32   | 825,981.40                               |                     |                    |                      | 825,981.40            | 825,981.40            |                     |                       |              | 825,981.40            |
|                                                          | 44   | 7,055,117.52                             |                     |                    |                      | 7,055,117.52          | 7,055,117.52          |                     |                       |              | 7,055,117.52          |
|                                                          | 63   | -                                        |                     |                    |                      | -                     | -                     |                     |                       |              | -                     |
|                                                          | 71   | 152,425.44                               |                     |                    |                      | 152,425.44            | 152,425.44            |                     |                       |              | 152,425.44            |
|                                                          | 75   | -                                        |                     |                    |                      | -                     | -                     |                     |                       |              | -                     |
| <b>161 Total</b>                                         |      | <b>10,399,278.39</b>                     | <b>401,556.35</b>   | <b>-</b>           | <b>-</b>             | <b>10,800,834.74</b>  | <b>10,800,834.74</b>  | <b>-</b>            | <b>-</b>              | <b>-</b>     | <b>10,800,834.74</b>  |
| <b>CIP</b>                                               |      |                                          |                     |                    |                      |                       |                       |                     |                       |              |                       |
|                                                          | 11   | 45,487.61                                |                     |                    |                      | 45,487.61             | 45,487.61             | 501,261.09          | (512,960.24)          |              | 33,788.46             |
|                                                          | 20   | -                                        |                     |                    |                      | -                     | -                     | 45,250.75           | (45,250.75)           |              | -                     |
|                                                          | 27   | -                                        |                     |                    |                      | -                     | -                     |                     |                       |              | -                     |
|                                                          | 32   | 384,687.84                               |                     |                    |                      | 384,687.84            | 384,687.84            | 274,504.41          | (613,023.28)          |              | 46,168.97             |
|                                                          | 44   | 8,431,645.01                             |                     |                    |                      | 8,431,645.01          | 8,431,645.01          | 3,160,608.62        | (1,753,666.87)        |              | 9,838,586.76          |
|                                                          | 63   | -                                        |                     |                    |                      | -                     | -                     |                     |                       |              | -                     |
|                                                          | 71   | -                                        |                     |                    |                      | -                     | -                     | 13,191.25           |                       |              | 13,191.25             |
|                                                          | 75   | -                                        |                     |                    |                      | -                     | -                     |                     |                       |              | -                     |
|                                                          |      | -                                        |                     |                    |                      | -                     | -                     |                     |                       |              | -                     |
| <b>165 Total</b>                                         |      | <b>8,861,820.46</b>                      | <b>-</b>            | <b>-</b>           | <b>-</b>             | <b>8,861,820.46</b>   | <b>8,861,820.46</b>   | <b>3,994,816.12</b> | <b>(2,924,901.14)</b> | <b>-</b>     | <b>9,931,735.44</b>   |
| <b>Depreciable Assets</b>                                |      |                                          |                     |                    |                      |                       |                       |                     |                       |              |                       |
| BUILDINGS & IMPROVEMENTS                                 | 11   | 16,892,562.76                            | 4,152,463.10        |                    |                      | 21,045,025.86         | 21,045,025.86         | -                   |                       |              | 21,045,025.86         |
|                                                          | 20   | 1,354,676.75                             | 51,030.75           |                    |                      | 1,405,707.50          | 1,405,707.50          |                     |                       |              | 1,405,707.50          |
|                                                          | 27   | 29,218.66                                |                     |                    |                      | 29,218.66             | 29,218.66             |                     |                       |              | 29,218.66             |
|                                                          | 32   | 9,891,138.29                             | 56,056.41           |                    |                      | 9,947,194.70          | 9,947,194.70          |                     |                       |              | 9,947,194.70          |
|                                                          | 44   | 69,133.68                                |                     |                    |                      | 69,133.68             | 69,133.68             |                     |                       |              | 69,133.68             |
|                                                          | 63   | -                                        |                     |                    |                      | -                     | -                     |                     |                       |              | -                     |
|                                                          | 71   | 3,770,840.88                             |                     |                    |                      | 3,770,840.88          | 3,770,840.88          |                     |                       |              | 3,770,840.88          |
|                                                          | 75   | -                                        |                     |                    |                      | -                     | -                     |                     |                       |              | -                     |
| <b>162 Total</b>                                         |      | <b>32,007,571.02</b>                     | <b>4,259,550.26</b> | <b>-</b>           | <b>-</b>             | <b>36,267,121.28</b>  | <b>36,267,121.28</b>  | <b>-</b>            | <b>-</b>              | <b>-</b>     | <b>36,267,121.28</b>  |
| MOTORIZED EQUIPMENT                                      | 11   | 9,037,685.26                             | 279,355.64          | (28,072.00)        | 149,026.00           | 9,139,942.90          | 9,139,942.90          | -                   |                       |              | 9,139,942.90          |
|                                                          | 20   | 133,934.79                               |                     |                    |                      | 133,934.79            | 133,934.79            |                     |                       |              | 133,934.79            |
|                                                          | 27   | -                                        |                     |                    |                      | -                     | -                     |                     |                       |              | -                     |
|                                                          | 32   | 1,860,017.77                             |                     | 6,519.00           |                      | 1,866,536.77          | 1,866,536.77          |                     |                       |              | 1,866,536.77          |
|                                                          | 44   | 2,714,373.27                             |                     |                    |                      | 2,714,373.27          | 2,714,373.27          |                     |                       |              | 2,714,373.27          |
|                                                          | 63   | 17,735.00                                |                     |                    |                      | 17,735.00             | 17,735.00             |                     |                       |              | 17,735.00             |
|                                                          | 71   | 438,957.46                               |                     |                    |                      | 438,957.46            | 438,957.46            |                     |                       |              | 438,957.46            |
|                                                          | 75   | 49,366.00                                |                     |                    |                      | 49,366.00             | 49,366.00             |                     |                       |              | 49,366.00             |
| <b>164 Total</b>                                         |      | <b>14,252,069.55</b>                     | <b>279,355.64</b>   | <b>(21,553.00)</b> | <b>149,026.00</b>    | <b>14,360,846.19</b>  | <b>14,360,846.19</b>  | <b>-</b>            | <b>-</b>              | <b>-</b>     | <b>14,360,846.19</b>  |
| UNSCHEDULED PROPERTY                                     | 11   | 3,580,538.22                             | 265,572.39          |                    | 135,243.72           | 3,710,866.89          | 3,710,866.89          |                     |                       |              | 3,710,866.89          |
|                                                          | 20   | 22,527.05                                | 20,235.54           |                    |                      | 42,762.59             | 42,762.59             |                     |                       |              | 42,762.59             |
|                                                          | 27   | 94,589.73                                |                     |                    |                      | 94,589.73             | 94,589.73             |                     |                       |              | 94,589.73             |
|                                                          | 32   | 864,920.28                               |                     |                    |                      | 864,920.28            | 864,920.28            |                     |                       |              | 864,920.28            |
|                                                          | 44   | 135,697.07                               |                     |                    |                      | 135,697.07            | 135,697.07            |                     |                       |              | 135,697.07            |
|                                                          | 63   | 15,000.00                                |                     |                    |                      | 15,000.00             | 15,000.00             |                     |                       |              | 15,000.00             |
|                                                          | 71   | 140,566.41                               | 27,571.56           |                    |                      | 168,137.97            | 168,137.97            |                     |                       |              | 168,137.97            |
|                                                          | 75   | 7,618.20                                 |                     |                    |                      | 7,618.20              | 7,618.20              |                     |                       |              | 7,618.20              |
| <b>166 Total</b>                                         |      | <b>4,861,456.96</b>                      | <b>313,379.49</b>   | <b>-</b>           | <b>135,243.72</b>    | <b>5,039,592.73</b>   | <b>5,039,592.73</b>   | <b>-</b>            | <b>-</b>              | <b>-</b>     | <b>5,039,592.73</b>   |
| INFRASTRUCTURE                                           | 11   | 1,097,296.45                             |                     |                    |                      | 1,097,296.45          | 1,097,296.45          |                     |                       |              | 1,097,296.45          |
|                                                          | 20   | 91,446.09                                |                     |                    |                      | 91,446.09             | 91,446.09             |                     |                       |              | 91,446.09             |
|                                                          | 27   | -                                        |                     |                    |                      | -                     | -                     |                     |                       |              | -                     |
|                                                          | 32   | 7,750,040.72                             | 563,986.87          |                    |                      | 8,314,027.59          | 8,314,027.59          |                     |                       |              | 8,314,027.59          |
|                                                          | 44   | 197,928,630.53                           | 1,753,666.87        |                    | 13,734,614.92        | 185,947,682.48        | 185,947,682.48        |                     |                       |              | 185,947,682.48        |
|                                                          | 63   | -                                        |                     |                    |                      | -                     | -                     |                     |                       |              | -                     |
|                                                          | 71   | 146,875.56                               |                     |                    |                      | 146,875.56            | 146,875.56            |                     |                       |              | 146,875.56            |
|                                                          | 75   | -                                        |                     |                    |                      | -                     | -                     |                     |                       |              | -                     |
| <b>168 Total</b>                                         |      | <b>207,014,289.35</b>                    | <b>2,317,653.74</b> | <b>-</b>           | <b>13,734,614.92</b> | <b>195,597,328.17</b> | <b>195,597,328.17</b> | <b>-</b>            | <b>-</b>              | <b>-</b>     | <b>195,597,328.17</b> |



| Asset Account<br>6/30/2020                            | Fixed<br>Assets | Fund | FY19 Ending<br>6/30/2020<br>Fixed Assets<br>Balance | FY2021 Additions<br>FY21<br>Acquisitions | Net Transfers<br>IN /(OUT) | Retirements   | Total          | Unadjusted<br>FY21 Ending 6/30/2021<br>GL Balance | Period 13/14<br>CIP<br>Additions | Period 13/14<br>CIP<br>Deletions | Period 13/14<br>Fixed Assets<br>Adjustments | Adjusted<br>FY21 Ending 6/30/2021<br>GL Balance |
|-------------------------------------------------------|-----------------|------|-----------------------------------------------------|------------------------------------------|----------------------------|---------------|----------------|---------------------------------------------------|----------------------------------|----------------------------------|---------------------------------------------|-------------------------------------------------|
| Total Government Activities (Set up in Memo Fund 010) |                 |      |                                                     |                                          |                            |               |                |                                                   |                                  |                                  |                                             |                                                 |
| 161-LAND                                              |                 |      | 10,399,278.39                                       | 401,556.35                               | -                          | -             | 10,800,834.74  | 10,800,834.74                                     | -                                | -                                | -                                           | 10,800,834.74                                   |
| 165-CIP                                               |                 |      | 8,861,820.46                                        | -                                        | -                          | -             | 8,861,820.46   | 8,861,820.46                                      | 3,994,816.12                     | (2,924,901.14)                   | -                                           | 9,931,735.44                                    |
| 162-BUILDINGS                                         |                 |      | 32,007,571.02                                       | 4,259,550.26                             | -                          | -             | 36,267,121.28  | 36,267,121.28                                     | -                                | -                                | -                                           | 36,267,121.28                                   |
| 164-MOTORIZED                                         |                 |      | 14,252,069.55                                       | 279,355.64                               | (21,553.00)                | 149,026.00    | 14,360,846.19  | 14,360,846.19                                     | -                                | -                                | -                                           | 14,360,846.19                                   |
| 166-UNSCHEDULED                                       |                 |      | 4,861,456.96                                        | 313,379.49                               | -                          | 135,243.72    | 5,039,592.73   | 5,039,592.73                                      | -                                | -                                | -                                           | 5,039,592.73                                    |
| 168-INFRASTRUCTURE                                    |                 |      | 207,014,289.35                                      | 2,317,653.74                             | -                          | 13,734,614.92 | 195,597,328.17 | 195,597,328.17                                    | -                                | -                                | -                                           | 195,597,328.17                                  |
| Total Gov Activities                                  |                 |      | 277,396,485.73                                      | 7,571,495.48                             | (21,553.00)                | 14,018,884.64 | 270,927,543.57 | 270,927,543.57                                    | 3,994,816.12                     | (2,924,901.14)                   | -                                           | 271,997,458.55                                  |
| BUSINESS TYPE ACTIVITIES                              |                 |      |                                                     |                                          |                            |               |                |                                                   |                                  |                                  |                                             |                                                 |
| Non Depreciable Assets                                |                 |      |                                                     |                                          |                            |               |                |                                                   |                                  |                                  |                                             |                                                 |
| LAND                                                  | 81              |      | 627,964.28                                          |                                          |                            |               | 627,964.28     | 627,964.28                                        |                                  |                                  |                                             | 627,964.28                                      |
|                                                       | 86              |      | 16,000.00                                           |                                          |                            |               | 16,000.00      | 16,000.00                                         |                                  |                                  |                                             | 16,000.00                                       |
|                                                       | 88              |      | 1,740,180.00                                        |                                          |                            |               | 1,740,180.00   | 1,740,180.00                                      |                                  |                                  |                                             | 1,740,180.00                                    |
|                                                       | 90              |      | 2,528,794.35                                        |                                          |                            |               | 2,528,794.35   | 2,528,794.35                                      |                                  |                                  |                                             | 2,528,794.35                                    |
|                                                       | 91              |      | 765,788.43                                          |                                          |                            |               | 765,788.43     | 765,788.43                                        |                                  |                                  |                                             | 765,788.43                                      |
| 161 Total                                             |                 |      | 5,678,727.06                                        | -                                        | -                          | -             | 5,678,727.06   | 5,678,727.06                                      | -                                | -                                | -                                           | 5,678,727.06                                    |
| CIP                                                   | 81              |      | 29,464,550.61                                       |                                          |                            |               | 29,464,550.61  | 29,464,550.61                                     | 7,386,805.65                     | (11,608,997.17)                  |                                             | 25,242,359.09                                   |
|                                                       | 86              |      | -                                                   |                                          |                            |               | -              | -                                                 |                                  |                                  |                                             | -                                               |
|                                                       | 88              |      | -                                                   |                                          |                            |               | -              | -                                                 |                                  |                                  |                                             | -                                               |
|                                                       | 90              |      | -                                                   |                                          |                            |               | -              | -                                                 |                                  |                                  |                                             | -                                               |
|                                                       | 91              |      | -                                                   |                                          |                            |               | -              | -                                                 | 197,537.31                       | (197,537.31)                     |                                             | -                                               |
| 165 Total                                             |                 |      | 29,464,550.61                                       | -                                        | -                          | -             | 29,464,550.61  | 29,464,550.61                                     | 7,584,342.96                     | (11,806,534.48)                  | -                                           | 25,242,359.09                                   |
| Depreciable Assets                                    |                 |      |                                                     |                                          |                            |               |                |                                                   |                                  |                                  |                                             |                                                 |
| BUILDINGS & IMPROVEMENTS                              | 81              |      | 16,034,753.34                                       | 3,170,906.39                             |                            | 10,000.00     | 19,195,659.73  | 19,195,659.73                                     |                                  |                                  |                                             | 19,195,659.73                                   |
|                                                       | 86              |      | 74,711.86                                           |                                          |                            |               | 74,711.86      | 74,711.86                                         |                                  |                                  |                                             | 74,711.86                                       |
|                                                       | 88              |      | 144,482.89                                          |                                          |                            |               | 144,482.89     | 144,482.89                                        |                                  |                                  |                                             | 144,482.89                                      |
|                                                       | 90              |      | 2,975,770.59                                        |                                          |                            |               | 2,975,770.59   | 2,975,770.59                                      |                                  |                                  |                                             | 2,975,770.59                                    |
|                                                       | 91              |      | 518,150.54                                          |                                          |                            |               | 518,150.54     | 518,150.54                                        |                                  |                                  |                                             | 518,150.54                                      |
| 162 Total                                             |                 |      | 19,747,869.22                                       | 3,170,906.39                             | -                          | 10,000.00     | 22,908,775.61  | 22,908,775.61                                     | -                                | -                                | -                                           | 22,908,775.61                                   |
| MOTORIZED VEHICLES                                    | 81              |      | 8,331,524.34                                        | 989,720.60                               | (74,450.00)                | 7,379.00      | 9,239,415.94   | 9,239,415.94                                      | -                                |                                  |                                             | 9,239,415.94                                    |
|                                                       | 86              |      | 880,665.30                                          |                                          |                            | 76,009.00     | 804,656.30     | 804,656.30                                        |                                  |                                  |                                             | 804,656.30                                      |
|                                                       | 88              |      | -                                                   |                                          |                            |               | -              | -                                                 |                                  |                                  |                                             | -                                               |
|                                                       | 90              |      | 780,736.42                                          |                                          | 74,450.00                  | 21,306.01     | 833,880.41     | 833,880.41                                        |                                  |                                  |                                             | 833,880.41                                      |
|                                                       | 91              |      | 309,975.56                                          |                                          | 21,553.00                  |               | 331,528.56     | 331,528.56                                        |                                  |                                  |                                             | 331,528.56                                      |
| 164 Total                                             |                 |      | 10,302,901.62                                       | 989,720.60                               | 21,553.00                  | 104,694.01    | 11,209,481.21  | 11,209,481.21                                     | -                                | -                                | -                                           | 11,209,481.21                                   |
| UNSCHEDULED PROPERTY                                  | 81              |      | 1,820,477.94                                        | 2,142,140.00                             | -                          |               | 3,962,617.94   | 3,962,617.94                                      |                                  |                                  |                                             | 3,962,617.94                                    |
|                                                       | 86              |      | 22,659.75                                           |                                          |                            |               | 22,659.75      | 22,659.75                                         |                                  |                                  |                                             | 22,659.75                                       |
|                                                       | 88              |      | 9,145.00                                            |                                          |                            |               | 9,145.00       | 9,145.00                                          |                                  |                                  |                                             | 9,145.00                                        |
|                                                       | 90              |      | 93,054.28                                           | 6,464.59                                 |                            |               | 99,518.87      | 99,518.87                                         |                                  |                                  |                                             | 99,518.87                                       |
|                                                       | 91              |      | -                                                   | 197,537.31                               |                            |               | 197,537.31     | 197,537.31                                        |                                  |                                  |                                             | 197,537.31                                      |
| 166 Total                                             |                 |      | 1,945,336.97                                        | 2,346,141.90                             | -                          | -             | 4,291,478.87   | 4,291,478.87                                      | -                                | -                                | -                                           | 4,291,478.87                                    |
| INFRASTRUCTURE                                        | 81              |      | 87,298,048.45                                       | 5,378,372.95                             | -                          |               | 92,676,421.40  | 92,676,421.40                                     |                                  |                                  |                                             | 92,676,421.40                                   |
|                                                       | 86              |      | 259,404.26                                          |                                          |                            |               | 259,404.26     | 259,404.26                                        |                                  |                                  |                                             | 259,404.26                                      |
|                                                       | 88              |      | 102,227.27                                          |                                          |                            |               | 102,227.27     | 102,227.27                                        |                                  |                                  |                                             | 102,227.27                                      |
|                                                       | 90              |      | 1,002,188.71                                        |                                          |                            |               | 1,002,188.71   | 1,002,188.71                                      |                                  |                                  |                                             | 1,002,188.71                                    |
|                                                       | 91              |      | 11,851,434.91                                       |                                          |                            |               | 11,851,434.91  | 11,851,434.91                                     |                                  |                                  |                                             | 11,851,434.91                                   |
| 168 Total                                             |                 |      | 100,513,303.60                                      | 5,378,372.95                             | -                          | -             | 105,891,676.55 | 105,891,676.55                                    | -                                | -                                | -                                           | 105,891,676.55                                  |
| Total Business Type                                   |                 |      | 167,652,689.08                                      | 11,885,141.84                            | 21,553.00                  | 114,694.01    | 179,444,689.91 | 179,444,689.91                                    | 7,584,342.96                     | (11,806,534.48)                  | -                                           | 175,222,498.39                                  |



| Asset Account<br>6/30/2020<br>Fixed Assets |      | FY20 Ending<br>6/30/2020<br>Fixed Asset | FY2021 Additions     |                           |               |                | Unadjusted                          | Period 13/14     | Period 13/14     | Period 13/14                | Adjusted                            |
|--------------------------------------------|------|-----------------------------------------|----------------------|---------------------------|---------------|----------------|-------------------------------------|------------------|------------------|-----------------------------|-------------------------------------|
| Number                                     | Fund | Balance                                 | FY21<br>Acquisitions | Net Transfers<br>IN/(OUT) | Retirements   | Total          | FY21 Ending 6/30/2021<br>GL Balance | CIP<br>Additions | CIP<br>Deletions | Fixed Assets<br>Adjustments | FY21 Ending 6/30/2021<br>GL Balance |
| <b>COMPONENT UNIT</b>                      |      |                                         |                      |                           |               |                |                                     |                  |                  |                             |                                     |
| <b>Non Depreciable Assets</b>              |      |                                         |                      |                           |               |                |                                     |                  |                  |                             |                                     |
| LAND                                       | 94   | 1,526,004.74                            |                      |                           |               |                | 1,526,004.74                        |                  |                  |                             | 1,526,004.74                        |
| 161 Total                                  |      | 1,526,004.74                            | -                    | -                         | -             | 1,526,004.74   | 1,526,004.74                        | -                | -                | -                           | 1,526,004.74                        |
| CIP                                        | 94   | -                                       |                      |                           |               |                | -                                   | 46,389.98        |                  |                             | 46,389.98                           |
| 165 Total                                  |      | -                                       | -                    | -                         | -             | -              | -                                   | 46,389.98        | -                | -                           | 46,389.98                           |
| <b>Depreciable Assets</b>                  |      |                                         |                      |                           |               |                |                                     |                  |                  |                             |                                     |
| BUILDING & Improve.                        | 94   | 280,003.54                              |                      |                           |               | 280,003.54     | 280,003.54                          |                  |                  |                             | 280,003.54                          |
| 162 Total                                  |      | 280,003.54                              | -                    | -                         | -             | 280,003.54     | 280,003.54                          | -                | -                | -                           | 280,003.54                          |
| MECHANIZED EQUIP.                          | 94   | 4,133,478.08                            | 25,101.50            |                           |               | 4,158,579.58   | 4,158,579.58                        |                  |                  |                             | 4,158,579.58                        |
| 164 Total                                  |      | 4,133,478.08                            | 25,101.50            | -                         | -             | 4,158,579.58   | 4,158,579.58                        | -                | -                | -                           | 4,158,579.58                        |
| UNSCHED. PROPERTY                          | 94   | 123,285.37                              |                      |                           |               | 123,285.37     | 123,285.37                          |                  |                  |                             | 123,285.37                          |
| 166 Total                                  |      | 123,285.37                              | -                    | -                         | -             | 123,285.37     | 123,285.37                          | -                | -                | -                           | 123,285.37                          |
| INFRASTRUCTURE                             | 94   | 2,486,162.80                            |                      |                           |               | 2,486,162.80   | 2,486,162.80                        |                  |                  |                             | 2,486,162.80                        |
| 168 Total                                  |      | 2,486,162.80                            | -                    | -                         | -             | 2,486,162.80   | 2,486,162.80                        | -                | -                | -                           | 2,486,162.80                        |
| Total Component                            |      | 8,548,934.53                            | 25,101.50            | -                         | -             | 8,574,036.03   | 8,574,036.03                        | 46,389.98        | -                | -                           | 8,620,426.01                        |
| Total Fixed Assets                         |      | 453,598,109.34                          | 19,481,738.82        | -                         | 14,133,578.65 | 458,946,269.51 | 458,946,269.51                      | 11,625,549.06    | (14,731,435.62)  | -                           | 455,840,382.95                      |

|                |                |                    |                |
|----------------|----------------|--------------------|----------------|
| TOTAL FUND 011 | 32,951,480.33  | TOTAL FUND 081     | 143,577,318.96 |
| TOTAL FUND 020 | 1,670,428.68   | TOTAL FUND 086     | 1,253,441.17   |
| TOTAL FUND 027 | 123,808.39     | TOTAL FUND 088     | 1,996,035.16   |
| TOTAL FUND 032 | 21,576,786.30  | TOTAL FUND 090     | 7,380,544.35   |
| TOTAL FUND 044 | 216,334,597.08 | TOTAL FUND 091     | 13,445,349.44  |
| TOTAL FUND 063 | 32,735.00      | TOTAL BUSINESS     | 167,652,689.08 |
| TOTAL FUND 071 | 4,649,665.75   | TOTAL COMPONENT    | 8,548,934.53   |
| TOTAL FUND 075 | 56,984.20      | TOTAL FIXED ASSETS | 453,598,109.34 |
| TOTAL GOV.     | 277,396,485.73 |                    |                |

|                |                |                    |                |
|----------------|----------------|--------------------|----------------|
| TOTAL FUND 011 | 37,726,386.94  | TOTAL FUND 081     | 150,944,438.38 |
| TOTAL FUND 020 | 1,741,694.97   | TOTAL FUND 086     | 1,177,432.17   |
| TOTAL FUND 027 | 123,808.39     | TOTAL FUND 088     | 1,996,035.16   |
| TOTAL FUND 032 | 21,864,829.71  | TOTAL FUND 090     | 7,461,705.93   |
| TOTAL FUND 044 | 205,760,590.78 | TOTAL FUND 091     | 13,642,886.75  |
| TOTAL FUND 063 | 32,735.00      | TOTAL BUSINESS     | 175,222,498.39 |
| TOTAL FUND 071 | 4,690,428.56   | TOTAL COMPONENT    | 8,620,426.01   |
| TOTAL FUND 075 | 56,984.20      | TOTAL FIXED ASSETS | 455,840,382.95 |
| TOTAL GOV.     | 271,997,458.55 |                    |                |

Less Govt. CIP  
 Less Business CIP  
 Less Component CIP  
 Total Fixed Assets

455,840,382.95  
 9,931,735.44 -  
 25,242,359.09 -  
 46,389.98 -  
 420,619,298.44 \*

# AGENDA REPORT

## CITY OF ALAMOGORDO

### CITY COMMISSION

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**Meeting Date:** 9/14/2021

**Report Date:** 8/25/2021

**Report No:** 5.

**Submitted By:** Petria Bengoechea

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**Subject:** Consider, and act upon, adoption and final publication of Ordinance 1636, an Ordinance creating Chapter 34 in the Alamogordo Code of Ordinances concerning Marijuana. (*Petria Bengoechea, City Attorney*) **(Roll Call Vote Required)**

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**Fiscal Impact:**

Amount Budgeted:

Fund:

Additional Fiscal Impact:

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**Recommendation:** Approve for adoption and final publication.

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**Background:** The Commission approved this Ordinance for first publication during the meeting of August 24, 2021 with a vote of 7-0-0.

Ordinance 1636 restricts where marijuana can be consumed, and where shops selling marijuana may be placed within City limits. The regulations mirror the regulations that we have for alcohol, except that it forbids the consumption of marijuana on City property or in open spaces.

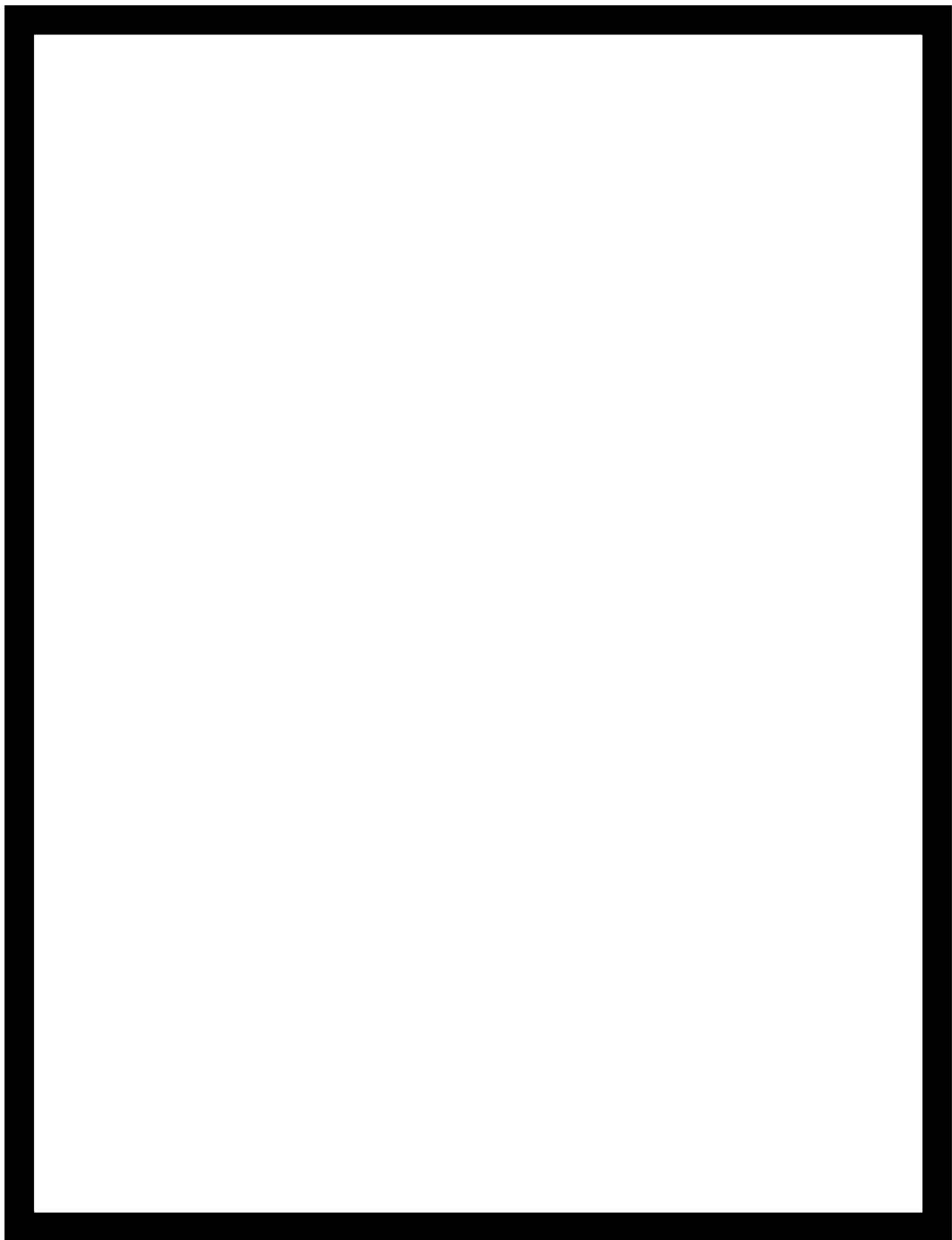
Pursuant to the Cannabis Control Act passed in the 2021 Special Session, adult use cannabis in New Mexico has been legalized, but there are restrictions on what a local jurisdiction can and cannot do.

A local jurisdiction can adopt rules to reasonably limit the density of cannabis license and the operating times of cannabis businesses, and can restrict access to a cannabis consumption area to people who are 21 years of age or older, and require that any cannabis establishment that provides a consumption area be located a certain distance away from any schools or daycares.

The legislation specifically prohibits local jurisdictions from:

- a. preventing people who are property licensed from transporting cannabis products on public roads,
- b. completely prohibiting the operation of a cannabis license,
- c. prohibiting or limiting signage identifying a business as a cannabis establishment if its attached to or located on the business premises
- d. require a cannabis establishment or a consumption area be located more than 300 feet from a school or daycare that existed when the establishment was licensed,
- e. require an existing cannabis licensee to relocate to a new premises, or
- f. prohibit an adult New Mexican from producing homegrown cannabis.





## **ORDINANCE NO. 1636**

### **AN ORDINANCE CREATING CHAPTER 34 IN THE ALAMOGORDO CODE OF ORDINANCES CONCERNING MARIJUANA**

**WHEREAS**, the New Mexico Legislature Legalized Marijuana through the Cannabis Regulation Act during the 2021 Special Session;

**WHEREAS**, the City Commission of the City of Alamogordo wishes to make such reasonable regulations concerning proximity of businesses selling cannabis to schools; and

**WHEREAS**, the City Commission of the City of Alamogordo wishes to make such reasonable regulations concerning where cannabis can be used within City limits in order to protect the public's health safety and welfare;

**THEREFORE, BE IT ORDAINED** by the City Commission of the City of Alamogordo that a new Chapter be added to the *Code of Ordinances* as follows:

#### **CHAPTER 34**

#### **ARTICLE 34-01. MARIJUANA**

##### **34-01-010. Definitions.**

The words and phrases below, wherever used in this article, shall be construed as defined in this section unless, clearly from the context, a different meaning is intended. Words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number.

- A. "Consume," "Consuming," and "Consumption" mean the act of ingesting, inhaling or otherwise introducing marijuana into the human body.
- B. "Consumer" means an individual who is at least twenty-one years of age and who purchases marijuana or marijuana products.
- C. "Cultivate" and "Cultivation" mean to propagate, breed, grow, prepare and package marijuana.
- D. "Department" means the State of New Mexico Department of Health Services or its successor agency.
- E. "Manufacture" and "Manufacturing" means to compound, blend, extract, infuse or otherwise make or prepare a marijuana product.
- F. "Marijuana"

1. Means all parts of the plant of the genus cannabis, whether growing or not, as well as the seeds from the plant, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture or preparation of the plant or its seeds or resin.
  2. Includes cannabis as defined in N.M.R.S. §26-2B-4, §26-2B-53. Does not include industrial hemp, the fiber produced from the stalks of the plant of the genus cannabis, oil or cake made from the seeds of the plant, sterilized seeds of the marijuana to prepare topical or oral administrations, food, drink or other products.
- G. "Marijuana Establishment" means an entity licensed by the Department to operate all of the following:
1. A single retail location at which the licensee may sell marijuana and marijuana products to consumers, cultivate marijuana and manufacture marijuana products.
  2. A single off-site cultivation location at which the licensee may cultivate marijuana, process marijuana and manufacture marijuana products, but from which marijuana and marijuana products may not be transferred or sold to consumers.
  3. A single off-site location at which the licensee may manufacture marijuana and marijuana products and package and store marijuana and marijuana products, but from which marijuana and marijuana products may not be transferred or sold to consumers.
- H. "Marijuana Products" means marijuana concentrate and products that are composed of marijuana and other ingredients and that are intended for use or consumption, including edible products, ointments, and tinctures.
- I. "Marijuana Testing Facility" means the Department or another entity that is licensed by the Department to analyze the potency of marijuana and test marijuana for harmful contaminants.
- J. "Open Space" means a public park, public sidewalk, public walkway or public pedestrian thoroughfare.
- K. "Person" means an individual, partnership, corporation, association, or any other entity of whatever kind or nature.
- L. "Process" and "Processing" means to harvest, dry, cure, trim or separate parts of the marijuana plant.
- M. "Public Place" has the same meaning prescribed in the Dee Johnson Clean Indoor Air Act, N.M.R.S. §24-16-3.
- N. "Smoke" means to inhale, exhale, burn, carry or possess any lighted marijuana or lighted marijuana products, whether natural or synthetic.

**34-01-020. Building, Operating, and Zoning requirements.**

- A. No marijuana shall be sold or delivered by any marijuana dispenser, retailer, or grower except in areas, buildings and/or rooms open to the general public. No closed or curtained booths shall be permitted in any establishment or public place licensed under this chapter.
- B. No person under 21 years of age may enter an establishment where the sale, cultivation or consumption of marijuana may occur.
- C. No license shall be issued by the City for the sale or distribution of marijuana, marijuana products, or a marijuana testing facility that is within three hundred (300) feet of any church or school. Businesses operating in violation of this before September 1, 2021 will be granted an exception to this rule.
  - a. A license may be granted for a proposed licensed premises if the owner or lessee has, prior to establishment of a church or school located within three hundred feet of the proposed licensed premises, applied for, been granted and maintained a valid building permit for the construction or renovation of the proposed licensed premises and has filed on a form prescribed by the Clerk a notice of intention to apply for transfer of a license to the proposed licensed premises. For the purposes of this section, all measurements taken in order to determine the location of licensed premises in relation to churches or schools shall BE THE STRAIGHT LINE DISTANCE FROM THE PROPERTY LINE OF THE LICENSED PREMISES TO THE PROPERTY LINE OF THE CHURCH OR SCHOOL. This provision shall not apply to any church that has been designated as an historical site by the cultural properties review committee and which does not have a regular congregation.
- D. All marijuana establishments licensed to sell at retail marijuana products or to allow consumption of marijuana on their premises must follow the hours prescribed for alcohol sales and consumption in the Liquor Control Act.

**34-01-050. Marijuana consumption in public places.**

- A. The use, sale, cultivation, manufacture, production, storage or distribution of marijuana or marijuana products is prohibited on property that is occupied, owned, controlled, or operated by the City of Alamogordo.
- B. It is unlawful for an individual to smoke marijuana or to consume marijuana products on property that is occupied, owned, controlled or operated by the City of Alamogordo.
- C. It shall be unlawful for anyone to smoke or to consume any marijuana of any kind, whether lawfully purchased or not, in any public place or in any street or in any government building, whether state or federal, or in any other public place except establishments having a license to dispense marijuana.
- D. It its unlawful for an individual to smoke marijuana or consume marijuana products in any open space in the City of Alamogordo.

**34-01-060. Selling of marijuana in public places.**

- (a) Selling of marijuana in public places consists of selling, serving, furnishing or permitting the smoking or consumption of marijuana in any public place or private club, or key club, whether operated for profit or not, except establishments having a license to dispense marijuana by the owner, operator, lessee or proprietor thereof.
- (b) For purposes of this chapter, "public place" shall mean: an area, whether enclosed or open, held out for use by the public and to which the public is invited, or in which the public is permitted, whether owned or operated by public or private interests.

**34-01-080. Lighting required.**

All persons holding licenses for the sale of marijuana as retailers or dispensers shall keep all parts of the lots on which the licensed premises are situated, and the streets or alleys immediately adjacent to such places or buildings, well lighted during the hours when marijuana is being sold or served on such premises.

**ARTICLE 34-02. MARIJUANA DISPENSERS LICENSE**

**34-02-010. Required.**

The sale and possession for the purpose of selling, and the offering for sale of marijuana is hereby prohibited except by persons duly licensed within the area and upon the conditions specified in this chapter and other applicable provisions of this Code.

**34-02-020. Application.**

Applications for a license to sell marijuana within the city shall be made to the clerk on a form prescribed by the clerk. Each application shall include a copy of the application to the state department of cannabis control and shall be accompanied by a fee of fifty dollars (\$50.00) to cover the expense of investigations. Upon receipt of the application, the clerk shall determine if preliminary approval of the issuance or transfer of the license has been made pursuant to the Cannabis Control Act. Upon determining that such preliminary approval has been made, the clerk shall set the application for hearing. An investigation shall be made of the applicant, the matters stated in the application, and for compliance by the applicant and the proposed location of the licensed premises for compliance with all applicable codes.

**34-02-030. License Fee.**

The fee for licenses to sell marijuana is as follows:

Retailer's/Dispensers license, per annum:     \$250.00

Growers license, per annum:                     \$250.00

All licenses shall be issued for the period July 1 to the following June 30. The license fee shall not be refunded or prorated. The above does not include business registration fees.



**34-02-040. Revocation.**

The city commission may, by a majority vote of all members elected, revoke any and all licenses for the sale of marijuana for the violation of any of the provisions of this chapter, after a public hearing and upon five (5) days' notice thereof.

**ARTICLE 34-03. VIOLATIONS**

**34-03-010. Penalties.**

Violation of any of the sections in this chapter shall be a misdemeanor punishable by up to five hundred dollars (\$500.00) per day and up to six (6) months in jail per day of each violation.

**PASSED, APPROVED AND ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

CITY OF ALAMOGORDO, NEW MEXICO  
a New Mexico municipal corporation

By: \_\_\_\_\_  
Richard A. Boss, Mayor

ATTEST:

\_\_\_\_\_  
Rachel Hughs, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Petria Bengoechea, City Attorney

# AGENDA REPORT

## CITY OF ALAMOGORDO

### CITY COMMISSION

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**Meeting Date:** 9/14/2021

**Report Date:** 8/31/2021

**Report No:** 6.

**Submitted By:** Debbie Osborne

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**Subject:** Consider, and act upon, accepting capital outlay grant agreement 21-F2820, in the amount of \$300,000.00, to purchase and equip vehicles for APD. (*Richard Denton, Chief of Police*)

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**Fiscal Impact:** \$300,000.00

Amount Budgeted: \$300,000.00

Fund: 024

Additional Fiscal Impact: No additional fiscal impact.

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**Recommendation:** Accept capital outlay grant agreement 21-F2820 in the amount of \$300,000.00.

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**Background:** The City of Alamogordo submitted a capital outlay grant application to purchase and equip vehicles and equipment for the Alamogordo Police Department. Commission members had approved this project as priority #3 on the FY2022-2026 ICIP. Subsequently, funding was awarded for the project at the 2021 Legislative Session, signed by the Governor, and grant agreement, 21-F2820, in the amount of \$300,000.00 was issued.

**STATE OF NEW MEXICO  
DEPARTMENT OF FINANCE AND ADMINISTRATION  
FUND 89200 CAPITAL APPROPRIATION PROJECT**

**THIS AGREEMENT** is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the Department of Finance and Administration, State of New Mexico, acting through the Local Government Division, Bataan Memorial Building, Room 202, Santa Fe, New Mexico, 87501, hereinafter called the "Department" or abbreviation such as "DFA/LGD", and the **City of Alamogordo** hereinafter called the "Grantee." This Agreement shall be effective as of the date it is executed by the Department.

**RECITALS**

**WHEREAS**, in the Laws of 2021, Chapter 138, Section 29, Para 261, the Legislature made an appropriation to the Department, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

**WHEREAS**, the Department is granting to Grantee, and the Grantee is accepting the grant of, funds from this appropriation, in accordance with the terms and conditions of this Agreement; and

**WHEREAS**, pursuant to Sections 9-6-5 and 9-6-5.1 NMSA 1978, the Secretary of the Department of Finance and Administration has the power and the authority to (i) maintain long-range estimates and plans for capital projects and develop standards for measuring the need for, and utility of, proposed projects; (ii) contract for, receive and utilize any grants or other financial assistance made available by the United States government or by any other source, public or private; (iii) provide planning and funding assistance to units of local government, council of government organizations, Indian tribal governments situated within New Mexico, and to nonprofit entities having for their purpose local, regional or community betterment; (iv) incident to any such programs, may enter into contracts and agreements with such units of local government, council of government organizations, Indian tribal governments, nonprofit entities and the federal government; and (v) delegate such authority to the Local Government Division as being necessary and appropriate to such delegation;

**AGREEMENT**

**NOW, THEREFORE**, in consideration of the mutual covenants and obligations contained herein, the parties hereby mutually agree as follows:

**ARTICLE I. PROJECT DESCRIPTION, AMOUNT OF GRANT AND REVERSION DATE**

A. The project that is the subject of this Agreement is described as follows:

**21-F2820      \$300,000.00      Appropriation Reversion Date: 30-JUN-23**  
**Laws of 2021, Chapter 138, Section 29, Paragraph 261 Three Hundred Thousand Dollars**  
**(\$300,000.00) to purchase and equip vehicles and equipment for the police department in**  
**Alamogordo in Otero County.**

The Grantee's total reimbursements shall not exceed **Three Hundred Thousand Dollars (\$300,000.00)**. (the "Appropriation Amount") minus the allocation for Art in Public Places ("**AIPP** ") [1], if applicable **Zero** dollars (\$0.00) which equals **Three Hundred Thousand Dollars (\$300,000.00)** (the "Adjusted Appropriation Amount").

In the event of a conflict among the Appropriation Amount, the Reversion Date, as defined herein and/or the purpose of the Project, as set forth in this Agreement, and the corresponding appropriation language in the laws cited above in this Article I (A), the language of the laws cited herein shall control.

This project is referred to throughout the remainder of this Agreement as the "Project"; the information contained in Article I (A) is referred to collectively throughout the remainder of this Agreement as the "Project Description". The Grantee shall reference the Project's number in all correspondence with and submissions to the Department concerning the Project, including, but not limited to, Requests for Payment and reports.

## **ARTICLE II. LIMITATION ON DEPARTMENT'S OBLIGATION TO MAKE GRANT DISBURSEMENT TO GRANTEE**

A. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Project Description, the Grantee shall only be reimbursed monies for which the Department has issued and the Grantee has received a Notice of Department's Obligation to Reimburse<sup>[2]</sup> Grantee (hereinafter referred to as "Notice of Obligation"). This Grant Agreement and the disbursement of any and all amounts of the above referenced Adjusted Appropriation Amount are expressly conditioned upon the following:

- (i) Irrespective of any Notice of Obligation, the Grantee's expenditures shall be made on or before the Reversion Date and, if applicable, an Early Termination Date (i.e., the goods have been delivered and accepted or the title to the goods has been transferred to the Grantee and/or the services have been rendered for the Grantee); and
- (ii) The total amount received by the Grantee shall not exceed the lesser of: (a) the Adjusted Appropriation Amount identified in Article I(A) herein or (b) the total of all amounts stated in the Notice(s) of Obligation evidencing that the Department has received and accepted the Grantee's Third Party Obligation(s), as defined in subparagraph iii of this Article II(A); and
- (iii) The Grantee's expenditures were made pursuant to the State Procurement Code and execution of binding written obligations or purchase orders with third party contractors or vendors for the provision of services, including professional services, or the purchase of tangible personal property and real property for the Project, hereinafter referred to as "Third Party Obligations"; and
- (iv) The Grantee's submittal of timely Requests for Payment in accordance with the procedures set forth in Article IX of this Agreement; and
- (v) In the event that capital assets acquired with Project funds are to be sold, leased, or licensed to or operated by a private entity, the sale, lease, license, or operating agreement:
  - a. must be approved by the applicable oversight entity (if any) in accordance with law; or
  - b. if no oversight entity is required to approve of the transaction, the Department must approve the transaction as complying with law.

Prior to the sale, lease, license, or operating agreement being approved pursuant to Articles II(A)(v)(a) and II(A)(v)(b) herein, the Department may, in its sole and absolute discretion and unless inconsistent with New Mexico State Board of Finance imposed conditions, reimburse the Grantee for necessary expenditures incurred to develop the Project sufficiently to make the sale, lease, license, or operating agreement commercially feasible, such as plan and design expenditures; and

[1] The AIPP amount is "an amount of money equal to one percent or two hundred thousand dollars (\$200,000), whichever is less, of the amount of money appropriated for new construction or any major renovation exceeding one hundred thousand dollars (\$100,000)." Section 13-4A-4 NMSA 1978.

[2] "Reimburse" as used throughout this Agreement includes Department payments to the Grantee for invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee.

- (vi) The Grantee's submission of documentation of all Third Party Obligations and amendments thereto (including terminations) to the Department and the Department's issuance and the Grantee's receiving of a Notice of Obligation for a particular amount in accordance with the terms of this Agreement shall be governed by the following:
- a. The Grantee shall submit to the Department one copy of all Third Party Obligations and amendments thereto (including terminations) as soon as possible after execution by the Third Party **but prior to execution by the Grantee.**
  - b. Grantee acknowledges and agrees that if it chooses to enter into a Third Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such obligations.
  - c. The Department may, in its sole and absolute discretion, issue to Grantee a Notice of Obligation for the particular amount of that Third Party Obligation that only obligates the Department to reimburse Grantee's expenditures made on or before the Reversion Date or an Early Termination Date. The current Notice of Obligation form is attached to this Agreement as Exhibit 2.
  - d. The date the Department signs the Notice of Obligation is the date that the Department's Notice of Obligation is effective. After that date, the Grantee is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third Party Obligation and request the Third Party to begin work. Payment for any work performed or goods received prior to the effective date of the Notice of Obligation is wholly and solely the obligation of the Grantee.
- B. The Grantee shall implement, in all respects, the Project. The Grantee shall provide all necessary qualified personnel, material, and facilities to implement the Project. The Grantee shall finance its share (if any) of the costs of the Project, including all Project overruns.
- C. Project funds shall not be used for purposes other than those specified in the Project Description.
- D. Unless specifically allowed by law, Project funds cannot be used to reimburse Grantee for indirect Project costs.

### **ARTICLE III. NOTICE PROVISIONS AND GRANTEE AND DEPARTMENT DESIGNATED REPRESENTATIVES**

Whenever written notices, including written decisions, are to be given or received, related to this Agreement, the following provisions shall apply.

The Grantee designates the person(s) listed below, or their successor as their official representative(s) concerning all matters related to this Agreement.

|           |                                            |
|-----------|--------------------------------------------|
| Grantee   | Alamogordo                                 |
| Name      | Maria Herndon                              |
| Title     | Administrative Manager                     |
| Address   | 1376 E. Ninth Street, Alamogordo, NM 88310 |
| Email     | mherndon@ci.alamogordo.nm.us               |
| Telephone | 575-439-4300                               |

The Grantee designates the person(s) listed below, or their successor, as their Fiscal Officer or Fiscal Agent concerning all matters related to this Agreement.

|           |                                            |
|-----------|--------------------------------------------|
| Grantee   | Alamogordo                                 |
| Name      | Debbie Osborne                             |
| Title     | Grant Coordinator                          |
| Address   | 1376 E. Ninth Street, Alamogordo, NM 88310 |
| Email     | dosborne@ci.alamogordo.nm.us               |
| Telephone | 575 -439-4257                              |



The Department designates the persons listed below, or their successors, as Points of Contact for matters related to this Agreement.

|            |                                                                                    |
|------------|------------------------------------------------------------------------------------|
| Department | DFA/Local Government Division                                                      |
| Name       | David Buchen                                                                       |
| Title      | Project Manager                                                                    |
| Address    | Bataan Memorial Bldg. Rm 202, Santa Fe, New Mexico, 87501 david.buchen@state.nm.us |
| Email      | David.Buchen@state.nm.us                                                           |
| Telephone  | 505-827-4757                                                                       |

The Grantee and the Department agree that either party shall send all notices, including written decisions, related to this Agreement to the above named persons by email, or regular mail. In the case of mailings, notices shall be deemed to have been given and received upon the date of the receiving party's actual receipt or five calendar days after mailing, whichever shall first occur. In the case of email transmissions, the notice shall be deemed to have been given and received on the date reflected on the delivery receipt of email.

#### **ARTICLE IV. REVERSION DATE, TERM, DEADLINE TO EXPEND FUNDS**

A. As referenced in Article I (A), the applicable law establishes a date by which Project funds must be expended by Grantee, which is referred to throughout the remainder of this Agreement as the "Reversion Date." Upon being duly executed by both parties, this Agreement shall be effective as of the date of execution by the Department. It shall terminate on **June 30, 2023**, the Reversion Date, unless Terminated Before Reversion Date ("Early Termination") pursuant to Article V herein.

B. The Project's funds must be expended on or before the Reversion Date and, if applicable, Early Termination Date of this Agreement. For purposes of this Agreement, it is not sufficient for the Grantee to encumber the Project funds on its books on or before the Project's Reversion Date or Early Termination Date. Funds are expended and an expenditure has occurred as of the date that a particular quantity of goods are delivered to and received by the Grantee or title to the goods is transferred to the Grantee and/or as of the date particular services are rendered for the Grantee. Funds are **not** expended and an expenditure has **not** occurred as of the date they are encumbered by the Grantee pursuant to a contract or purchase order with a third party.

#### **ARTICLE V. EARLY TERMINATION**

##### **A. Early Termination Before Reversion Date Due to Completion of the Project or Complete Expenditure of the Adjusted Appropriation or Violation of this Agreement**

Early Termination includes:

- (i) Termination due to completion of the Project before the Reversion Date; or
- (ii) Termination due to complete expenditure of the Adjusted Appropriation Amount before the Reversion Date; or
- (iii) Termination for violation of the terms of this Agreement; or
- (iv) Termination for suspected mishandling of public funds, including but not limited to, fraud, waste, abuse, and conflicts of interest.

Either the Department or the Grantee may early terminate this Agreement prior to the Reversion Date by providing the other party with a minimum of fifteen (15) days' advance, written notice of early termination. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V (A).

**B. Early Termination Before Reversion Date Due to Non-Appropriation**

The terms of this Agreement are expressly made contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. Throughout this Agreement the term "non-appropriate" or "non-appropriation" includes the following actions by the New Mexico Legislature: deauthorization, reauthorization or revocation of a prior authorization. The Legislature may choose to non-appropriate the Appropriation referred to in Article I and, if that occurs, the Department shall early terminate this Agreement for non-appropriation by giving the Grantee written notice of such termination, and such termination shall be effective as of the effective date of the law making the non-appropriation. The Department's decision as to whether sufficient appropriations or authorizations are available shall be accepted by the Grantee and shall be final. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V (B).

**C. Limitation on Department's Obligation to Make Grant Disbursements to Grantee in the Event of Early Termination**

In the event of Early Termination of this Agreement by either party, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth Article II.

**ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS**

A. The Department may choose, in its sole and absolute discretion, to provide written notice to the Grantee to suspend entering into new and further obligations. Upon the receipt of such written notice by the Grantee:

- (i) The Grantee shall immediately suspend entering into new or further written obligations with third parties; and
- (ii) The Department will suspend the issuance of any new or further Notice of Obligation under this Agreement; and
- (iii) The Department may direct the Grantee to implement a corrective action plan in accordance with Article VI (D) herein.

B. In the event of Suspension of this Agreement, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth in Article II herein.

C. A suspension of new or further obligations under this Agreement shall remain in effect unless or until the date the Grantee receives written notice given by the Department informing the Grantee that the Suspension has been lifted or that the Agreement has been Early Terminated in accordance with Article V herein. If the Suspension is lifted, the Department will consider further requests for Notice of Obligation.

**D. Corrective Action Plan in the Event of Suspension**

In the event that the Department chooses, in its sole and absolute discretion to direct the Grantee to suspend entering into new or further written obligations with third parties pursuant to Article VI (A), the Department may, but is not obligated to, require the Grantee to develop and implement a written corrective action plan to remedy the grounds for the Suspension. Such corrective action plan must be approved by the Department and be signed by the Grantee. Failure to sign a corrective action plan or meet the terms and deadlines set forth in the signed corrective action plan, is hereby deemed a violation of the terms of this Agreement for purposes of Early Termination, Article V(A)(iii). The corrective action plan is in addition to, and not in lieu of, any other equitable or legal remedy, including but not limited to Early Termination.

## **ARTICLE VII. AMENDMENT**

This Agreement shall not be altered, changed, or amended except by instrument in writing duly executed by both the parties hereto.

## **ARTICLE VIII. REPORTS**

### **A. Database reporting**

The Grantee shall report monthly Project activity by entering such Project information as the Department and the Department of Finance and Administration may require, such information entered directly into a database maintained by the Department of Finance and Administration (<http://cpms.dfa.state.nm.us>). Additionally, the Grantee shall certify on the Request for Payment form (exhibit 1) that updates have been maintained and are current in the database. The Grantee hereby acknowledges that failure to perform and/or certify updates into the database will delay or potentially jeopardize the reimbursement of funds. The Department shall give the Grantee with a minimum of thirty (30) days' advance written notice of any changes to the information the Grantee is required to report.

Monthly reports shall be due on the last day of each month, beginning with the first full month following execution of this Agreement by the Department and ending upon the submission of the final request for reimbursement for the Project.

### **B. Requests for Additional Information/Project Inspection**

During the term of this Agreement and during the period of time during which the Grantee must maintain records pursuant to Article VIII, the Department may:

- (i) request such additional information regarding the Project as it deems necessary; and
- (ii) conduct, at reasonable times and upon reasonable notice, onsite inspections of the Project. Grantee shall respond to such requests for additional information within a reasonable period of time, as established by the Department.

## **ARTICLE IX. REQUEST FOR PAYMENT PROCEDURES AND DEADLINES**

A. The Grantee shall request payment by submitting a Request for Payment, in the form attached hereto as Exhibit 1. Payment requests are subject to the following procedures:

- (i) The Grantee must submit a Request for Payment; and
- (ii) Each Request for Payment must contain proof of payment by the Grantee or liabilities incurred by the Grantee showing that the expenditures are valid or the liabilities incurred by the Grantee in the form of actual unpaid invoices received by the Grantee for services rendered by a third party or items of tangible personal property received by the Grantee for the implementation of the Project; provided, however, that the Grantee may be reimbursed for unpaid liabilities only if the Department, in its sole and absolute discretion, agrees to do so and in accordance with any special conditions imposed by the Department.
- (iii) In cases where the Grantee is submitting a Request for Payment to the Department based upon invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee, the Grantee shall make payment to those contractors or vendors within five (5) business days from the date of receiving reimbursement from the Department or such shorter period of time as the Department may prescribe in writing. The Grantee is required to certify to the Department proof of payment to the third party contractor or vendor within ten (10) business days from the date of receiving reimbursement from the Department.

B. The Grantee must obligate 5% of the Adjusted Appropriation Amount within six months of the acceptance of the grant agreement and must have expended no less than 85% of the Adjusted Appropriation Amount six months prior to the reversion date.

### **C. Deadlines**

Requests for Payments shall be submitted by Grantee to the Department on the earlier of:

- (i) Immediately as they are received by the Grantee but at a minimum of thirty (30) days from when the expenditure was incurred or liability of the Grantee was approved as evidenced by an unpaid invoice received by the Grantee from a third party contractor or vendor; or
- (ii) July 15 of each year for all unreimbursed incurred during the previous fiscal year; or
- (iii) Twenty (20) days from the date of Early Termination; or
- (iv) Twenty (20) days from the reversion date.

D. The Grantee's failure to abide by the requirements set forth in Article II and Article IX herein will result in the denial of its Request for Payment or will delay the processing of Requests for Payment. The Department has the right to reject a payment request for the Project unless and until it is satisfied that the expenditures in the Request for Payment are for permissible purposes within the meaning of the Project Description and that the expenditures and the Grantee are otherwise in compliance with this Agreement, including but not limited to, compliance with the reporting requirements and the requirements set forth in Article II herein to provide Third Party Obligations and the Deadlines set forth in Article IX herein. The Department's ability to reject any Request for Payment is in addition to, and not in lieu of, any other legal or equitable remedy available to the Department due to Grantee's violation of this Agreement.

### **ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS; REPRESENTATIONS AND WARRANTIES**

A. The following general conditions and restrictions are applicable to the Project:

- (i) The Project's funds must be spent in accordance with all applicable state laws, regulations, policies, and guidelines, including, but not limited to, the State Procurement Code (or local procurement ordinance, where applicable).
- (ii) The project must be implemented in accordance with the New Mexico Public Works Minimum Works Act, Section 13-4-10 through 13-4-17 NMSA 1978, as applicable. Every contract or project in excess of sixty thousand dollars (\$60,000) that the Grantee is a party to for construction, alteration, demolition or repair or any combination of these, including painting and decorating, of public buildings, public works or public roads and that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics, shall be based upon the wages and benefits that will be determined by the New Mexico Department of Workforce Solutions to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the locality. Further, every contract or project shall contain a stipulation that the contractor, subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates and fringe benefit rates not less than those determined pursuant to Section 13-4-11 (B) NMSA 1978 to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.
- (iii) The Project may only benefit private entities in accordance with applicable law, including, but not limited to, Article IX, Section 14 of the Constitution of the State of New Mexico, "Anti-Donation Clause."
- (iv) The Grantee shall not for a period of 10 years, from the date of this agreement convert any property acquired, built, renovated, required, designed or developed with the Project's funds to uses other than those specified in the Project Description without the Department's and the Board of Finance's express, advance written approval, which may include requirement to reimburse the State for the cost of the project, transfer proceeds from the disposition of property to the State, or otherwise provide consideration to the State.

- (v) The Grantee shall comply with all federal and state laws, rules and regulations pertaining to equal employment opportunity. In accordance with all such laws, rules and regulations the Grantee agrees to assure that no person shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with Grantee, be excluded from participation in the Project, be denied benefits or otherwise be subject to discrimination under, any activity performed under this Agreement. If Grantee is found to be not in compliance with these requirements during the life of this Agreement, Grantee agrees to take appropriate steps to correct any deficiencies. The Grantee's failure to implement such appropriate steps within a reasonable time constitutes grounds for terminating this Agreement.

B. The Grantee hereby represents and warrants the following:

- (i) The Grantee has the legal authority to receive and expend the Project's funds.
- (ii) This Agreement has been duly authorized by the Grantee, the person executing this Agreement has authority to do so, and, once executed by the Grantee, this Agreement shall constitute a binding obligation of the Grantee, enforceable according to its terms.
- (iii) This Agreement and the Grantee's obligations hereunder do not conflict with any law or ordinance or resolution applicable to the Grantee, the Grantee's charter (if applicable), or any judgment or decree to which the Grantee is subject.
- (iv) The Grantee has independently confirmed that the Project Description, including, but not limited to, the amount and Reversion Date, is consistent with the underlying appropriation in law.
- (v) The Grantee's governing body has duly adopted or passed as an official act a resolution, motion, or similar action authorizing the person identified as the official representative of the Grantee to sign the Agreement and to sign Requests for Payment.
- (vi) The Grantee shall abide by New Mexico laws regarding conflicts of interest, governmental conduct and whistleblower protection. The Grantee specifically agrees that no officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this Grant, during their tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed or goods to be received, pursuant to this Grant. Further, Grantee shall require all of its contractors to incorporate in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.
- (vii) No funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of this or any agency or body in connection with the awarding of any Third Party Obligation and that the Grantee shall require certifying language prohibiting lobbying to be included in the award documents for all subawards, including subcontracts, loans and cooperative agreements. All subrecipients shall be required to certify accordingly.

#### **ARTICLE XI. STRICT ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS; PROJECT RECORDS**

A. The Grantee shall be strictly accountable for receipts and disbursements relating to the Project's funds. The Grantee shall follow generally accepted accounting principles, and, if feasible, maintain a separate bank account or fund with a separate organizational code, for the funds to assure separate budgeting and accounting of the funds.

B. For a period of five (5) years following the Project's completion, the Grantee shall maintain all Project related records, including, but not limited to, all financial records, requests for proposals, invitations to bid, selection and award criteria, contracts and subcontracts, advertisements, minutes of pertinent meetings, as well as records sufficient to fully account for the amount and disposition of the total funds from all sources budgeted for the Project, the purpose for which such funds were used, and such other records as the Department shall prescribe.

C. The Grantee shall make all Project records available to the Department, the Department of Finance and Administration, and the New Mexico State Auditor upon request. With respect to the funds that are the subject of this Agreement, if the State Auditor or the Department of Finance and Administration finds that any or all of these funds were improperly expended, the Grantee may be required to reimburse to the State of New Mexico, to the originating fund, any and all amounts found to be improperly expended.

#### **ARTICLE XII. IMPROPERLY REIMBURSED FUNDS**

If the Department determines that part or all of the Appropriation Amount was improperly reimbursed to Grantee, including but not limited to, Project funds reimbursed to Grantee based upon fraud, mismanagement, misrepresentation, misuse, violation of law by the Grantee, or violation of this Agreement, the Grantee shall return such funds to the Department for disposition in accordance with law.

#### **ARTICLE XIII. LIABILITY**

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 immunities and limitations of the New Mexico Tort Claims Act.

#### **ARTICLE XIV. SCOPE OF AGREEMENT**

This Agreement constitutes the entire and exclusive agreement between the Grantee and Department concerning the subject matter hereof. The Agreement supersedes any and all prior or contemporaneous agreements, understandings, discussions, communications, and representations, written or verbal.

#### **ARTICLE XV. REQUIRED NON-APPROPRIATIONS CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT**

The Grantee acknowledges, warrants, and agrees that Grantee shall include a "non-appropriations" clause in all contracts between it and other parties that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement that states:

"The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, the **City of Alamogordo** may immediately terminate this Agreement by giving Contractor written notice of such termination. The **City of Alamogordo's** decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. Contractor hereby waives any rights to assert an impairment of contract claim against the **City of Alamogordo**, the Department of Finance and Administration, Local Government Division (DFA/LGD), or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the **City of Alamogordo** or the Department."

#### **ARTICLE XVI. REQUIRED TERMINATION CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT**

Grantee acknowledges, warrants, and agrees that Grantee shall include the following or a termination clause in all contracts that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement:

"This contract is funded in whole or in part by funds made available under DFA/LGD Grant Agreement. Should DFA/LGD early terminate the grant agreement, the **City of Alamogordo** may early terminate this



contract by providing Contractor written notice of such termination. In the event of termination pursuant to this paragraph, the **City of Alamogordo's** only liability shall be to pay Contractor for acceptable goods delivered and services rendered before the termination date."

Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department.

#### **ARTICLE XVII. COMPLIANCE WITH UNIFORM FUNDING CRITERIA**

A. Throughout the term of this Agreement, Grantee shall:

1. submit all reports of annual audits and agreed upon procedures required by Section 12-6-3(A)-(B) NMSA 1978 by the due dates established in 2.2.2 NMAC, reports of which must be a public record pursuant to Section 12-6-5(A) NMSA 1978 within forty-five days of delivery to the State Auditor;
2. have a duly adopted budget for the current fiscal year approved by its budgetary oversight agency (if any);
3. timely submit all required financial reports to its budgetary oversight agency (if any); and
4. have adequate accounting methods and procedures to expend grant funds in accordance with applicable law and account for and safeguard grant funds and assets acquired by grant funds.

B. In the event Grantee fails to comply with the requirements of Paragraph A of this Article XVII, the Department may take one or more of the following actions:

1. suspend new or further obligations pursuant to Article VI(A) of this Agreement;
2. require the Grantee to develop and implement a written corrective action plan pursuant to Article VI(D) of this Agreement to remedy the non-compliance;
3. impose special grant conditions to address the non-compliance by giving the Grantee notice of such special conditions in accordance with Article III of this Agreement; the special conditions shall be binding and effective on the date that notice is deemed to have been given pursuant to Article III; or
4. terminate this Agreement pursuant to Article V (A) of this Agreement.

#### **ARTICLE XVIII. SEVERANCE TAX BOND PROJECT AND GENERAL OBLIGATION BOND PROJECT CLAUSES**

A. Grantee acknowledges and agrees that the underlying appropriation for the Project is a severance tax bond or general obligation bond appropriation, and that the associated bond proceeds are administered by the New Mexico State Board of Finance (SBOF), an entity separate and distinct from the Department. Grantee acknowledges and agrees that (i) it is Grantee's sole and absolute responsibility to determine through SBOF staff what (if any) conditions are currently imposed on the Project; (ii) the Department's failure to inform Grantee of a SBOF imposed condition does not affect the validity or enforceability of the condition; (iii) the SBOF may in the future impose further or different conditions upon the Project; (iv) all SBOF conditions are effective without amendment of this Agreement; (v) all applicable SBOF conditions must be satisfied before the SBOF will release to the Department funds subject to the condition(s); and (vi) the Department's obligation to reimburse Grantee from the Project is contingent upon the then current SBOF conditions being satisfied.

B. Grantee acknowledges and agrees that SBOF may in its sole and absolute discretion remove a project's assigned bond proceeds if the project doesn't proceed sufficiently. Entities must comply with the requirement to encumber five percent (5%) of Project funds within six months of bond issuance as certified by the grantee in the Bond Questionnaire and Certification documents submitted to the SBOF. Failure to comply may result in the bond proceeds reassignment to a new ready project. If this should occur this grant agreement will be suspended until the entity has demonstrated readiness as determined by the SBOF and the Department.

C. Grantee acknowledges and agrees that this agreement is subject to the SBOF's Bond Project Disbursements

rule, NMAC 2.61.6, as may be amended or re-codified. The rule provides definitions and interpretations of grant language for the purpose of determining whether a particular activity is allowable under the authorizing language of the agreement.]

[THIS SPACE LEFT BLANK INTENTIONALLY]

**IN WITNESS WHEREOF**, the parties have duly executed Agreement as of the date of execution by the Department.

**GRANTEE**

City of Alamogordo  
Entity Name

By: Richard A. Boss  
(Type or Print Name)

Its: Mayor  
(Type or Print Title)

Signature of Official with Authority to Bind Grantee

Date

**DEPARTMENT OF FINANCE AND ADMINISTRATION  
LOCAL GOVERNMENT DIVISION**

Its: Division Director

Signature

Date

**STATE OF NEW MEXICO  
CAPITAL GRANT PROJECT  
Request for Payment Form  
Exhibit 1**

**I. Grantee Information**

(Make sure information is complete & accurate)

A. Grantee: \_\_\_\_\_  
B. Address: \_\_\_\_\_  
(Complete Mailing, including Suite, if applicable)  
\_\_\_\_\_  
City, State, Zip  
C. Phone No: \_\_\_\_\_  
D. Grant No: \_\_\_\_\_  
E. Project Title: \_\_\_\_\_  
F. Grant Expiration Date: \_\_\_\_\_

**II. Payment Computation**

A. Payment Request No. \_\_\_\_\_  
B. Grant Amount: \_\_\_\_\_  
C. AIPP Amount (If Applicable): \_\_\_\_\_  
D. Funds Requested to Date: \_\_\_\_\_  
E. Amount Requested this Payment: \_\_\_\_\_  
F. Reversion Amount (If Applicable): \_\_\_\_\_  
G. Grant Balance: \_\_\_\_\_  
H. ☐ GF ☐ GOB ☐ STB (attach wire if first draw)  
I. ☐ Final Request for Payment (if Applicable)

**III. Fiscal Year :** \_\_\_\_\_

(The State of NM Fiscal Year is July 1, 20XX through June 30, 20XX of the following year)

**IV. ☒ Reporting Certification:** I hereby certify to the best of my knowledge and belief, that database reporting is up to date; to include the accuracy of expenditures and grant balance, project status, project phase, achievements and milestones; and in compliance with Article VIII of the Capital Outlay Grant Agreement.

**V. ☒ Compliance Certification:** Under penalty of law, I hereby certify to the best of my knowledge and belief, the above information is correct; expenditures are properly documented, and are valid expenditures or actual receipts; and that the grant activity is in full compliance with Article IX, Sec. 14 of the New Mexico Constitution known as the "anti donation" clause.

\_\_\_\_\_  
**Grantee Fiscal Officer**  
or **Fiscal Agent** (if applicable)

\_\_\_\_\_  
**Grantee Representative**

\_\_\_\_\_  
Printed Name

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

\_\_\_\_\_  
Printed Name

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

**(State Agency Use Only)**

Vendor Code: \_\_\_\_\_ Fund No.: \_\_\_\_\_ Loc No.: \_\_\_\_\_

I certify that the State Agency financial and vendor file information agree with the above submitted information.

\_\_\_\_\_  
Division Fiscal Officer Date

\_\_\_\_\_  
Division Project Manager Date

**NOTICE OF OBLIGATION TO REIMBURSE GRANTEE  
EXHIBIT 2**

**Notice of Obligation to Reimburse Grantee # \_\_\_\_\_**

DATE: \_\_\_\_\_

TO: Department Representative: \_\_\_\_\_, \_\_\_\_\_

FROM: Grantee Entity: \_\_\_\_\_

Grantee Official Representative: \_\_\_\_\_

SUBJECT: Notice of Obligation to Reimburse Grantee

Grant Number: \_\_\_\_\_

Grant Termination Date: \_\_\_\_\_

As the designated representative of the Department for Grant Agreement number \_\_\_\_\_ entered into between Grantee and the Department, I certify that the Grantee has submitted to the Department the following third party obligation executed, in writing, by the third party's authorized representative:

Vendor or Contractor: \_\_\_\_\_

Third Party Obligation Amount: \_\_\_\_\_

Vendor or Contractor: \_\_\_\_\_

Third Party Obligation Amount: \_\_\_\_\_

I certify that the State is issuing this Notice of Obligation to Reimburse Grantee for permissible purposes within the scope of the project description, subject to all the terms and conditions of the above referenced Grant Agreement.

Grant Amount (Minus AIPP if applicable): \_\_\_\_\_

The Amount of this Notice of Obligation: \_\_\_\_\_

The Total Amount of all Previously Issued Notices of Obligation: \_\_\_\_\_

The Total Amount of all Notices of Obligation to Date: \_\_\_\_\_ **\$ 0.00**

*Note: Contract amounts may exceed the total grant amount, but the invoices paid by the grant will not exceed the grant amount.*

Department Rep. Approver: \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

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

1 Administrative and/or Indirect Cost – generally, the legislation authorizing the issuance of bonds prohibits the use of its proceeds for indirect expenses (e.g. penalty fees or damages other than pay for work performed, attorney fees, and administrative fees). Such use of bond proceeds shall not be allowed unless specifically authorized by statute.

# AGENDA REPORT

## CITY OF ALAMOGORDO

### CITY COMMISSION

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**Meeting Date:** 9/14/2021

**Report Date:** 8/31/2021

**Report No:** 7.

**Submitted By:** Debbie Osborne

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**Subject:** Consider, and act upon, accepting capital outlay grant agreement 21-F2819, in the amount of \$524,000.00, to purchase and install building security measures for APD. (*Richard Denton, Chief of Police*)

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**Fiscal Impact:** \$524,000.00

Amount Budgeted: \$524,000.00

Fund: 024

Additional Fiscal Impact: No additional fiscal impact.

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**Recommendation:** Accept capital outlay grant agreement 21-F2819, in the amount of \$524,000.00.

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**Background:** The City of Alamogordo submitted a capital outlay grant application to purchase and install building security measure, including fencing, paving, lighting, security cameras and key card entry systems, for the Alamogordo Police Department. Commission members had approved this project as priority #1 on the FY2022-2026 ICIP. Subsequently, funding was awarded for the project at the 2021 Legislative Session, signed by the Governor, and grant agreement, 21-F2819, in the amount of \$524,000.00 was issued.



**STATE OF NEW MEXICO  
DEPARTMENT OF FINANCE AND ADMINISTRATION  
FUND 89200 CAPITAL APPROPRIATION PROJECT**

**THIS AGREEMENT** is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the Department of Finance and Administration, State of New Mexico, acting through the Local Government Division, Bataan Memorial Building, Room 202, Santa Fe, New Mexico, 87501, hereinafter called the "Department" or abbreviation such as "DFA/LGD", and the **City of Alamogordo** hereinafter called the "Grantee." This Agreement shall be effective as of the date it is executed by the Department.

**RECITALS**

**WHEREAS**, in the Laws of 2021, Chapter 138, Section 29, Para 260, the Legislature made an appropriation to the Department, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

**WHEREAS**, the Department is granting to Grantee, and the Grantee is accepting the grant of, funds from this appropriation, in accordance with the terms and conditions of this Agreement; and

**WHEREAS**, pursuant to Sections 9-6-5 and 9-6-5.1 NMSA 1978, the Secretary of the Department of Finance and Administration has the power and the authority to (i) maintain long-range estimates and plans for capital projects and develop standards for measuring the need for, and utility of, proposed projects; (ii) contract for, receive and utilize any grants or other financial assistance made available by the United States government or by any other source, public or private; (iii) provide planning and funding assistance to units of local government, council of government organizations, Indian tribal governments situated within New Mexico, and to nonprofit entities having for their purpose local, regional or community betterment; (iv) incident to any such programs, may enter into contracts and agreements with such units of local government, council of government organizations, Indian tribal governments, nonprofit entities and the federal government; and (v) delegate such authority to the Local Government Division as being necessary and appropriate to such delegation;

**AGREEMENT**

**NOW, THEREFORE**, in consideration of the mutual covenants and obligations contained herein, the parties hereby mutually agree as follows:

**ARTICLE I. PROJECT DESCRIPTION, AMOUNT OF GRANT AND REVERSION DATE**

A. The project that is the subject of this Agreement is described as follows:

**21-F2819      \$524,000.00      Appropriation Reversion Date: 30-JUN-23**  
**Laws of 2021, Chapter 138, Section 29, Paragraph 260 Five Hundred Twenty-Four thousand dollars (\$524,000.00) to purchase and install building security measure, including fencing, paving, lighting, security cameras and key card entry systems, for the police department in Alamogordo in Otero County.**

The Grantee's total reimbursements shall not exceed **Five Hundred Twenty-four Thousand Dollars (\$524,000.00)**. (the "Appropriation Amount") minus the allocation for Art in Public Places ("**AIPP**") [1], if applicable Zero dollars (\$0.00) which equals **Five Hundred Twenty-four Thousand dollars (\$524,000.00)** (the "Adjusted Appropriation Amount").

In the event of a conflict among the Appropriation Amount, the Reversion Date, as defined herein and/or the purpose of the Project, as set forth in this Agreement, and the corresponding appropriation language in the laws cited above in this Article I (A), the language of the laws cited herein shall control.

This project is referred to throughout the remainder of this Agreement as the "Project"; the information contained in Article I (A) is referred to collectively throughout the remainder of this Agreement as the "Project Description". The Grantee shall reference the Project's number in all correspondence with and submissions to the Department concerning the Project, including, but not limited to, Requests for Payment and reports.

## **ARTICLE II. LIMITATION ON DEPARTMENT'S OBLIGATION TO MAKE GRANT DISBURSEMENT TO GRANTEE**

A. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Project Description, the Grantee shall only be reimbursed monies for which the Department has issued and the Grantee has received a Notice of Department's Obligation to Reimburse<sup>[2]</sup> Grantee (hereinafter referred to as "Notice of Obligation"). This Grant Agreement and the disbursement of any and all amounts of the above referenced Adjusted Appropriation Amount are expressly conditioned upon the following:

- (i) Irrespective of any Notice of Obligation, the Grantee's expenditures shall be made on or before the Reversion Date and, if applicable, an Early Termination Date (i.e., the goods have been delivered and accepted or the title to the goods has been transferred to the Grantee and/or the services have been rendered for the Grantee); and
- (ii) The total amount received by the Grantee shall not exceed the lesser of: (a) the Adjusted Appropriation Amount identified in Article I(A) herein or (b) the total of all amounts stated in the Notice(s) of Obligation evidencing that the Department has received and accepted the Grantee's Third Party Obligation(s), as defined in subparagraph iii of this Article II(A); and
- (iii) The Grantee's expenditures were made pursuant to the State Procurement Code and execution of binding written obligations or purchase orders with third party contractors or vendors for the provision of services, including professional services, or the purchase of tangible personal property and real property for the Project, hereinafter referred to as "Third Party Obligations"; and
- (iv) The Grantee's submittal of timely Requests for Payment in accordance with the procedures set forth in Article IX of this Agreement; and
- (v) In the event that capital assets acquired with Project funds are to be sold, leased, or licensed to or operated by a private entity, the sale, lease, license, or operating agreement:
  - a. must be approved by the applicable oversight entity (if any) in accordance with law; or
  - b. if no oversight entity is required to approve of the transaction, the Department must approve the transaction as complying with law.

Prior to the sale, lease, license, or operating agreement being approved pursuant to Articles II(A)(v)(a) and II(A)(v)(b) herein, the Department may, in its sole and absolute discretion and unless inconsistent with New Mexico State Board of Finance imposed conditions, reimburse the Grantee for necessary expenditures incurred to develop the Project sufficiently to make the sale, lease, license, or operating agreement commercially feasible, such as plan and design expenditures; and

[1] The AIPP amount is "an amount of money equal to one percent or two hundred thousand dollars (\$200,000), whichever is less, of the amount of money appropriated for new construction or any major renovation exceeding one hundred thousand dollars (\$100,000)." Section 13-4A-4 NMSA 1978.

[2] "Reimburse" as used throughout this Agreement includes Department payments to the Grantee for invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee.

- (vi) The Grantee's submission of documentation of all Third Party Obligations and amendments thereto (including terminations) to the Department and the Department's issuance and the Grantee's receiving of a Notice of Obligation for a particular amount in accordance with the terms of this Agreement shall be governed by the following:
- a. The Grantee shall submit to the Department one copy of all Third Party Obligations and amendments thereto (including terminations) as soon as possible after execution by the Third Party **but prior to execution by the Grantee.**
  - b. Grantee acknowledges and agrees that if it chooses to enter into a Third Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such obligations.
  - c. The Department may, in its sole and absolute discretion, issue to Grantee a Notice of Obligation for the particular amount of that Third Party Obligation that only obligates the Department to reimburse Grantee's expenditures made on or before the Reversion Date or an Early Termination Date. The current Notice of Obligation form is attached to this Agreement as Exhibit 2.
  - d. The date the Department signs the Notice of Obligation is the date that the Department's Notice of Obligation is effective. After that date, the Grantee is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third Party Obligation and request the Third Party to begin work. Payment for any work performed or goods received prior to the effective date of the Notice of Obligation is wholly and solely the obligation of the Grantee.
- B. The Grantee shall implement, in all respects, the Project. The Grantee shall provide all necessary qualified personnel, material, and facilities to implement the Project. The Grantee shall finance its share (if any) of the costs of the Project, including all Project overruns.
- C. Project funds shall not be used for purposes other than those specified in the Project Description.
- D. Unless specifically allowed by law, Project funds cannot be used to reimburse Grantee for indirect Project costs.

### **ARTICLE III. NOTICE PROVISIONS AND GRANTEE AND DEPARTMENT DESIGNATED REPRESENTATIVES**

Whenever written notices, including written decisions, are to be given or received, related to this Agreement, the following provisions shall apply.

The Grantee designates the person(s) listed below, or their successor as their official representative(s) concerning all matters related to this Agreement.

|           |                                            |
|-----------|--------------------------------------------|
| Grantee   | Alamogordo                                 |
| Name      | Maria Herndon                              |
| Title     | Administrative Manager                     |
| Address   | 1376 E. Ninth Street, Alamogordo, NM 88310 |
| Email     | mherndon@ci.alamogordo.nm.us               |
| Telephone | 575-439-4300                               |

The Grantee designates the person(s) listed below, or their successor, as their Fiscal Officer or Fiscal Agent concerning all matters related to this Agreement.

|           |                                            |
|-----------|--------------------------------------------|
| Grantee   | Alamogordo                                 |
| Name      | Debbie Osborne                             |
| Title     | Grant Coordinator                          |
| Address   | 1376 E. Ninth Street, Alamogordo, NM 88310 |
| Email     | dosborne@ci.alamogordo.nm.us               |
| Telephone | 575-439-4257                               |

The Department designates the persons listed below, or their successors, as Points of Contact for matters related to this Agreement.

|            |                                                           |
|------------|-----------------------------------------------------------|
| Department | DFA/Local Government Division                             |
| Name       | David Buchen                                              |
| Title      | Project Manager                                           |
| Address    | Bataan Memorial Bldg. Rm 202, Santa Fe, New Mexico, 87501 |
| Email      | David.Buchen@state.nm.us                                  |
| Telephone  | 505-827-4757                                              |

The Grantee and the Department agree that either party shall send all notices, including written decisions, related to this Agreement to the above named persons by email, or regular mail. In the case of mailings, notices shall be deemed to have been given and received upon the date of the receiving party's actual receipt or five calendar days after mailing, whichever shall first occur. In the case of email transmissions, the notice shall be deemed to have been given and received on the date reflected on the delivery receipt of email.

#### **ARTICLE IV. REVERSION DATE, TERM, DEADLINE TO EXPEND FUNDS**

A. As referenced in Article I (A), the applicable law establishes a date by which Project funds must be expended by Grantee, which is referred to throughout the remainder of this Agreement as the "Reversion Date." Upon being duly executed by both parties, this Agreement shall be effective as of the date of execution by the Department. It shall terminate on **June 30, 2023**, the Reversion Date, unless Terminated Before Reversion Date ("Early Termination") pursuant to Article V herein.

B. The Project's funds must be expended on or before the Reversion Date and, if applicable, Early Termination Date of this Agreement. For purposes of this Agreement, it is not sufficient for the Grantee to encumber the Project funds on its books on or before the Project's Reversion Date or Early Termination Date. Funds are expended and an expenditure has occurred as of the date that a particular quantity of goods are delivered to and received by the Grantee or title to the goods is transferred to the Grantee and/or as of the date particular services are rendered for the Grantee. Funds are **not** expended and an expenditure has **not** occurred as of the date they are encumbered by the Grantee pursuant to a contract or purchase order with a third party.

#### **ARTICLE V. EARLY TERMINATION**

##### **A. Early Termination Before Reversion Date Due to Completion of the Project or Complete Expenditure of the Adjusted Appropriation or Violation of this Agreement**

Early Termination includes:

- (i) Termination due to completion of the Project before the Reversion Date; or
- (ii) Termination due to complete expenditure of the Adjusted Appropriation Amount before the Reversion Date; or
- (iii) Termination for violation of the terms of this Agreement; or
- (iv) Termination for suspected mishandling of public funds, including but not limited to, fraud, waste, abuse, and conflicts of interest.

Either the Department or the Grantee may early terminate this Agreement prior to the Reversion Date by providing the other party with a minimum of fifteen (15) days' advance, written notice of early termination. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V (A).

**B. Early Termination Before Reversion Date Due to Non-Appropriation**

The terms of this Agreement are expressly made contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. Throughout this Agreement the term "non-appropriate" or "non-appropriation" includes the following actions by the New Mexico Legislature: deauthorization, reauthorization or revocation of a prior authorization. The Legislature may choose to non-appropriate the Appropriation referred to in Article I and, if that occurs, the Department shall early terminate this Agreement for non-appropriation by giving the Grantee written notice of such termination, and such termination shall be effective as of the effective date of the law making the non-appropriation. The Department's decision as to whether sufficient appropriations or authorizations are available shall be accepted by the Grantee and shall be final. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V (B).

**C. Limitation on Department's Obligation to Make Grant Disbursements to Grantee in the Event of Early Termination**

In the event of Early Termination of this Agreement by either party, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth Article II.

**ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS**

A. The Department may choose, in its sole and absolute discretion, to provide written notice to the Grantee to suspend entering into new and further obligations. Upon the receipt of such written notice by the Grantee:

- (i) The Grantee shall immediately suspend entering into new or further written obligations with third parties; and
- (ii) The Department will suspend the issuance of any new or further Notice of Obligation under this Agreement; and
- (iii) The Department may direct the Grantee to implement a corrective action plan in accordance with Article VI (D) herein.

B. In the event of Suspension of this Agreement, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth in Article II herein.

C. A suspension of new or further obligations under this Agreement shall remain in effect unless or until the date the Grantee receives written notice given by the Department informing the Grantee that the Suspension has been lifted or that the Agreement has been Early Terminated in accordance with Article V herein. If the Suspension is lifted, the Department will consider further requests for Notice of Obligation.

**D. Corrective Action Plan in the Event of Suspension**

In the event that the Department chooses, in its sole and absolute discretion to direct the Grantee to suspend entering into new or further written obligations with third parties pursuant to Article VI (A), the Department may, but is not obligated to, require the Grantee to develop and implement a written corrective action plan to remedy the grounds for the Suspension. Such corrective action plan must be approved by the Department and be signed by the Grantee. Failure to sign a corrective action plan or meet the terms and deadlines set forth in the signed corrective action plan, is hereby deemed a violation of the terms of this Agreement for purposes of Early Termination, Article V(A)(iii). The corrective action plan is in addition to, and not in lieu of, any other equitable or legal remedy, including but not limited to Early Termination.

## **ARTICLE VII. AMENDMENT**

This Agreement shall not be altered, changed, or amended except by instrument in writing duly executed by both the parties hereto.

## **ARTICLE VIII. REPORTS**

### **A. Database reporting**

The Grantee shall report monthly Project activity by entering such Project information as the Department and the Department of Finance and Administration may require, such information entered directly into a database maintained by the Department of Finance and Administration (<http://cpms.dfa.state.nm.us>). Additionally, the Grantee shall certify on the Request for Payment form (exhibit 1) that updates have been maintained and are current in the database. The Grantee hereby acknowledges that failure to perform and/or certify updates into the database will delay or potentially jeopardize the reimbursement of funds. The Department shall give the Grantee with a minimum of thirty (30) days' advance written notice of any changes to the information the Grantee is required to report.

Monthly reports shall be due on the last day of each month, beginning with the first full month following execution of this Agreement by the Department and ending upon the submission of the final request for reimbursement for the Project.

### **B. Requests for Additional Information/Project Inspection**

During the term of this Agreement and during the period of time during which the Grantee must maintain records pursuant to Article VIII, the Department may:

- (i) request such additional information regarding the Project as it deems necessary; and
- (ii) conduct, at reasonable times and upon reasonable notice, onsite inspections of the Project. Grantee shall respond to such requests for additional information within a reasonable period of time, as established by the Department.

## **ARTICLE IX. REQUEST FOR PAYMENT PROCEDURES AND DEADLINES**

A. The Grantee shall request payment by submitting a Request for Payment, in the form attached hereto as Exhibit 1. Payment requests are subject to the following procedures:

- (i) The Grantee must submit a Request for Payment; and
- (ii) Each Request for Payment must contain proof of payment by the Grantee or liabilities incurred by the Grantee showing that the expenditures are valid or the liabilities incurred by the Grantee in the form of actual unpaid invoices received by the Grantee for services rendered by a third party or items of tangible personal property received by the Grantee for the implementation of the Project; provided, however, that the Grantee may be reimbursed for unpaid liabilities only if the Department, in its sole and absolute discretion, agrees to do so and in accordance with any special conditions imposed by the Department.
- (iii) In cases where the Grantee is submitting a Request for Payment to the Department based upon invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee, the Grantee shall make payment to those contractors or vendors within five (5) business days from the date of receiving reimbursement from the Department or such shorter period of time as the Department may prescribe in writing. The Grantee is required to certify to the Department proof of payment to the third party contractor or vendor within ten (10) business days from the date of receiving reimbursement from the Department.

B. The Grantee must obligate 5% of the Adjusted Appropriation Amount within six months of the acceptance of the grant agreement and must have expended no less than 85% of the Adjusted Appropriation Amount six months prior to the reversion date.



### **C. Deadlines**

Requests for Payments shall be submitted by Grantee to the Department on the earlier of:

- (i) Immediately as they are received by the Grantee but at a minimum of thirty (30) days from when the expenditure was incurred or liability of the Grantee was approved as evidenced by an unpaid invoice received by the Grantee from a third party contractor or vendor; or
- (ii) July 15 of each year for all unreimbursed incurred during the previous fiscal year; or
- (iii) Twenty (20) days from the date of Early Termination; or
- (iv) Twenty (20) days from the reversion date.

D. The Grantee's failure to abide by the requirements set forth in Article II and Article IX herein will result in the denial of its Request for Payment or will delay the processing of Requests for Payment. The Department has the right to reject a payment request for the Project unless and until it is satisfied that the expenditures in the Request for Payment are for permissible purposes within the meaning of the Project Description and that the expenditures and the Grantee are otherwise in compliance with this Agreement, including but not limited to, compliance with the reporting requirements and the requirements set forth in Article II herein to provide Third Party Obligations and the Deadlines set forth in Article IX herein. The Department's ability to reject any Request for Payment is in addition to, and not in lieu of, any other legal or equitable remedy available to the Department due to Grantee's violation of this Agreement.

### **ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS; REPRESENTATIONS AND WARRANTIES**

A. The following general conditions and restrictions are applicable to the Project:

- (i) The Project's funds must be spent in accordance with all applicable state laws, regulations, policies, and guidelines, including, but not limited to, the State Procurement Code (or local procurement ordinance, where applicable).
- (ii) The project must be implemented in accordance with the New Mexico Public Works Minimum Works Act, Section 13-4-10 through 13-4-17 NMSA 1978, as applicable. Every contract or project in excess of sixty thousand dollars (\$60,000) that the Grantee is a party to for construction, alteration, demolition or repair or any combination of these, including painting and decorating, of public buildings, public works or public roads and that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics, shall be based upon the wages and benefits that will be determined by the New Mexico Department of Workforce Solutions to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the locality. Further, every contract or project shall contain a stipulation that the contractor, subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates and fringe benefit rates not less than those determined pursuant to Section 13-4-11 (B) NMSA 1978 to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.
- (iii) The Project may only benefit private entities in accordance with applicable law, including, but not limited to, Article IX, Section 14 of the Constitution of the State of New Mexico, "Anti-Donation Clause."
- (iv) The Grantee shall not for a period of 10 years, from the date of this agreement convert any property acquired, built, renovated, required, designed or developed with the Project's funds to uses other than those specified in the Project Description without the Department's and the Board of Finance's express, advance written approval, which may include requirement to reimburse the State for the cost of the project, transfer proceeds from the disposition of property to the State, or otherwise provide consideration to the State.

- (v) The Grantee shall comply with all federal and state laws, rules and regulations pertaining to equal employment opportunity. In accordance with all such laws, rules and regulations the Grantee agrees to assure that no person shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with Grantee, be excluded from participation in the Project, be denied benefits or otherwise be subject to discrimination under, any activity performed under this Agreement. If Grantee is found to be not in compliance with these requirements during the life of this Agreement, Grantee agrees to take appropriate steps to correct any deficiencies. The Grantee's failure to implement such appropriate steps within a reasonable time constitutes grounds for terminating this Agreement.

B. The Grantee hereby represents and warrants the following:

- (i) The Grantee has the legal authority to receive and expend the Project's funds.
- (ii) This Agreement has been duly authorized by the Grantee, the person executing this Agreement has authority to do so, and, once executed by the Grantee, this Agreement shall constitute a binding obligation of the Grantee, enforceable according to its terms.
- (iii) This Agreement and the Grantee's obligations hereunder do not conflict with any law or ordinance or resolution applicable to the Grantee, the Grantee's charter (if applicable), or any judgment or decree to which the Grantee is subject.
- (iv) The Grantee has independently confirmed that the Project Description, including, but not limited to, the amount and Reversion Date, is consistent with the underlying appropriation in law.
- (v) The Grantee's governing body has duly adopted or passed as an official act a resolution, motion, or similar action authorizing the person identified as the official representative of the Grantee to sign the Agreement and to sign Requests for Payment.
- (vi) The Grantee shall abide by New Mexico laws regarding conflicts of interest, governmental conduct and whistleblower protection. The Grantee specifically agrees that no officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this Grant, during their tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed or goods to be received, pursuant to this Grant. Further, Grantee shall require all of its contractors to incorporate in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.
- (vii) No funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of this or any agency or body in connection with the awarding of any Third Party Obligation and that the Grantee shall require certifying language prohibiting lobbying to be included in the award documents for all subawards, including subcontracts, loans and cooperative agreements. All subrecipients shall be required to certify accordingly.

#### **ARTICLE XI. STRICT ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS; PROJECT RECORDS**

A. The Grantee shall be strictly accountable for receipts and disbursements relating to the Project's funds. The Grantee shall follow generally accepted accounting principles, and, if feasible, maintain a separate bank account or fund with a separate organizational code, for the funds to assure separate budgeting and accounting of the funds.

B. For a period of five (5) years following the Project's completion, the Grantee shall maintain all Project related records, including, but not limited to, all financial records, requests for proposals, invitations to bid, selection and award criteria, contracts and subcontracts, advertisements, minutes of pertinent meetings, as well as records sufficient to fully account for the amount and disposition of the total funds from all sources budgeted for the Project, the purpose for which such funds were used, and such other records as the Department shall prescribe.

C. The Grantee shall make all Project records available to the Department, the Department of Finance and Administration, and the New Mexico State Auditor upon request. With respect to the funds that are the subject of this Agreement, if the State Auditor or the Department of Finance and Administration finds that any or all of these funds were improperly expended, the Grantee may be required to reimburse to the State of New Mexico, to the originating fund, any and all amounts found to be improperly expended.

## **ARTICLE XII. IMPROPERLY REIMBURSED FUNDS**

If the Department determines that part or all of the Appropriation Amount was improperly reimbursed to Grantee, including but not limited to, Project funds reimbursed to Grantee based upon fraud, mismanagement, misrepresentation, misuse, violation of law by the Grantee, or violation of this Agreement, the Grantee shall return such funds to the Department for disposition in accordance with law.

## **ARTICLE XIII. LIABILITY**

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 immunities and limitations of the New Mexico Tort Claims Act.

## **ARTICLE XIV. SCOPE OF AGREEMENT**

This Agreement constitutes the entire and exclusive agreement between the Grantee and Department concerning the subject matter hereof. The Agreement supersedes any and all prior or contemporaneous agreements, understandings, discussions, communications, and representations, written or verbal.

## **ARTICLE XV. REQUIRED NON-APPROPRIATIONS CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT**

The Grantee acknowledges, warrants, and agrees that Grantee shall include a "non-appropriations" clause in all contracts between it and other parties that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement that states:

"The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, the **City of Alamogordo** may immediately terminate this Agreement by giving Contractor written notice of such termination. The **City of Alamogordo's** decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. Contractor hereby waives any rights to assert an impairment of contract claim against the **City of Alamogordo**, the Department of Finance and Administration, Local Government Division (DFA/LGD), or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the **City of Alamogordo** or the Department."

## **ARTICLE XVI. REQUIRED TERMINATION CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT**

Grantee acknowledges, warrants, and agrees that Grantee shall include the following or a termination clause in all contracts that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement:

"This contract is funded in whole or in part by funds made available under DFA/LGD Grant Agreement. Should DFA/LGD early terminate the grant agreement, the **City of Alamogordo** may early terminate this

contract by providing Contractor written notice of such termination. In the event of termination pursuant to this paragraph, the **City of Alamogordo's** only liability shall be to pay Contractor for acceptable goods delivered and services rendered before the termination date."

Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department.

#### **ARTICLE XVII. COMPLIANCE WITH UNIFORM FUNDING CRITERIA**

A. Throughout the term of this Agreement, Grantee shall:

1. submit all reports of annual audits and agreed upon procedures required by Section 12-6-3(A)-(B) NMSA 1978 by the due dates established in 2.2.2 NMAC, reports of which must be a public record pursuant to Section 12-6-5(A) NMSA 1978 within forty-five days of delivery to the State Auditor;
2. have a duly adopted budget for the current fiscal year approved by its budgetary oversight agency (if any);
3. timely submit all required financial reports to its budgetary oversight agency (if any); and
4. have adequate accounting methods and procedures to expend grant funds in accordance with applicable law and account for and safeguard grant funds and assets acquired by grant funds.

B. In the event Grantee fails to comply with the requirements of Paragraph A of this Article XVII, the Department may take one or more of the following actions:

1. suspend new or further obligations pursuant to Article VI(A) of this Agreement;
2. require the Grantee to develop and implement a written corrective action plan pursuant to Article VI(D) of this Agreement to remedy the non-compliance;
3. impose special grant conditions to address the non-compliance by giving the Grantee notice of such special conditions in accordance with Article III of this Agreement; the special conditions shall be binding and effective on the date that notice is deemed to have been given pursuant to Article III; or
4. terminate this Agreement pursuant to Article V (A) of this Agreement.

#### **ARTICLE XVIII. SEVERANCE TAX BOND PROJECT AND GENERAL OBLIGATION BOND PROJECT CLAUSES**

A. Grantee acknowledges and agrees that the underlying appropriation for the Project is a severance tax bond or general obligation bond appropriation, and that the associated bond proceeds are administered by the New Mexico State Board of Finance (SBOF), an entity separate and distinct from the Department. Grantee acknowledges and agrees that (i) it is Grantee's sole and absolute responsibility to determine through SBOF staff what (if any) conditions are currently imposed on the Project; (ii) the Department's failure to inform Grantee of a SBOF imposed condition does not affect the validity or enforceability of the condition; (iii) the SBOF may in the future impose further or different conditions upon the Project; (iv) all SBOF conditions are effective without amendment of this Agreement; (v) all applicable SBOF conditions must be satisfied before the SBOF will release to the Department funds subject to the condition(s); and (vi) the Department's obligation to reimburse Grantee from the Project is contingent upon the then current SBOF conditions being satisfied.

B. Grantee acknowledges and agrees that SBOF may in its sole and absolute discretion remove a project's assigned bond proceeds if the project doesn't proceed sufficiently. Entities must comply with the requirement to encumber five percent (5%) of Project funds within six months of bond issuance as certified by the grantee in the Bond Questionnaire and Certification documents submitted to the SBOF. Failure to comply may result in the bond proceeds reassignment to a new ready project. If this should occur this grant agreement will be suspended until the entity has demonstrated readiness as determined by the SBOF and the Department.

C. Grantee acknowledges and agrees that this agreement is subject to the SBOF's Bond Project Disbursements

rule, NMAC 2.61.6, as may be amended or re-codified. The rule provides definitions and interpretations of grant language for the purpose of determining whether a particular activity is allowable under the authorizing language of the agreement.]

[THIS SPACE LEFT BLANK INTENTIONALLY]

**IN WITNESS WHEREOF**, the parties have duly executed Agreement as of the date of execution by the Department.

**GRANTEE**

City of Alamogordo  
Entity Name

By: Richard A. Boss  
(Type or Print Name)

Its: Mayor  
(Type or Print Title)

Signature of Official with Authority to Bind Grantee

Date

**DEPARTMENT OF FINANCE AND ADMINISTRATION  
LOCAL GOVERNMENT DIVISION**

Its: Division Director

Signature

Date

**STATE OF NEW MEXICO  
CAPITAL GRANT PROJECT  
Request for Payment Form  
Exhibit 1**

**I. Grantee Information**

(Make sure information is complete & accurate)

A. Grantee: \_\_\_\_\_  
B. Address: \_\_\_\_\_  
(Complete Mailing, including Suite, if applicable)  
\_\_\_\_\_  
City, State, Zip  
C. Phone No: \_\_\_\_\_  
D. Grant No: \_\_\_\_\_  
E. Project Title: \_\_\_\_\_  
F. Grant Expiration Date: \_\_\_\_\_

**II. Payment Computation**

A. Payment Request No. \_\_\_\_\_  
B. Grant Amount: \_\_\_\_\_  
C. AIPP Amount (If Applicable): \_\_\_\_\_  
D. Funds Requested to Date: \_\_\_\_\_  
E. Amount Requested this Payment: \_\_\_\_\_  
F. Reversion Amount (If Applicable): \_\_\_\_\_  
G. Grant Balance: \_\_\_\_\_  
H. ☐ GF ☐ GOB ☐ STB (attach wire if first draw)  
I. ☐ Final Request for Payment (if Applicable)

**III. Fiscal Year :** \_\_\_\_\_

(The State of NM Fiscal Year is July 1, 20XX through June 30, 20XX of the following year)

**IV.**



**Reporting Certification:** I hereby certify to the best of my knowledge and belief, that database reporting is up to date; to include the accuracy of expenditures and grant balance, project status, project phase, achievements and milestones; and in compliance with Article VIII of the Capital Outlay Grant Agreement.

**V.**



**Compliance Certification:** Under penalty of law, I hereby certify to the best of my knowledge and belief, the above information is correct; expenditures are properly documented, and are valid expenditures or actual receipts; and that the grant activity is in full compliance with Article IX, Sec. 14 of the New Mexico Constitution known as the "anti donation" clause.

\_\_\_\_\_  
**Grantee Fiscal Officer**  
or **Fiscal Agent** (if applicable)

\_\_\_\_\_  
**Grantee Representative**

\_\_\_\_\_  
Printed Name

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

\_\_\_\_\_  
Printed Name

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

**(State Agency Use Only)**

Vendor Code: \_\_\_\_\_ Fund No.: \_\_\_\_\_ Loc No.: \_\_\_\_\_

I certify that the State Agency financial and vendor file information agree with the above submitted information.

\_\_\_\_\_  
Division Fiscal Officer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Division Project Manager

\_\_\_\_\_  
Date



**NOTICE OF OBLIGATION TO REIMBURSE GRANTEE  
EXHIBIT 2**

**Notice of Obligation to Reimburse Grantee #** \_\_\_\_\_

DATE: \_\_\_\_\_

TO: Department Representative: \_\_\_\_\_, \_\_\_\_\_

FROM: Grantee Entity: \_\_\_\_\_

Grantee Official Representative: \_\_\_\_\_

SUBJECT: Notice of Obligation to Reimburse Grantee

Grant Number: \_\_\_\_\_

Grant Termination Date: \_\_\_\_\_

As the designated representative of the Department for Grant Agreement number \_\_\_\_\_ entered into between Grantee and the Department, I certify that the Grantee has submitted to the Department the following third party obligation executed, in writing, by the third party's authorized representative:

Vendor or Contractor: \_\_\_\_\_

Third Party Obligation Amount: \_\_\_\_\_

Vendor or Contractor: \_\_\_\_\_

Third Party Obligation Amount: \_\_\_\_\_

I certify that the State is issuing this Notice of Obligation to Reimburse Grantee for permissible purposes within the scope of the project description, subject to all the terms and conditions of the above referenced Grant Agreement.

Grant Amount (Minus AIPP if applicable): \_\_\_\_\_

The Amount of this Notice of Obligation: \_\_\_\_\_

The Total Amount of all Previously Issued Notices of Obligation: \_\_\_\_\_

The Total Amount of all Notices of Obligation to Date: \_\_\_\_\_ **\$ 0.00**

*Note: Contract amounts may exceed the total grant amount, but the invoices paid by the grant will not exceed the grant amount.*

Department Rep. Approver: \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

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

1 Administrative and/or Indirect Cost – generally, the legislation authorizing the issuance of bonds prohibits the use of its proceeds for indirect expenses (e.g. penalty fees or damages other than pay for work performed, attorney fees, and administrative fees). Such use of bond proceeds shall not be allowed unless specifically authorized by statute.

# AGENDA REPORT

## CITY OF ALAMOGORDO

### CITY COMMISSION

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**Meeting Date:** 9/14/2021

**Report Date:** 8/31/2021

**Report No:** 8.

**Submitted By:** Debbie Osborne

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**Subject:** Consider, and act upon, accepting capital outlay grant agreement 21-F2818, in the amount of \$490,000.00, to plan, design and renovate Fire Station #7. (*Richard Adler, Fire Chief*)

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**Fiscal Impact:** \$490,000.00

Amount Budgeted: \$490,000.00

Fund: 024

Additional Fiscal Impact: No additional fiscal impact.

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**Recommendation:** Accept capital outlay grant agreement 21-F2818, in the amount of \$490,000.00.

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**Background:** The City of Alamogordo submitted a capital outlay grant application for the Alamogordo Fire Department to plan, design, construct, renovate, purchase, furnish, and equip Fire Station #7 in Alamogordo. Commission members had approved this project as priority #2 on the FY2022-2026 ICIP. Subsequently, funding was awarded for the project at the 2021 Legislative Session, signed by the Governor, and grant agreement, 21-F2818, in the amount of \$490,000.00 was issued.

**STATE OF NEW MEXICO  
DEPARTMENT OF FINANCE AND ADMINISTRATION  
FUND 89200 CAPITAL APPROPRIATION PROJECT**

**THIS AGREEMENT** is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the Department of Finance and Administration, State of New Mexico, acting through the Local Government Division, Bataan Memorial Building, Room 202, Santa Fe, New Mexico, 87501, hereinafter called the "Department" or abbreviation such as "DFA/LGD", and the **City of Alamogordo** hereinafter called the "Grantee." This Agreement shall be effective as of the date it is executed by the Department.

**RECITALS**

**WHEREAS**, in the Laws of 2021, Chapter 138, Section 29, Para 259, the Legislature made an appropriation to the Department, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

**WHEREAS**, the Department is granting to Grantee, and the Grantee is accepting the grant of, funds from this appropriation, in accordance with the terms and conditions of this Agreement; and

**WHEREAS**, pursuant to Sections 9-6-5 and 9-6-5.1 NMSA 1978, the Secretary of the Department of Finance and Administration has the power and the authority to (i) maintain long-range estimates and plans for capital projects and develop standards for measuring the need for, and utility of, proposed projects; (ii) contract for, receive and utilize any grants or other financial assistance made available by the United States government or by any other source, public or private; (iii) provide planning and funding assistance to units of local government, council of government organizations, Indian tribal governments situated within New Mexico, and to nonprofit entities having for their purpose local, regional or community betterment; (iv) incident to any such programs, may enter into contracts and agreements with such units of local government, council of government organizations, Indian tribal governments, nonprofit entities and the federal government; and (v) delegate such authority to the Local Government Division as being necessary and appropriate to such delegation;

**AGREEMENT**

**NOW, THEREFORE**, in consideration of the mutual covenants and obligations contained herein, the parties hereby mutually agree as follows:

**ARTICLE I. PROJECT DESCRIPTION, AMOUNT OF GRANT AND REVERSION DATE**

A. The project that is the subject of this Agreement is described as follows:

**21-F2818      \$490,000.00      Appropriation Reversion Date: 30-JUN-25**  
**Laws of 2021, Chapter 138, Section 29, Paragraph 259 Four hundred ninety thousand dollars (\$490,000.00) to plan, design, construct, renovate, purchase, furnish, and equip fire station number seven in Alamogordo in Otero County.**

The Grantee's total reimbursements shall not exceed Four Hundred Ninety Thousand Dollars (**\$490,000.00**). (the "Appropriation Amount") minus the allocation for Art in Public Places ("**AIPP**") [1], if applicable Forty-Nine Hundred Dollars (\$4,900.00) which equals **Four Hundred Eighty-Five Thousand One Hundred Dollars (\$485,100.00)** (the "Adjusted Appropriation Amount").

In the event of a conflict among the Appropriation Amount, the Reversion Date, as defined herein and/or the purpose of the Project, as set forth in this Agreement, and the corresponding appropriation language in the laws cited above in this Article I (A), the language of the laws cited herein shall control.

This project is referred to throughout the remainder of this Agreement as the "Project"; the information contained in Article I (A) is referred to collectively throughout the remainder of this Agreement as the "Project Description". The Grantee shall reference the Project's number in all correspondence with and submissions to the Department concerning the Project, including, but not limited to, Requests for Payment and reports.

## **ARTICLE II. LIMITATION ON DEPARTMENT'S OBLIGATION TO MAKE GRANT DISBURSEMENT TO GRANTEE**

A. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Project Description, the Grantee shall only be reimbursed monies for which the Department has issued and the Grantee has received a Notice of Department's Obligation to Reimburse<sup>[2]</sup> Grantee (hereinafter referred to as "Notice of Obligation"). This Grant Agreement and the disbursement of any and all amounts of the above referenced Adjusted Appropriation Amount are expressly conditioned upon the following:

- (i) Irrespective of any Notice of Obligation, the Grantee's expenditures shall be made on or before the Reversion Date and, if applicable, an Early Termination Date (i.e., the goods have been delivered and accepted or the title to the goods has been transferred to the Grantee and/or the services have been rendered for the Grantee); and
- (ii) The total amount received by the Grantee shall not exceed the lesser of: (a) the Adjusted Appropriation Amount identified in Article I(A) herein or (b) the total of all amounts stated in the Notice(s) of Obligation evidencing that the Department has received and accepted the Grantee's Third Party Obligation(s), as defined in subparagraph iii of this Article II(A); and
- (iii) The Grantee's expenditures were made pursuant to the State Procurement Code and execution of binding written obligations or purchase orders with third party contractors or vendors for the provision of services, including professional services, or the purchase of tangible personal property and real property for the Project, hereinafter referred to as "Third Party Obligations"; and
- (iv) The Grantee's submittal of timely Requests for Payment in accordance with the procedures set forth in Article IX of this Agreement; and
- (v) In the event that capital assets acquired with Project funds are to be sold, leased, or licensed to or operated by a private entity, the sale, lease, license, or operating agreement:
  - a. must be approved by the applicable oversight entity (if any) in accordance with law; or
  - b. if no oversight entity is required to approve of the transaction, the Department must approve the transaction as complying with law.

Prior to the sale, lease, license, or operating agreement being approved pursuant to Articles II(A)(v)(a) and II(A)(v)(b) herein, the Department may, in its sole and absolute discretion and unless inconsistent with New Mexico State Board of Finance imposed conditions, reimburse the Grantee for necessary expenditures incurred to develop the Project sufficiently to make the sale, lease, license, or operating agreement commercially feasible, such as plan and design expenditures; and

[1] The AIPP amount is "an amount of money equal to one percent or two hundred thousand dollars (\$200,000), whichever is less, of the amount of money appropriated for new construction or any major renovation exceeding one hundred thousand dollars (\$100,000)." Section 13-4A-4 NMSA 1978.

[2] "Reimburse" as used throughout this Agreement includes Department payments to the Grantee for invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee.

- (vi) The Grantee's submission of documentation of all Third Party Obligations and amendments thereto (including terminations) to the Department and the Department's issuance and the Grantee's receiving of a Notice of Obligation for a particular amount in accordance with the terms of this Agreement shall be governed by the following:
- a. The Grantee shall submit to the Department one copy of all Third Party Obligations and amendments thereto (including terminations) as soon as possible after execution by the Third Party **but prior to execution by the Grantee.**
  - b. Grantee acknowledges and agrees that if it chooses to enter into a Third Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such obligations.
  - c. The Department may, in its sole and absolute discretion, issue to Grantee a Notice of Obligation for the particular amount of that Third Party Obligation that only obligates the Department to reimburse Grantee's expenditures made on or before the Reversion Date or an Early Termination Date. The current Notice of Obligation form is attached to this Agreement as Exhibit 2.
  - d. The date the Department signs the Notice of Obligation is the date that the Department's Notice of Obligation is effective. After that date, the Grantee is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third Party Obligation and request the Third Party to begin work. Payment for any work performed or goods received prior to the effective date of the Notice of Obligation is wholly and solely the obligation of the Grantee.
- B. The Grantee shall implement, in all respects, the Project. The Grantee shall provide all necessary qualified personnel, material, and facilities to implement the Project. The Grantee shall finance its share (if any) of the costs of the Project, including all Project overruns.
- C. Project funds shall not be used for purposes other than those specified in the Project Description.
- D. Unless specifically allowed by law, Project funds cannot be used to reimburse Grantee for indirect Project costs.

### **ARTICLE III. NOTICE PROVISIONS AND GRANTEE AND DEPARTMENT DESIGNATED REPRESENTATIVES**

Whenever written notices, including written decisions, are to be given or received, related to this Agreement, the following provisions shall apply.

The Grantee designates the person(s) listed below, or their successor as their official representative(s) concerning all matters related to this Agreement.

|           |                                            |
|-----------|--------------------------------------------|
| Grantee   | Alamogordo                                 |
| Name      | Richard Adler                              |
| Title     | Fire Chief                                 |
| Address   | 1376 E. Ninth Street, Alamogordo, NM 88310 |
| Email     | radler@ci.alamogordo.nm.us                 |
| Telephone | 575-439-4298                               |

The Grantee designates the person(s) listed below, or their successor, as their Fiscal Officer or Fiscal Agent concerning all matters related to this Agreement.

|           |                                            |
|-----------|--------------------------------------------|
| Grantee   | Alamogordo                                 |
| Name      | Debbie Osborne                             |
| Title     | Grant Coordinator                          |
| Address   | 1376 E. Ninth Street, Alamogordo, NM 88310 |
| Email     | dosborne@ci.alamogordo.nm.us               |
| Telephone | 575-439-4257                               |

The Department designates the persons listed below, or their successors, as Points of Contact for matters related to this Agreement.

|            |                                                                                    |
|------------|------------------------------------------------------------------------------------|
| Department | DFA/Local Government Division                                                      |
| Name       | David Buchen                                                                       |
| Title      | Project Manager                                                                    |
| Address    | Bataan Memorial Bldg. Rm 202, Santa Fe, New Mexico, 87501 david.buchen@state.nm.us |
| Email      | David.Buchen@state.nm.us                                                           |
| Telephone  | 505-827-4757                                                                       |

The Grantee and the Department agree that either party shall send all notices, including written decisions, related to this Agreement to the above named persons by email, or regular mail. In the case of mailings, notices shall be deemed to have been given and received upon the date of the receiving party's actual receipt or five calendar days after mailing, whichever shall first occur. In the case of email transmissions, the notice shall be deemed to have been given and received on the date reflected on the delivery receipt of email.

#### **ARTICLE IV. REVERSION DATE, TERM, DEADLINE TO EXPEND FUNDS**

A. As referenced in Article I (A), the applicable law establishes a date by which Project funds must be expended by Grantee, which is referred to throughout the remainder of this Agreement as the "Reversion Date." Upon being duly executed by both parties, this Agreement shall be effective as of the date of execution by the Department. It shall terminate on **June 30, 2025**, the Reversion Date, unless Terminated Before Reversion Date ("Early Termination") pursuant to Article V herein.

B. The Project's funds must be expended on or before the Reversion Date and, if applicable, Early Termination Date of this Agreement. For purposes of this Agreement, it is not sufficient for the Grantee to encumber the Project funds on its books on or before the Project's Reversion Date or Early Termination Date. Funds are expended and an expenditure has occurred as of the date that a particular quantity of goods are delivered to and received by the Grantee or title to the goods is transferred to the Grantee and/or as of the date particular services are rendered for the Grantee. Funds are **not** expended and an expenditure has **not** occurred as of the date they are encumbered by the Grantee pursuant to a contract or purchase order with a third party.

#### **ARTICLE V. EARLY TERMINATION**

##### **A. Early Termination Before Reversion Date Due to Completion of the Project or Complete Expenditure of the Adjusted Appropriation or Violation of this Agreement**

Early Termination includes:

- (i) Termination due to completion of the Project before the Reversion Date; or
- (ii) Termination due to complete expenditure of the Adjusted Appropriation Amount before the Reversion Date; or
- (iii) Termination for violation of the terms of this Agreement; or
- (iv) Termination for suspected mishandling of public funds, including but not limited to, fraud, waste, abuse, and conflicts of interest.

Either the Department or the Grantee may early terminate this Agreement prior to the Reversion Date by providing the other party with a minimum of fifteen (15) days' advance, written notice of early termination. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V (A).

**B. Early Termination Before Reversion Date Due to Non-Appropriation**

The terms of this Agreement are expressly made contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. Throughout this Agreement the term "non-appropriate" or "non-appropriation" includes the following actions by the New Mexico Legislature: deauthorization, reauthorization or revocation of a prior authorization. The Legislature may choose to non-appropriate the Appropriation referred to in Article I and, if that occurs, the Department shall early terminate this Agreement for non-appropriation by giving the Grantee written notice of such termination, and such termination shall be effective as of the effective date of the law making the non-appropriation. The Department's decision as to whether sufficient appropriations or authorizations are available shall be accepted by the Grantee and shall be final. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V (B).

**C. Limitation on Department's Obligation to Make Grant Disbursements to Grantee in the Event of Early Termination**

In the event of Early Termination of this Agreement by either party, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth Article II.

**ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS**

A. The Department may choose, in its sole and absolute discretion, to provide written notice to the Grantee to suspend entering into new and further obligations. Upon the receipt of such written notice by the Grantee:

- (i) The Grantee shall immediately suspend entering into new or further written obligations with third parties; and
- (ii) The Department will suspend the issuance of any new or further Notice of Obligation under this Agreement; and
- (iii) The Department may direct the Grantee to implement a corrective action plan in accordance with Article VI (D) herein.

B. In the event of Suspension of this Agreement, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth in Article II herein.

C. A suspension of new or further obligations under this Agreement shall remain in effect unless or until the date the Grantee receives written notice given by the Department informing the Grantee that the Suspension has been lifted or that the Agreement has been Early Terminated in accordance with Article V herein. If the Suspension is lifted, the Department will consider further requests for Notice of Obligation.

**D. Corrective Action Plan in the Event of Suspension**

In the event that the Department chooses, in its sole and absolute discretion to direct the Grantee to suspend entering into new or further written obligations with third parties pursuant to Article VI (A), the Department may, but is not obligated to, require the Grantee to develop and implement a written corrective action plan to remedy the grounds for the Suspension. Such corrective action plan must be approved by the Department and be signed by the Grantee. Failure to sign a corrective action plan or meet the terms and deadlines set forth in the signed corrective action plan, is hereby deemed a violation of the terms of this Agreement for purposes of Early Termination, Article V(A)(iii). The corrective action plan is in addition to, and not in lieu of, any other equitable or legal remedy, including but not limited to Early Termination.



## **ARTICLE VII. AMENDMENT**

This Agreement shall not be altered, changed, or amended except by instrument in writing duly executed by both the parties hereto.

## **ARTICLE VIII. REPORTS**

### **A. Database reporting**

The Grantee shall report monthly Project activity by entering such Project information as the Department and the Department of Finance and Administration may require, such information entered directly into a database maintained by the Department of Finance and Administration (<http://cpms.dfa.state.nm.us>). Additionally, the Grantee shall certify on the Request for Payment form (exhibit 1) that updates have been maintained and are current in the database. The Grantee hereby acknowledges that failure to perform and/or certify updates into the database will delay or potentially jeopardize the reimbursement of funds. The Department shall give the Grantee with a minimum of thirty (30) days' advance written notice of any changes to the information the Grantee is required to report.

Monthly reports shall be due on the last day of each month, beginning with the first full month following execution of this Agreement by the Department and ending upon the submission of the final request for reimbursement for the Project.

### **B. Requests for Additional Information/Project Inspection**

During the term of this Agreement and during the period of time during which the Grantee must maintain records pursuant to Article VIII, the Department may:

- (i) request such additional information regarding the Project as it deems necessary; and
- (ii) conduct, at reasonable times and upon reasonable notice, onsite inspections of the Project. Grantee shall respond to such requests for additional information within a reasonable period of time, as established by the Department.

## **ARTICLE IX. REQUEST FOR PAYMENT PROCEDURES AND DEADLINES**

A. The Grantee shall request payment by submitting a Request for Payment, in the form attached hereto as Exhibit 1. Payment requests are subject to the following procedures:

- (i) The Grantee must submit a Request for Payment; and
- (ii) Each Request for Payment must contain proof of payment by the Grantee or liabilities incurred by the Grantee showing that the expenditures are valid or the liabilities incurred by the Grantee in the form of actual unpaid invoices received by the Grantee for services rendered by a third party or items of tangible personal property received by the Grantee for the implementation of the Project; provided, however, that the Grantee may be reimbursed for unpaid liabilities only if the Department, in its sole and absolute discretion, agrees to do so and in accordance with any special conditions imposed by the Department.
- (iii) In cases where the Grantee is submitting a Request for Payment to the Department based upon invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee, the Grantee shall make payment to those contractors or vendors within five (5) business days from the date of receiving reimbursement from the Department or such shorter period of time as the Department may prescribe in writing. The Grantee is required to certify to the Department proof of payment to the third party contractor or vendor within ten (10) business days from the date of receiving reimbursement from the Department.

B. The Grantee must obligate 5% of the Adjusted Appropriation Amount within six months of the acceptance of the grant agreement and must have expended no less than 85% of the Adjusted Appropriation Amount six months prior to the reversion date.

### **C. Deadlines**

Requests for Payments shall be submitted by Grantee to the Department on the earlier of:

- (i) Immediately as they are received by the Grantee but at a minimum of thirty (30) days from when the expenditure was incurred or liability of the Grantee was approved as evidenced by an unpaid invoice received by the Grantee from a third party contractor or vendor; or
- (ii) July 15 of each year for all unreimbursed incurred during the previous fiscal year; or
- (iii) Twenty (20) days from the date of Early Termination; or
- (iv) Twenty (20) days from the reversion date.

D. The Grantee's failure to abide by the requirements set forth in Article II and Article IX herein will result in the denial of its Request for Payment or will delay the processing of Requests for Payment. The Department has the right to reject a payment request for the Project unless and until it is satisfied that the expenditures in the Request for Payment are for permissible purposes within the meaning of the Project Description and that the expenditures and the Grantee are otherwise in compliance with this Agreement, including but not limited to, compliance with the reporting requirements and the requirements set forth in Article II herein to provide Third Party Obligations and the Deadlines set forth in Article IX herein. The Department's ability to reject any Request for Payment is in addition to, and not in lieu of, any other legal or equitable remedy available to the Department due to Grantee's violation of this Agreement.

### **ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS; REPRESENTATIONS AND WARRANTIES**

A. The following general conditions and restrictions are applicable to the Project:

- (i) The Project's funds must be spent in accordance with all applicable state laws, regulations, policies, and guidelines, including, but not limited to, the State Procurement Code (or local procurement ordinance, where applicable).
- (ii) The project must be implemented in accordance with the New Mexico Public Works Minimum Works Act, Section 13-4-10 through 13-4-17 NMSA 1978, as applicable. Every contract or project in excess of sixty thousand dollars (\$60,000) that the Grantee is a party to for construction, alteration, demolition or repair or any combination of these, including painting and decorating, of public buildings, public works or public roads and that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics, shall be based upon the wages and benefits that will be determined by the New Mexico Department of Workforce Solutions to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the locality. Further, every contract or project shall contain a stipulation that the contractor, subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates and fringe benefit rates not less than those determined pursuant to Section 13-4-11 (B) NMSA 1978 to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.
- (iii) The Project may only benefit private entities in accordance with applicable law, including, but not limited to, Article IX, Section 14 of the Constitution of the State of New Mexico, "Anti-Donation Clause."
- (iv) The Grantee shall not for a period of 10 years, from the date of this agreement convert any property acquired, built, renovated, required, designed or developed with the Project's funds to uses other than those specified in the Project Description without the Department's and the Board of Finance's express, advance written approval, which may include requirement to reimburse the State for the cost of the project, transfer proceeds from the disposition of property to the State, or otherwise provide consideration to the State.

- (v) The Grantee shall comply with all federal and state laws, rules and regulations pertaining to equal employment opportunity. In accordance with all such laws, rules and regulations the Grantee agrees to assure that no person shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with Grantee, be excluded from participation in the Project, be denied benefits or otherwise be subject to discrimination under, any activity performed under this Agreement. If Grantee is found to be not in compliance with these requirements during the life of this Agreement, Grantee agrees to take appropriate steps to correct any deficiencies. The Grantee's failure to implement such appropriate steps within a reasonable time constitutes grounds for terminating this Agreement.

B. The Grantee hereby represents and warrants the following:

- (i) The Grantee has the legal authority to receive and expend the Project's funds.
- (ii) This Agreement has been duly authorized by the Grantee, the person executing this Agreement has authority to do so, and, once executed by the Grantee, this Agreement shall constitute a binding obligation of the Grantee, enforceable according to its terms.
- (iii) This Agreement and the Grantee's obligations hereunder do not conflict with any law or ordinance or resolution applicable to the Grantee, the Grantee's charter (if applicable), or any judgment or decree to which the Grantee is subject.
- (iv) The Grantee has independently confirmed that the Project Description, including, but not limited to, the amount and Reversion Date, is consistent with the underlying appropriation in law.
- (v) The Grantee's governing body has duly adopted or passed as an official act a resolution, motion, or similar action authorizing the person identified as the official representative of the Grantee to sign the Agreement and to sign Requests for Payment.
- (vi) The Grantee shall abide by New Mexico laws regarding conflicts of interest, governmental conduct and whistleblower protection. The Grantee specifically agrees that no officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this Grant, during their tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed or goods to be received, pursuant to this Grant. Further, Grantee shall require all of its contractors to incorporate in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.
- (vii) No funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of this or any agency or body in connection with the awarding of any Third Party Obligation and that the Grantee shall require certifying language prohibiting lobbying to be included in the award documents for all subawards, including subcontracts, loans and cooperative agreements. All subrecipients shall be required to certify accordingly.

#### **ARTICLE XI. STRICT ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS; PROJECT RECORDS**

A. The Grantee shall be strictly accountable for receipts and disbursements relating to the Project's funds. The Grantee shall follow generally accepted accounting principles, and, if feasible, maintain a separate bank account or fund with a separate organizational code, for the funds to assure separate budgeting and accounting of the funds.

B. For a period of five (5) years following the Project's completion, the Grantee shall maintain all Project related records, including, but not limited to, all financial records, requests for proposals, invitations to bid, selection and award criteria, contracts and subcontracts, advertisements, minutes of pertinent meetings, as well as records sufficient to fully account for the amount and disposition of the total funds from all sources budgeted for the Project, the purpose for which such funds were used, and such other records as the Department shall prescribe.

C. The Grantee shall make all Project records available to the Department, the Department of Finance and Administration, and the New Mexico State Auditor upon request. With respect to the funds that are the subject of this Agreement, if the State Auditor or the Department of Finance and Administration finds that any or all of these funds were improperly expended, the Grantee may be required to reimburse to the State of New Mexico, to the originating fund, any and all amounts found to be improperly expended.

#### **ARTICLE XII. IMPROPERLY REIMBURSED FUNDS**

If the Department determines that part or all of the Appropriation Amount was improperly reimbursed to Grantee, including but not limited to, Project funds reimbursed to Grantee based upon fraud, mismanagement, misrepresentation, misuse, violation of law by the Grantee, or violation of this Agreement, the Grantee shall return such funds to the Department for disposition in accordance with law.

#### **ARTICLE XIII. LIABILITY**

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 immunities and limitations of the New Mexico Tort Claims Act.

#### **ARTICLE XIV. SCOPE OF AGREEMENT**

This Agreement constitutes the entire and exclusive agreement between the Grantee and Department concerning the subject matter hereof. The Agreement supersedes any and all prior or contemporaneous agreements, understandings, discussions, communications, and representations, written or verbal.

#### **ARTICLE XV. REQUIRED NON-APPROPRIATIONS CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT**

The Grantee acknowledges, warrants, and agrees that Grantee shall include a "non-appropriations" clause in all contracts between it and other parties that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement that states:

"The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, the **City of Alamogordo** may immediately terminate this Agreement by giving Contractor written notice of such termination. The **City of Alamogordo's** decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. Contractor hereby waives any rights to assert an impairment of contract claim against the **City of Alamogordo**, the Department of Finance and Administration, Local Government Division (DFA/LGD), or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the **City of Alamogordo** or the Department."

#### **ARTICLE XVI. REQUIRED TERMINATION CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT**

Grantee acknowledges, warrants, and agrees that Grantee shall include the following or a termination clause in all contracts that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement:

"This contract is funded in whole or in part by funds made available under DFA/LGD Grant Agreement. Should DFA/LGD early terminate the grant agreement, the **City of Alamogordo** may early terminate this

contract by providing Contractor written notice of such termination. In the event of termination pursuant to this paragraph, the **City of Alamogordo's** only liability shall be to pay Contractor for acceptable goods delivered and services rendered before the termination date."

Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department.

#### **ARTICLE XVII. COMPLIANCE WITH UNIFORM FUNDING CRITERIA**

A. Throughout the term of this Agreement, Grantee shall:

1. submit all reports of annual audits and agreed upon procedures required by Section 12-6-3(A)-(B) NMSA 1978 by the due dates established in 2.2.2 NMAC, reports of which must be a public record pursuant to Section 12-6-5(A) NMSA 1978 within forty-five days of delivery to the State Auditor;
2. have a duly adopted budget for the current fiscal year approved by its budgetary oversight agency (if any);
3. timely submit all required financial reports to its budgetary oversight agency (if any); and
4. have adequate accounting methods and procedures to expend grant funds in accordance with applicable law and account for and safeguard grant funds and assets acquired by grant funds.

B. In the event Grantee fails to comply with the requirements of Paragraph A of this Article XVII, the Department may take one or more of the following actions:

1. suspend new or further obligations pursuant to Article VI(A) of this Agreement;
2. require the Grantee to develop and implement a written corrective action plan pursuant to Article VI(D) of this Agreement to remedy the non-compliance;
3. impose special grant conditions to address the non-compliance by giving the Grantee notice of such special conditions in accordance with Article III of this Agreement; the special conditions shall be binding and effective on the date that notice is deemed to have been given pursuant to Article III; or
4. terminate this Agreement pursuant to Article V (A) of this Agreement.

#### **ARTICLE XVIII. SEVERANCE TAX BOND PROJECT AND GENERAL OBLIGATION BOND PROJECT CLAUSES**

A. Grantee acknowledges and agrees that the underlying appropriation for the Project is a severance tax bond or general obligation bond appropriation, and that the associated bond proceeds are administered by the New Mexico State Board of Finance (SBOF), an entity separate and distinct from the Department. Grantee acknowledges and agrees that (i) it is Grantee's sole and absolute responsibility to determine through SBOF staff what (if any) conditions are currently imposed on the Project; (ii) the Department's failure to inform Grantee of a SBOF imposed condition does not affect the validity or enforceability of the condition; (iii) the SBOF may in the future impose further or different conditions upon the Project; (iv) all SBOF conditions are effective without amendment of this Agreement; (v) all applicable SBOF conditions must be satisfied before the SBOF will release to the Department funds subject to the condition(s); and (vi) the Department's obligation to reimburse Grantee from the Project is contingent upon the then current SBOF conditions being satisfied.

B. Grantee acknowledges and agrees that SBOF may in its sole and absolute discretion remove a project's assigned bond proceeds if the project doesn't proceed sufficiently. Entities must comply with the requirement to encumber five percent (5%) of Project funds within six months of bond issuance as certified by the grantee in the Bond Questionnaire and Certification documents submitted to the SBOF. Failure to comply may result in the bond proceeds reassignment to a new ready project. If this should occur this grant agreement will be suspended until the entity has demonstrated readiness as determined by the SBOF and the Department.

C. Grantee acknowledges and agrees that this agreement is subject to the SBOF's Bond Project Disbursements

rule, NMAC 2.61.6, as may be amended or re-codified. The rule provides definitions and interpretations of grant language for the purpose of determining whether a particular activity is allowable under the authorizing language of the agreement.]

[THIS SPACE LEFT BLANK INTENTIONALLY]

**IN WITNESS WHEREOF**, the parties have duly executed Agreement as of the date of execution by the Department.

**GRANTEE**

\_\_\_\_\_  
Entity Name

By:\_\_\_\_\_  
(Type or Print Name)

Its:\_\_\_\_\_  
(Type or Print Title)

\_\_\_\_\_  
Signature of Official with Authority to Bind Grantee

\_\_\_\_\_  
Date

**DEPARTMENT OF FINANCE AND ADMINISTRATION  
LOCAL GOVERNMENT DIVISION**

Its: Division Director

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**STATE OF NEW MEXICO  
CAPITAL GRANT PROJECT  
Request for Payment Form  
Exhibit 1**

**I. Grantee Information**

(Make sure information is complete & accurate)

A. Grantee: \_\_\_\_\_  
B. Address: \_\_\_\_\_  
(Complete Mailing, including Suite, if applicable)  
\_\_\_\_\_  
City, State, Zip  
C. Phone No: \_\_\_\_\_  
D. Grant No: \_\_\_\_\_  
E. Project Title: \_\_\_\_\_  
F. Grant Expiration Date: \_\_\_\_\_

**II. Payment Computation**

A. Payment Request No. \_\_\_\_\_  
B. Grant Amount: \_\_\_\_\_  
C. AIPP Amount (If Applicable): \_\_\_\_\_  
D. Funds Requested to Date: \_\_\_\_\_  
E. Amount Requested this Payment: \_\_\_\_\_  
F. Reversion Amount (If Applicable): \_\_\_\_\_  
G. Grant Balance: \_\_\_\_\_  
H. ☐ GF ☐ GOB ☐ STB (attach wire if first draw)  
I. ☐ Final Request for Payment (if Applicable)

**III. Fiscal Year :** \_\_\_\_\_

(The State of NM Fiscal Year is July 1, 20XX through June 30, 20XX of the following year)

**IV. ☒ Reporting Certification:** I hereby certify to the best of my knowledge and belief, that database reporting is up to date; to include the accuracy of expenditures and grant balance, project status, project phase, achievements and milestones; and in compliance with Article VIII of the Capital Outlay Grant Agreement.

**V. ☒ Compliance Certification:** Under penalty of law, I hereby certify to the best of my knowledge and belief, the above information is correct; expenditures are properly documented, and are valid expenditures or actual receipts; and that the grant activity is in full compliance with Article IX, Sec. 14 of the New Mexico Constitution known as the "anti donation" clause.

\_\_\_\_\_  
**Grantee Fiscal Officer**  
or **Fiscal Agent** (if applicable)

\_\_\_\_\_  
**Grantee Representative**

\_\_\_\_\_  
Printed Name

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

\_\_\_\_\_  
Printed Name

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

**(State Agency Use Only)**

Vendor Code: \_\_\_\_\_ Fund No.: \_\_\_\_\_ Loc No.: \_\_\_\_\_

I certify that the State Agency financial and vendor file information agree with the above submitted information.

\_\_\_\_\_  
Division Fiscal Officer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Division Project Manager

\_\_\_\_\_  
Date



**NOTICE OF OBLIGATION TO REIMBURSE GRANTEE  
EXHIBIT 2**

**Notice of Obligation to Reimburse Grantee #** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**TO:** Department Representative: \_\_\_\_\_, \_\_\_\_\_

**FROM:** Grantee Entity: \_\_\_\_\_  
Grantee Official Representative: \_\_\_\_\_

**SUBJECT:** Notice of Obligation to Reimburse Grantee

Grant Number: \_\_\_\_\_

Grant Termination Date: \_\_\_\_\_

As the designated representative of the Department for Grant Agreement number \_\_\_\_\_ entered into between Grantee and the Department, I certify that the Grantee has submitted to the Department the following third party obligation executed, in writing, by the third party's authorized representative:

Vendor or Contractor: \_\_\_\_\_

Third Party Obligation Amount: \_\_\_\_\_

Vendor or Contractor: \_\_\_\_\_

Third Party Obligation Amount: \_\_\_\_\_

I certify that the State is issuing this Notice of Obligation to Reimburse Grantee for permissible purposes within the scope of the project description, subject to all the terms and conditions of the above referenced Grant Agreement.

Grant Amount (Minus AIPP if applicable): \_\_\_\_\_

The Amount of this Notice of Obligation: \_\_\_\_\_

The Total Amount of all Previously Issued Notices of Obligation: \_\_\_\_\_

The Total Amount of all Notices of Obligation to Date: \_\_\_\_\_ **\$ 0.00**

*Note: Contract amounts may exceed the total grant amount, but the invoices paid by the grant will not exceed the grant amount.*

Department Rep. Approver: \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

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

1 Administrative and/or Indirect Cost – generally, the legislation authorizing the issuance of bonds prohibits the use of its proceeds for indirect expenses (e.g. penalty fees or damages other than pay for work performed, attorney fees, and administrative fees). Such use of bond proceeds shall not be allowed unless specifically authorized by statute.

# AGENDA REPORT

## CITY OF ALAMOGORDO

### CITY COMMISSION

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**Meeting Date:** 9/14/2021

**Report Date:** 9/7/2021

**Report No:** 9.

**Submitted By:** Debbie Osborne

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**Subject:** Consider, and act upon, accepting grant agreement from U.S. DOT, FAA, to Alamogordo White Sands Regional Airport, in the amount of \$186,865.00, to design the reconstruction of taxiway A. *(Jim Talbert, Airport Manager)*

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**Fiscal Impact:** \$186,865.00

Amount Budgeted: \$0.00

Fund: 091

Additional Fiscal Impact: Grant award - no additional fiscal impact.

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**Recommendation:** Accept grant offer.

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**Background:** The FAA has offered a 100% grant to fund a PER by Armstrong Airport Consultants for the reconstruction of taxiway A, the main parallel taxiway, at the Alamogordo White Sands Regional Airport. The taxiway is 7,000 feet long by 75 feet wide. The taxiway currently does not connect to the recently extended runway. The taxiway is in good condition despite its age and being past its useful life. The FAA is asking for an estimate as to the cost of a total reconstruction and extending the taxiway to the end of the runway extension completed in 2016. This extension would make the taxiway 9,200 feet long to match the runway length. This PER would include new LED lighting on the taxiway and reconstruction of the connecting taxiways. In order to gain Regional Jet service into our airport, taxiway A has to be moved to a greater separation from the runway to accommodate the larger wingspan of the passenger jets. The FAA is requesting this PER to compare the cost of reconstruction of the existing taxiway with constructing a new one at the greater separation distance. Once the PER is completed, the FAA may do one of three options. Option 1 is to complete the reconstruction of taxiway A in its current location. Option 2 is to remove the current taxiway A and construct a new taxiway at the greater separation distance. Option 3, and yes, the FAA may do this, as they have done this in the past at other airports, reconstruct the current taxiway in its current location then construct a new one at the greater separation distance. No matter which option the FAA chooses to go with, the first necessary step is to complete this PER. The City Staff recommends the City Commission approve this 100% (no city match) FAA sponsored grant.



U.S. Department  
of Transportation  
Federal Aviation  
Administration

Airports Division  
Southwest Region  
Louisiana, New Mexico

10101 Hillwood Parkway  
Fort Worth, TX 76177

August 23, 2021

Mr. Brian Cesar  
3500 Airport Road  
Alamogordo, NM 88310

Dear Mr. Cesar:

We are transmitting to you for execution the Grant Offer for Airport Improvement Program (AIP) Project No. 3-35-0001-032-2021 at Alamogordo-White Sands Regional in Alamogordo, New Mexico Airport. This letter outlines expectations for success. Please read the conditions and assurances carefully.

To properly enter into this agreement, you must do the following:

- a. The governing body must provide authority to execute the grant to the individual signing the grant; i.e. the sponsor's authorized representative.
- b. The sponsor's authorized representative must execute the grant by providing their electronic signature.
- c. Once the sponsor's authorized representative has electronically signed the grant, the sponsor's attorney will automatically be sent via email the grant to provide their electronic signature.
- d. You may not make any modification to the text, terms or conditions of the grant offer.
- e. Following the attorney's action, the executed grant will be automatically sent to all parties as an attachment to an email.

Subject to the requirements in 2 CFR §200.305, each payment request for reimbursement under this grant must be made electronically via the Delphi eInvoicing System. Please see the attached Grant Agreement for more information regarding the use of this System.

The terms and conditions of this agreement require you to complete the project without undue delay. We will be monitoring your progress to ensure proper stewardship of these Federal funds. **We expect you to submit payment requests for reimbursement of allowable incurred project expenses consistent with project progress.** Should you fail to make draws on a regular basis, your grant may be placed in "inactive" status, which will affect your ability to receive future grant offers.

Until the grant is completed and closed, you are responsible for submitting formal reports as follows:

- A signed/dated SF-270 (non-construction projects) or SF-271 or equivalent (construction projects) and SF-425 annually, due 90 days after the end of each federal fiscal year in which this grant is open (due December 31 of each year this grant is open); and
- Performance Reports, which are due within 30 days of the end of a reporting period as follows:
  1. Non-construction project: Due annually at end of the Federal fiscal year.
  2. Construction project: Submit FAA form 5370-1, Construction Progress and Inspection Report at the end of each fiscal quarter.

As a condition of receiving Federal assistance under this award, you must comply with audit requirements as established under 2 CFR part 200. Subpart F requires non-Federal entities that expend \$750,000 or more in Federal awards to conduct a single or program specific audit for that year. Note that this includes Federal expenditures made under other Federal-assistance programs. Please take appropriate and necessary action to assure your organization will comply with applicable audit requirements and standards.

Once the project(s) is completed and all costs are determined, we ask that you close the project without delay and submit the necessary final closeout documentation as required by your Region/Airports District Office.

Jean Gamarra, (817) 222-5522, is the assigned program manager for this grant and is readily available to assist you and your designated representative with the requirements stated herein. We sincerely value your cooperation in these efforts and look forward to working with you to complete this important project.

Sincerely,

  
Lacey D Spriggs (Aug 23, 2021 11:47 CDT)

Lacey D. Spriggs  
Manager, LA/NM ADO



U.S. Department  
of Transportation  
Federal Aviation  
Administration

## FAA Airport Improvement Program (AIP)

### GRANT AGREEMENT

#### Part I - Offer

|                          |                                         |
|--------------------------|-----------------------------------------|
| Federal Award Offer Date | August 23, 2021                         |
| Airport/Planning Area    | Alamogordo-White Sands Regional Airport |
| FY2021 AIP Grant Number  | 3-35-0001-032-2021                      |
| Unique Entity Identifier | 086854825                               |
| TO:                      | City of Alamogordo                      |
|                          | (herein called the "Sponsor")           |

FROM: **The United States of America** (acting through the Federal Aviation Administration, herein called the "FAA")

**WHEREAS**, the Sponsor has submitted to the FAA a Project Application dated June 15, 2021, for a grant of Federal funds for a project at or associated with the Alamogordo-White Sands Regional Airport, which is included as part of this Grant Agreement; and

**WHEREAS**, the FAA has approved a project for the Alamogordo-White Sands Regional Airport (herein called the "Project") consisting of the following:

#### **Reconstruct Taxiway**

which is more fully described in the Project Application.

**NOW THEREFORE**, Pursuant to and for the purpose of carrying out the FAA Reauthorization Act of 2018 (Public Law Number 115-254); Title 49, United States Code (U.S.C.), Chapters 471 and 475; 49 U.S.C. §§ 40101 et seq., and 48103; the Department of Transportation Appropriations Act, 2021 (Public Law 116-260, Division L), as further amended by the American Rescue Plan Act of 2021 (Public Law 117-2); and the representations contained in the Project Application; and in consideration of: (a) the Sponsor's adoption and ratification of the Grant Assurances attached hereto (b) the Sponsor's acceptance of this Offer; and (c) the benefits to accrue to the United States and the public from the accomplishment of the Project and compliance with the Grant Assurance and conditions as herein provided;

**THE FEDERAL AVIATION ADMINISTRATION, FOR AND ON BEHALF OF THE UNITED STATES, HEREBY OFFERS AND AGREES to pay 100 percent of the allowable costs incurred accomplishing the Project as the United States share of the Project.**

**Assistance Listings Number (Formerly CFDA Number): 20.106**

**This Offer is made on and SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:**

### **CONDITIONS**

1. **Maximum Obligation.** The maximum obligation of the United States payable under this Offer is \$186,865.

The following amounts represent a breakdown of the maximum obligation for the purpose of establishing allowable amounts for any future grant amendment, which may increase the foregoing maximum obligation of the United States under the provisions of 49 U.S.C. § 47108(b):

\$ 186,865 for planning

\$ 0 airport development or noise program implementation; and,

\$ 0 for land acquisition.

2. **Grant Performance.** This Grant Agreement is subject to the following Federal award requirements:

- a. Period of Performance:

1. Shall start on the date the Sponsor formally accepts this Agreement and is the date signed by the last Sponsor signatory to the Agreement. The end date of the Period of Performance is 4 years (1,460 calendar days) from the date of acceptance. The Period of Performance end date shall not affect, relieve, or reduce Sponsor obligations and assurances that extend beyond the closeout of this Grant Agreement.
2. Means the total estimated time interval between the start of an initial Federal award and the planned end date, which may include one or more funded portions or budget periods. (2 Code of Federal Regulations (CFR) § 200.1).

- b. Budget Period:

1. For this Grant is 4 years (1,460 calendar days) and follows the same start and end date as the period of performance provided in Paragraph a.1. Pursuant to 2 CFR § 200.403(h), the Sponsor may charge to the Grant only allowable costs incurred during the Budget Period.
2. Means the time interval from the start date of a funded portion of an award to the end date of that funded portion during which the Sponsor is authorized to expend the funds awarded, including any funds carried forward or other revisions pursuant to § 200.308.

- c. Close Out and Termination

1. Unless the FAA authorizes a written extension, the Sponsor must submit all Grant closeout documentation and liquidate (pay-off) all obligations incurred under this award no later than 120 calendar days after the end date of the period of performance. If the Sponsor does not submit all required closeout documentation within this time period, the FAA will proceed to close out the grant within one year of the period of performance end date with the information available at the end of 120 days. (2 CFR § 200.344).

2. The FAA may terminate this Grant, in whole or in part, in accordance with the conditions set forth in 2 CFR § 200.340, or other Federal regulatory or statutory authorities as applicable.
3. **Ineligible or Unallowable Costs.** The Sponsor must not include any costs in the project that the FAA has determined to be ineligible or unallowable.
4. **Indirect Costs - Sponsor.** The Sponsor may charge indirect costs under this award by applying the indirect cost rate identified in the project application as accepted by the FAA, to allowable costs for Sponsor direct salaries and wages.
5. **Determining the Final Federal Share of Costs.** The United States' share of allowable project costs will be made in accordance with 49 U.S.C. § 47109, the regulations, policies, and procedures of the Secretary, and any superseding legislation. Final determination of the United States' share will be based upon the final audit of the total amount of allowable project costs and settlement will be made for any upward or downward adjustments to the Federal share of costs.
6. **Completing the Project Without Delay and in Conformance with Requirements.** The Sponsor must carry out and complete the project without undue delays and in accordance with this Agreement, 49 U.S.C. Chapters 471 and 475, and the regulations, policies, and procedures of the Secretary of Transportation ("Secretary"). Per 2 CFR § 200.308, the Sponsor agrees to report to the FAA any disengagement from performing the project that exceeds three months or a 25 percent reduction in time devoted to the project, and request prior approval from FAA. The report must include a reason for the project stoppage. The Sponsor also agrees to comply with the grant assurances, which are part of this Agreement.
7. **Amendments or Withdrawals before Grant Acceptance.** The FAA reserves the right to amend or withdraw this offer at any time prior to its acceptance by the Sponsor.
8. **Offer Expiration Date.** This offer will expire and the United States will not be obligated to pay any part of the costs of the project unless this offer has been accepted by the Sponsor on or before **September 10, 2021**, or such subsequent date as may be prescribed in writing by the FAA.
9. **Improper Use of Federal Funds.** The Sponsor must take all steps, including litigation if necessary, to recover Federal funds spent fraudulently, wastefully, or in violation of Federal antitrust statutes, or misused in any other manner for any project upon which Federal funds have been expended. For the purposes of this Grant Agreement, the term "Federal funds" means funds however used or dispersed by the Sponsor, that were originally paid pursuant to this or any other Federal grant agreement. The Sponsor must obtain the approval of the Secretary as to any determination of the amount of the Federal share of such funds. The Sponsor must return the recovered Federal share, including funds recovered by settlement, order, or judgment, to the Secretary. The Sponsor must furnish to the Secretary, upon request, all documents and records pertaining to the determination of the amount of the Federal share or to any settlement, litigation, negotiation, or other efforts taken to recover such funds. All settlements or other final positions of the Sponsor, in court or otherwise, involving the recovery of such Federal share require advance approval by the Secretary.
10. **United States Not Liable for Damage or Injury.** The United States is not responsible or liable for damage to property or injury to persons which may arise from, or be incident to, compliance with this Grant Agreement.
11. **System for Award Management (SAM) Registration and Unique Entity Identifier (UEI).**

- a. Requirement for System for Award Management (SAM): Unless the Sponsor is exempted from this requirement under 2 CFR 25.110, the Sponsor must maintain the currency of its information in the SAM until the Sponsor submits the final financial report required under this Grant, or receives the final payment, whichever is later. This requires that the Sponsor review and update the information at least annually after the initial registration and more frequently if required by changes in information or another award term. Additional information about registration procedures may be found at the SAM website (currently at <http://www.sam.gov>).
  - b. Unique entity identifier (UEI) means a 12-character alpha-numeric value used to identify a specific commercial, nonprofit or governmental entity. A UEI may be obtained from SAM.gov at <https://sam.gov/SAM/pages/public/index.jsf>.
12. **Electronic Grant Payment(s).** Unless otherwise directed by the FAA, the Sponsor must make each payment request under this Agreement electronically via the Delphi eInvoicing System for Department of Transportation (DOT) Financial Assistance Awardees.
13. **Informal Letter Amendment of AIP Projects.** If, during the life of the project, the FAA determines that the maximum grant obligation of the United States exceeds the expected needs of the Sponsor by \$25,000 or five percent (5%), whichever is greater, the FAA can issue a letter amendment to the Sponsor unilaterally reducing the maximum obligation.  
  
The FAA can also issue a letter to the Sponsor increasing the maximum obligation if there is an overrun in the total actual eligible and allowable project costs to cover the amount of the overrun provided it will not exceed the statutory limitations for grant amendments. The FAA's authority to increase the maximum obligation does not apply to the "planning" component of Condition No. 1.  
  
The FAA can also issue an informal letter amendment that modifies the grant description to correct administrative errors or to delete work items if the FAA finds it advantageous and in the best interests of the United States.  
  
An informal letter amendment has the same force and effect as a formal grant amendment.
14. **Air and Water Quality.** The Sponsor is required to comply with all applicable air and water quality standards for all projects in this grant. If the Sponsor fails to comply with this requirement, the FAA may suspend, cancel, or terminate this Grant Agreement.
15. **Financial Reporting and Payment Requirements.** The Sponsor will comply with all Federal financial reporting requirements and payment requirements, including submittal of timely and accurate reports.
16. **Buy American.** Unless otherwise approved in advance by the FAA, in accordance with 49 U.S.C. § 50101, the Sponsor will not acquire or permit any contractor or subcontractor to acquire any steel or manufactured products produced outside the United States to be used for any project for which funds are provided under this grant. The Sponsor will include a provision implementing Buy American in every contract and subcontract awarded under this Grant.
17. **Maximum Obligation Increase.** In accordance with 49 U.S.C. § 47108(b)(3), as amended, the maximum obligation of the United States, as stated in Condition No. 1 of this Grant Offer:
  - a. May not be increased for a planning project;
  - b. May be increased by not more than 15 percent for development projects if funds are available;
  - c. May be increased by not more than the greater of the following for a, land project, if funds are available:



1. 15 percent; or
2. 25 percent of the total increase in allowable project costs attributable to acquiring an interest in the land.

If the sponsor requests an increase, any eligible increase in funding will be subject to the United States Government share as provided in 49 U.S.C. § 47110, or other superseding legislation if applicable, for the fiscal year appropriation with which the increase is funded. The FAA is not responsible for the same Federal share provided herein for any amount increased over the initial grant amount. The FAA may adjust the Federal share as applicable through an informal letter of amendment.

**18. Audits for Sponsors.**

PUBLIC SPONSORS. The Sponsor must provide for a Single Audit or program-specific audit in accordance with 2 CFR Part 200. The Sponsor must submit the audit reporting package to the Federal Audit Clearinghouse on the Federal Audit Clearinghouse's Internet Data Entry System at <http://harvester.census.gov/facweb/>. Upon request of the FAA, the Sponsor shall provide one copy of the completed audit to the FAA.

**19. Suspension or Debarment.** When entering into a "covered transaction" as defined by 2 CFR § 180.200, the Sponsor must:

- a. Verify the non-Federal entity is eligible to participate in this Federal program by:
  1. Checking the excluded parties list system (EPLS) as maintained within the System for Award Management (SAM) to determine if the non-Federal entity is excluded or disqualified; or
  2. Collecting a certification statement from the non-Federal entity attesting they are not excluded or disqualified from participating; or
  3. Adding a clause or condition to covered transactions attesting individual or firm are not excluded or disqualified from participating.
- b. Require prime contractors to comply with 2 CFR § 180.330 when entering into lower-tier transactions (e.g. Sub-contracts).
- c. Immediately disclose to the FAA whenever the Sponsor (1) learns they have entered into a covered transaction with an ineligible entity or (2) suspends or debar a contractor, person, or entity.

**20. Ban on Texting While Driving.**

- a. In accordance with Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving, October 1, 2009, and DOT Order 3902.10, Text Messaging While Driving, December 30, 2009, the Sponsor is encouraged to:
  1. Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving when performing any work for, or on behalf of, the Federal government, including work relating to a grant or subgrant.
  2. Conduct workplace safety initiatives in a manner commensurate with the size of the business, such as:
    - a. Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and

- b. Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.
- b. The Sponsor must insert the substance of this clause on banning texting while driving in all subgrants, contracts, and subcontracts funded with this Grant.

**21. Trafficking in Persons.**

- a. You as the recipient, your employees, subrecipients under this Grant, and subrecipients' employees may not –
  - 1. Engage in severe forms of trafficking in persons during the period of time that the Grant and applicable conditions are in effect;
  - 2. Procure a commercial sex act during the period of time that the Grant and applicable conditions are in effect; or
  - 3. Use forced labor in the performance of the Grant or any subgrants under this Grant.
- b. We as the Federal awarding agency, may unilaterally terminate this Grant, without penalty, if you or a subrecipient that is a private entity –
  - 1. Is determined to have violated a prohibition in paragraph a. of this condition; or
  - 2. Has an employee who is determined by the agency official authorized to terminate the Grant to have violated a prohibition in paragraph a. of this condition through conduct that is either –
    - a. Associated with performance under this Grant; or
    - b. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR Part 180, "OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 49 CFR Part 29.
- c. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a. of this condition.
- d. Our right to terminate unilaterally that is described in paragraph a. of this condition:
  - i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
  - ii. Is in addition to all other remedies for noncompliance that are available to us under this Grant Agreement.

**22. AIP Funded Work Included in a PFC Application.** Within 90 days of acceptance of this Grant Agreement, the Sponsor must submit to the FAA an amendment to any approved Passenger Facility Charge (PFC) application that contains an approved PFC project also covered under this Grant Agreement as described in the project application. The airport sponsor may not make any expenditure under this Grant Agreement until project work addressed under this Grant Agreement is removed from an approved PFC application by amendment.

**23. Exhibit "A" Property Map.** The Exhibit "A" Property Map dated April 30, 2005, is incorporated herein by reference or is submitted with the project application and made part of this Grant Agreement.

**24. Employee Protection from Reprisal.**

## a. Prohibition of Reprisals —

1. In accordance with 41 U.S.C. § 4712, an employee of a Sponsor, grantee, subgrantee, contractor, or subcontractor may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body described in sub-paragraph a.2. below, information that the employee reasonably believes is evidence of:
  - i. Gross mismanagement of a Federal grant;
  - ii. Gross waste of Federal funds;
  - iii. An abuse of authority relating to implementation or use of Federal funds;
  - iv. A substantial and specific danger to public health or safety; or
  - v. A violation of law, rule, or regulation related to a Federal grant.
2. Persons and bodies covered. The persons and bodies to which a disclosure by an employee is covered are as follows:
  - i. A member of Congress or a representative of a committee of Congress;
  - ii. An Inspector General;
  - iii. The Government Accountability Office;
  - iv. A Federal employee responsible for contract or grant oversight or management at the relevant agency;
  - v. A court or grand jury;
  - vi. A management official or other employee of the Sponsor, contractor, or subcontractor who has the responsibility to investigate, discover, or address misconduct; or
  - vii. An authorized official of the Department of Justice or other law enforcement agency.
3. Submission of Complaint — A person who believes that they have been subjected to a reprisal prohibited by paragraph a of this grant term may submit a complaint regarding the reprisal to the Office of Inspector General (OIG) for the U.S. Department of Transportation.
4. Time Limitation for Submittal of a Complaint — A complaint may not be brought under this condition more than three years after the date on which the alleged reprisal took place.
5. Required Actions of the Inspector General — Actions, limitations, and exceptions of the Inspector General's office are established under 41 U.S.C. § 4712(b).
6. Assumption of Rights to Civil Remedy — Upon receipt of an explanation of a decision not to conduct or continue an investigation by the Office of Inspector General, the person submitting a complaint assumes the right to a civil remedy under 41 U.S.C. § 4712(c).

**SPECIAL CONDITIONS**

25. **Buy American Executive Orders.** The Sponsor agrees to abide by applicable Executive Orders in effect at the time this Grant Agreement is executed, including Executive Order 14005, Ensuring the Future Is Made in All of America by All of America's Workers.

The Sponsor's acceptance of this Offer and ratification and adoption of the Project Application incorporated herein shall be evidenced by execution of this instrument by the Sponsor, as hereinafter provided, and this Offer and Acceptance shall comprise a Grant Agreement, constituting the contractual obligations and rights of the United States and the Sponsor with respect to the accomplishment of the Project and compliance with the Grant Assurances, terms, and conditions as provided herein. Such Grant Agreement shall become effective upon the Sponsor's acceptance of this Offer.

**Please read the following information:** By signing this document, you are agreeing that you have reviewed the following consumer disclosure information and consent to transact business using electronic communications, to receive notices and disclosures electronically, and to utilize electronic signatures in lieu of using paper documents. You are not required to receive notices and disclosures or sign documents electronically. If you prefer not to do so, you may request to receive paper copies and withdraw your consent at any time.

I declare under penalty of perjury that the foregoing is true and correct.<sup>1</sup>

**UNITED STATES OF AMERICA  
FEDERAL AVIATION ADMINISTRATION**

*Lacey D Spriggs*  
Lacey D Spriggs (Aug 23, 2021 11:47 CDT)

(Signature)

Lacey D Spriggs

(Typed Name)

Manager, LA/NM Airports District Office

(Title of FAA Official)

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<sup>1</sup> Knowingly and willfully providing false information to the Federal government is a violation of 18 U.S.C. Section 1001 (False Statements) and could subject you to fines, imprisonment, or both.

## Part II - Acceptance

The Sponsor does hereby ratify and adopt all assurances, statements, representations, warranties, covenants, and agreements contained in the Project Application and incorporated materials referred to in the foregoing Offer, and does hereby accept this Offer and by such acceptance agrees to comply with all of the Grant Assurances, terms, and conditions in this Offer and in the Project Application.

**Please read the following information:** By signing this document, you are agreeing that you have reviewed the following consumer disclosure information and consent to transact business using electronic communications, to receive notices and disclosures electronically, and to utilize electronic signatures in lieu of using paper documents. You are not required to receive notices and disclosures or sign documents electronically. If you prefer not to do so, you may request to receive paper copies and withdraw your consent at any time.

I declare under penalty of perjury that the foregoing is true and correct.<sup>2</sup>

Dated August 30, 2021

City of Alamogordo

*(Name of Sponsor)*

Brian Cesar

Brian Cesar (Aug 30, 2021 09:14 MDT)

*(Signature of Sponsor's Authorized Official)*

By: Brian Cesar

*(Typed Name of Sponsor's Authorized Official)*

Title: City Manager

*(Title of Sponsor's Authorized Official)*

<sup>2</sup> Knowingly and willfully providing false information to the Federal government is a violation of 18 U.S.C. Section 1001 (False Statements) and could subject you to fines, imprisonment, or both.

**CERTIFICATE OF SPONSOR'S ATTORNEY**

I, Petria Bengoechea, acting as Attorney for the Sponsor do hereby certify:

That in my opinion the Sponsor is empowered to enter into the foregoing Grant Agreement under the laws of the State of New Mexico. Further, I have examined the foregoing Grant Agreement and the actions taken by said Sponsor and Sponsor's official representative, who has been duly authorized to execute this Grant Agreement, which is in all respects due and proper and in accordance with the laws of the said State, the FAA Reauthorization Act of 2018 (Public Law Number 115-254); Title 49 U.S.C., Chapters 471 and 475; 49 U.S.C. §§ 40101, et seq., and 48103; and the Department of Transportation Appropriations Act, 2021 (Public Law 116-260, Division L), as further amended by the American Rescue Plan Act of 2021 (Public Law 117-2). In addition, for grants involving projects to be carried out on property not owned by the Sponsor, there are no legal impediments that will prevent full performance by the Sponsor. Further, it is my opinion that the said Grant Agreement constitutes a legal and binding obligation of the Sponsor in accordance with the terms thereof.

**Please read the following information:** By signing this document, you are agreeing that you have reviewed the following consumer disclosure information and consent to transact business using electronic communications, to receive notices and disclosures electronically, and to utilize electronic signatures in lieu of using paper documents. You are not required to receive notices and disclosures or sign documents electronically. If you prefer not to do so, you may request to receive paper copies and withdraw your consent at any time.

I declare under penalty of perjury that the foregoing is true and correct.<sup>3</sup>

Dated at September 5, 2021

By:  Petria Bengoechea (Sep 5, 2021 09:25 MDT)

(Signature of Sponsor's Attorney)

## **ASSURANCES**

### **PLANNING AGENCY SPONSORS**

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#### **A. General.**

1. These assurances shall be complied with in the performance of grant agreements for airport development, airport planning, and noise compatibility program grants for airport sponsors.
2. These assurances are required to be submitted as part of the project application by sponsors requesting funds under the provisions of Title 49, U.S.C., subtitle VII, as amended. As used herein, the term "public agency sponsor" means a public agency with control of a public-use airport; the term "private sponsor" means a private owner of a public-use airport; and the term "sponsor" includes both public agency sponsors and private sponsors.
3. Upon acceptance of this grant offer by the sponsor, these assurances are incorporated in and become part of this grant agreement.

#### **B. Duration and Applicability.**

The terms, conditions and assurances of this grant agreement shall remain in full force and effect during the life of the project.

#### **C. Sponsor Certification.**

The sponsor hereby assures and certifies, with respect to this grant that:

##### **1. General Federal Requirements**

It will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application, acceptance and use of Federal funds for this project including but not limited to the following:

#### **FEDERAL LEGISLATION**

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- a. Title 49, U.S.C., subtitle VII, as amended.
- b. Federal Fair Labor Standards Act - 29 U.S.C. 201, et seq.
- c. Hatch Act – 5 U.S.C. 1501, et seq.<sup>2</sup>
- d. Rehabilitation Act of 1973 – 29 U.S.C. 794
- e. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin)
- f. Americans with Disabilities Act of 1990, as amended, (42 U.S.C. § 12101 et seq.), prohibits discrimination on the basis of disability
- g. Age Discrimination Act of 1975 - 42 U.S.C. 6101, et seq.
- h. Single Audit Act of 1984 - 31 U.S.C. 7501, et seq.<sup>2</sup>
- i. Drug-Free Workplace Act of 1988 - 41 U.S.C. 702 through 706.

#### **EXECUTIVE ORDERS**

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- a. Executive Order 12372 - Intergovernmental Review of Federal Programs

## **FEDERAL REGULATIONS**

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- a. 2 CFR Part 180 – OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement).
- b. 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. [OMB Circular A-87 Cost Principles Applicable to Grants and Contracts with State and Local Governments, and OMB Circular A-133 - Audits of States, Local Governments, and Non-Profit Organizations].<sup>4, 5, 6</sup>
- c. 2 CFR Part 1200 – Nonprocurement Suspension and Debarment
- d. 14 CFR Part 13 – Investigative and Enforcement Procedures
- e. 14 CFR Part 16 – Rules of Practice For Federally Assisted Airport Enforcement Proceedings.
- f. 28 CFR § 50.3 – U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964.
- g. 49 CFR Part 18 – Uniform administrative requirements for grants and cooperative agreements to state and local governments.<sup>3</sup>
- h. 49 CFR Part 20 – New restrictions on lobbying.
- i. 49 CFR Part 21 – Nondiscrimination in federally-assisted programs of the Department of Transportation - effectuation of Title VI of the Civil Rights Act of 1964.
- j. 49 CFR Part 26 – Participation by Disadvantaged Business Enterprises in Department of Transportation Programs.
- k. 49 CFR Part 28 – Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities conducted by the Department of Transportation.
- l. 49 CFR Part 30 – Denial of public works contracts to suppliers of goods and services of countries that deny procurement market access to U.S. contractors.
- m. 28 CFR Part 35 – Discrimination on the Basis of Disability in State and Local Government Services.
- n. 28 CFR § 50.3 – U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964.
- o. 49 CFR Part 28 – Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities conducted by the Department of Transportation.
- p. 49 CFR Part 32 – Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)
- q. The Federal Funding Accountability and Transparency Act of 2006, as amended (Pub. L. 109-282, as amended by section 6202 of Public Law 110-252).

## **SPECIFIC ASSURANCES**

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Specific assurances required to be included in grant agreements by any of the above laws, regulations or circulars are incorporated by reference in this grant agreement.

## **FOOTNOTES TO ASSURANCE C.1.**

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- <sup>1</sup> These laws do not apply to airport planning sponsors.



- <sup>2</sup> These laws do not apply to private sponsors.
- <sup>3</sup> 49 CFR Part 18 and 2 CFR Part 200 contain requirements for State and Local Governments receiving Federal assistance. Any requirement levied upon State and Local Governments by this regulation and circular shall also be applicable to private sponsors receiving Federal assistance under Title 49, United States Code.
- <sup>4</sup> On December 26, 2013 at 78 FR 78590, the Office of Management and Budget (OMB) issued the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR Part 200. 2 CFR Part 200 replaces and combines the former Uniform Administrative Requirements for Grants (OMB Circular A-102 and Circular A-110 or 2 CFR Part 215 or Circular) as well as the Cost Principles (Circulars A-21 or 2 CFR part 220; Circular A-87 or 2 CFR part 225; and A-122, 2 CFR part 230). Additionally it replaces Circular A-133 guidance on the Single Annual Audit. In accordance with 2 CFR section 200.110, the standards set forth in Part 200 which affect administration of Federal awards issued by Federal agencies become effective once implemented by Federal agencies or when any future amendment to this Part becomes final. Federal agencies, including the Department of Transportation, must implement the policies and procedures applicable to Federal awards by promulgating a regulation to be effective by December 26, 2014 unless different provisions are required by statute or approved by OMB.
- <sup>5</sup> Cost principles established in 2 CFR part 200 subpart E must be used as guidelines for determining the eligibility of specific types of expenses.
- <sup>6</sup> Audit requirements established in 2 CFR part 200 subpart F are the guidelines for audits.

## **2. Responsibility and Authority of the Sponsor.**

It has legal authority to apply for this grant, and to finance and carry out the proposed project; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

## **3. Sponsor Fund Availability.**

It has sufficient funds available for that portion of the project costs which are not to be paid by the United States.

## **4. Preserving Rights and Powers**

It will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in this grant agreement without the written approval of the Secretary

## **5. Consistency with Local Plans.**

The project is reasonably consistent with plans (existing at the time of submission of this application) of public agencies in the planning area.

## **6. Accounting System, Audit, and Record Keeping Requirements**

- a. It shall keep all project accounts and records which fully disclose the amount and disposition by the recipient of the proceeds of this grant, the total cost of the project in connection with which this grant is given or used, and the amount or nature of that portion of the cost of the project supplied by other sources, and such other financial records pertinent to the project. The

accounts and records shall be kept in accordance with an accounting system that will facilitate an effective audit in accordance with the Single Audit Act of 1984.

- b. It shall make available to the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, for the purpose of audit and examination, any books, documents, papers, and records of the recipient that are pertinent to this grant. The Secretary may require that an appropriate audit be conducted by a recipient. In any case in which an independent audit is made of the accounts of a sponsor relating to the disposition of the proceeds of a grant or relating to the project in connection with which this grant was given or used, it shall file a certified copy of such audit with the Comptroller General of the United States not later than six (6) months following the close of the fiscal year for which the audit was made.

## **7. Planning Projects**

In carrying out planning projects:

- a. It will execute the project in accordance with the approved program narrative contained in the project application or with modifications similarly approved.
- b. It will furnish the Secretary with such periodic reports as required pertaining to the planning project and planning work activities.
- c. It will include in all published material prepared in connection with the planning project a notice that the material was prepared under a grant provided by the United States.
- d. It will make such material available for examination by the public, and agrees that no material prepared with funds under this project shall be subject to copyright in the United States or any other country.
- e. It will give the Secretary unrestricted authority to publish, disclose, distribute, and otherwise use any of the material prepared in connection with this grant.
- f. It will grant the Secretary the right to disapprove the Sponsor's employment of specific consultants and their subcontractors to do all or any part of this project as well as the right to disapprove the proposed scope and cost of professional services.
- g. It will grant the Secretary the right to disapprove the use of the sponsor's employees to do all or any part of the project.
- h. It understands and agrees that the Secretary's approval of this project grant or the Secretary's approval of any planning material developed as part of this grant does not mean constitute or imply any assurance or commitment on the part of the Secretary to approve any pending or future application for a Federal airport grant.

## **8. Reports and Inspections.**

It will submit to the Secretary such annual or special financial and operations reports as the Secretary may reasonably request.

## **9. Civil Rights.**

It will promptly take any measures necessary to ensure that no person in the United States shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in any activity conducted with, or benefiting from, funds received from this grant.

- a. Using the definitions of activity, facility and program as found and defined in §§ 21.23 (b) and 21.23 (e) of 49 CFR § 21, the sponsor will facilitate all programs, operate all facilities, or conduct all programs in compliance with all non-discrimination requirements imposed by, or pursuant to these assurances.

- b. Applicability

1. Programs and Activities. If the sponsor has received a grant (or other federal assistance) for any of the sponsor's program or activities, these requirements extend to all of the sponsor's programs and activities.
2. Facilities. Where it receives a grant or other federal financial assistance to construct, expand, renovate, remodel, alter or acquire a facility, or part of a facility, the assurance extends to the entire facility and facilities operated in connection therewith.
3. Real Property. Where the sponsor receives a grant or other Federal financial assistance in the form of, or for the acquisition of real property or an interest in real property, the assurance will extend to rights to space on, over, or under such property.

- c. Duration.

The sponsor agrees that it is obligated to this assurance for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the assurance obligates the sponsor, or any transferee for the longer of the following periods:

1. So long as the airport is used as an airport, or for another purpose involving the provision of similar services or benefits; or
2. So long as the sponsor retains ownership or possession of the property.

- d. Required Solicitation Language.

It will include the following notification in all solicitations for bids, Requests For Proposals for work, or material under this grant agreement and in all proposals for agreements, including airport concessions, regardless of funding source:

"The (**City of Alamogordo**), in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises and airport concession disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award."

- e. Required Contract Provisions.

1. It will insert the non-discrimination contract clauses requiring compliance with the acts and regulations relative to non-discrimination in Federally-assisted programs of the DOT, and incorporating the acts and regulations into the contracts by reference in every contract or agreement subject to the non-discrimination in Federally-assisted programs of the DOT acts and regulations.
2. It will include a list of the pertinent non-discrimination authorities in every contract that is subject to the non-discrimination acts and regulations.

3. It will insert non-discrimination contract clauses as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a sponsor.
4. It will insert non-discrimination contract clauses prohibiting discrimination on the basis of race, color, national origin, creed, sex, age, or handicap as a covenant running with the land, in any future deeds, leases, license, permits, or similar instruments entered into by the sponsor with other parties:
  - a. For the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
  - b. For the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.
- f. It will provide for such methods of administration for the program as are found by the Secretary to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the acts, the regulations, and this assurance.
- g. It agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the acts, the regulations, and this assurance.

#### **10. Engineering and Design Services.**

It will award each contract, or sub-contract for program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design, engineering, surveying, mapping or related services with respect to the project in the same manner as a contract for architectural and engineering services is negotiated under Title IX of the Federal Property and Administrative Services Act of 1949 or an equivalent qualifications-based requirement prescribed for or by the sponsor of the airport.

#### **11. Foreign Market Restrictions.**

It will not allow funds provided under this grant to be used to fund any project which uses any product or service of a foreign country during the period in which such foreign country is listed by the United States Trade Representative as denying fair and equitable market opportunities for products and suppliers of the United States in procurement and construction.

#### **12. Policies, Standards, and Specifications.**

It will carry out the project in accordance with policies, standards, and specifications approved by the Secretary.

#### **13. Disadvantaged Business Enterprises.**

The recipient shall not discriminate on the basis of race, color, national origin or sex in the award and performance of any DOT-assisted contract covered by 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The recipient's DBE program, as required by 49 CFR Parts 26, and as approved by DOT, is incorporated by reference in this agreement. Implementation of these programs is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under Parts 26 and 23 and may, in

appropriate cases, refer the matter for enforcement under 18 U.S.C. § 1001 and/or the Program Fraud Civil Remedies Act of 1936 (31 U.S.C. § 3801).

## **Current FAA Advisory Circulars Required for Use in AIP Funded and PFC Approved Projects**

View the most current versions of FAA's Advisory Circulars (A/Cs) here:

[https://www.faa.gov/regulations\\_policies/advisory\\_circulars/](https://www.faa.gov/regulations_policies/advisory_circulars/)

Airports A/Cs are found in the 150 series. In addition Airspace A/Cs, found in the 70 series, also may apply for certain projects.

# AGENDA REPORT

## CITY OF ALAMOGORDO

### CITY COMMISSION

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**Meeting Date:** 9/14/2021

**Report Date:** 9/7/2021

**Report No:** 10.

**Submitted By:** Britney Courtier

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**Subject:** Consider, and act upon, an agreement with Otero County for Alamo Senior Center services to County residents, the total amount budgeted is \$34,787.50 (\$22,537.50 for home-delivered meals and \$12,250.00 for transportation). (*Magdalena Morales, ASC Manager*).

---

**Fiscal Impact:**

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Total Amount Budgeted: \$34,787.50

Allocation for Home-delivered Meals: \$22,537.50

Allocation for Transportation: \$12,250.00

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**Recommendation:** Approve award of \$34,787.50 for Senior Center services to Otero County residents.

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**Background:** This agreement is a memorandum of understanding to provide home-delivered meals and transportation services to the residents of Otero County who are outside of the Alamogordo City limits. Otero County will award a total of \$34,787.50 (\$22,537.50 for home-delivered meals and \$12,250.00 for transportation.)

ADMINISTRATION  
1101 NEW YORK AVENUE  
ALAMOGORDO, NM 88310



WWW.CO.OTERO.NM.US  
☎ (575) 437-7427  
📠 (575) 443-2928

**Agreement for Community Services Funding  
Between the Board of County Commissioners of  
Otero County, New Mexico,  
and  
City of Alamogordo, Alamo Senior Center – Meals on  
Wheels,  
a Unit of Local Government**

*I. General Provisions.*

**A. Parties.**

The parties to this agreement are:

1. the Board of County Commissioners of Otero County, New Mexico, a political subdivision of the State of New Mexico established under N.M.S.A. 1978, § 4-19-1 (1899), to be referred to as "Otero County," and
2. City of Alamogordo, Alamo Senior Center – Meals on Wheels, a unit of local government, to be referred to as "Recipient."

**B. Parties Includes Officials, Employees, Agents, Etc.**

The parties agree that references to "parties," "Otero County" and "Recipient" shall be understood, where the context is appropriate, as including all their elected officials, directors, officers, employees, agents, contractors, licensees, invitees, and visitors.

**C. Purpose.**

The purpose of this agreement for Otero County to provide community services funding to Recipient so that it may provide community services in Otero County. These services are detailed in Exhibit A, which is attached to this agreement.



## *II. Essential Provisions.*

### **A. Term & Effective Date.**

The term of this agreement shall be a term of at most one year, which shall be Otero County's fiscal year 2022.

This agreement shall commence upon the later of (a) July 1st, 2021, or, (b) the date upon which both parties have signed this agreement.

Even if the commencement date is later than July 1st, 2021, this agreement shall terminate on June 30th, 2022, the last day of Otero County's fiscal year 2022.

This agreement is not renewable.

### **B. Amount of Funding.**

The parties agree that the community services funding shall be **\$22,537.50** for the fiscal year.

### **C. Payments.**

Otero County will make one single payment to Recipient if the funding is \$5,000.00 or less.

Otero County will make quarterly payments to Recipient if the funding is more than \$5,000.00.

Otero County will make payments by check or warrant.

### **D. No Use of County Purchasing Department.**

Recipient may not purchase any goods or services through Otero County or its purchasing department. If Recipient chooses to use funding provided by this agreement for the purchase of goods or services, it shall do so on its own account and with its own personnel.

### **E. Invoices for Payments.**

The Recipient agrees to submit invoices to Otero County for the payments under paragraph II-C. The invoice shall reference this agreement, Recipient's name, the period for which payment is requested, and the mailing address to which payment is to be sent. Invoices shall be sent to:

County of Otero  
Attn: Accounts Payable  
1101 New York Avenue  
Alamogordo, New Mexico 88310

If the Recipient is to receive one payment for the year, the invoice shall be submitted to Otero County during the month of October 2021.

If the Recipient is to receive quarterly payments, the invoices shall be submitted to Otero County during the months of September 2021, December 2021, March 2022, and May 2022.

**F. Report on Activities.**

During the months of September 2021, December 2021, March 2022, and May 2022, Recipient's submission of invoices, it shall submit to Otero County a report describing its use of the funding under this agreement. The report shall be submitted to:

County of Otero  
Attn: County Manager  
1101 New York Avenue  
Alamogordo, New Mexico 88310

Recipient agrees to make its report in a form acceptable to the County Manager and to supply additional information to the County Manager if the County Manager believes the report as submitted is deficient. Such additional information shall be supplied by Recipient within fourteen days of the County Manager's request.

**G. W-9 and Vendor ID Forms.**

Recipient agrees to supply Otero County with both (1) a completed and signed Internal Revenue Service Form W-9, Request for Taxpayer Identification Number and Certification and (2) a completed Otero County vendor identification form.

Recipient agrees that these forms must be supplied annually even if Recipient had completed them in a prior year.

Recipient agrees that no payment can be made by Otero County until these forms are completed and returned to Otero County.

**H. No Invoices Accepted After June 1st, 2022.**

Recipient agrees that no request for payment shall be honored by Otero County if it is received by Otero County after June 1st, 2022.

Recipient understands that Otero County must close its fiscal year on June 30th, 2022, and invoices received late in the fiscal year interfere with Otero County's accounting.

Recipient agrees that any invoices received by Otero County after June 1st, 2022, will be rejected.

Recipient agrees that any balance under this agreement that was unpaid because of a failure to submit timely invoices will be forfeited.

**I. Non-transferrable.**

The parties agree that this agreement is non-transferable and it may not be assigned or sub-contracted to any other party.

Recipient may not pledge the funding provided under this agreement to another party.

**J. Termination.**

The parties agree that this agreement may be terminated at any time.

*III. Compliance with Laws.*

**A. Taxes.**

Recipient acknowledges that it may be subject to Federal, state, and local taxes.

Recipient agrees that it is solely responsible for paying such taxes as well as any interest and penalties that may arise from its failure to do so.

Recipient agrees that upon demand of the County Commissioners, it shall provide evidence that it is current in its payment of Federal, State, and local taxes, including payments required under: (1) the Federal Insurance Contributions Act, 26 U.S.C. § 3101 et seq.; (2) the Unemployment Compensation Law, N.M.S.A. 1978, § 51-1-1 et seq.; (3) the Workers' Compensation Act, N.M.S.A. 1978, § 52-1-1 et seq.; and (4) the Gross Receipts and Compensating Tax Act, N.M.S.A. 1978, § 7-9-1 et seq.

Recipient agrees to indemnify Otero County for any action against the Otero County arising from Recipient's failure to pay any tax or make any payment required by law.

**B. Licenses and Permits.**

Recipient agrees to obtain all licenses or permits necessary for the conduct of its operations and will be solely responsible for the costs of the licenses or permits.

Recipient agrees to indemnify Otero County against any action arising from Recipient's failure to obtain any licenses or permits.

Recipient agrees to provide copies of all its licenses or permits to Otero County Commissioners upon demand.

**C. Corporate Status.**

Recipient warrants that it is either (a) a non-profit corporation in good standing with the New Mexico Secretary of State or (b) a unit of a local government.

If Recipient is a non-profit corporation, Recipient agrees that it shall keep its corporate status in good standing with the New Mexico Secretary of State.

Recipient shall give Otero County notice of any change in its corporate status within fourteen days.

Recipient agrees to provide Otero County a copy of a certificate of good standing upon demand.

**D. Non-profit Tax Status.**

Recipient warrants that it has tax-exempt status with the Internal Revenue Service because it is either (a) a non-profit corporation certified as tax exempt under section 501(c)(3) of the Internal Revenue Code of 1986 or (b) a unit of a local government.

If Recipient has tax-exempt status under section 501(c)(3) of the Internal Revenue Code of 1986, Recipient agrees that it shall keep this status with the Internal Revenue Service.

Recipient shall give Otero County notice of any change in its tax-exempt status under the Internal Revenue Code of 1986 within fourteen days.

Recipient agrees to provide Otero County proof of its tax status upon demand.

Recipient agrees to provide Otero County with a copy of its Internal Revenue Service Form 990 or audited financial statements upon demand.

**E. Anti-discrimination laws.**

Recipient agrees that it shall comply with all Federal, state, and local anti-discrimination laws, including:

- 1) the Civil Rights Act of 1964, Pub. L. 88-352, 78 Stat. 741;
- 2) the Age Discrimination in Employment Act of 1967, Pub. L. 90-202, 81 Stat. 602;
- 3) the Rehabilitation Act of 1973, Pub. L. 93-112, 87 Stat. 355;
- 4) the Older Americans Amendments Act of 1975, Pub. L. 94-135, 89 Stat. 713;
- 5) the Americans with Disabilities Act of 1990, Pub. L. 101-336, 104 Stat. 327;
- 6) the Civil Rights Act of 1991, Pub. L. 102-166, 105 Stat. 1071;
- 7) the ADA Amendments Act of 2008, Pub. L. 110-325, 122 Stat. 3553;
- 8) the Human Rights Act, N.M.S.A. 1978, § 28-1-1 et seq.; and
- 9) the Fair Pay for Women Act, N.M.S.A. 1978, § 28-23-1 et seq.

**F. Federal, State, and Local Laws.**

Recipient acknowledges that it is subject to Federal, state, and local laws and will comply with them.

Recipient agrees that will indemnify Otero County for any violation of Federal, state, or local law committed by it.

*IV. Contract Interpretation Provisions.*

**A. Entire Agreement.**

The parties agree that this document constitutes the entire agreement between them and any prior agreements or understandings between them have been merged into this document.

**B. Amendments.**

The parties agree that amendments to this agreement shall be done in writing and signed by representatives of them in the same manner that this contract was executed.

**C. Severability.**

The parties agree that if any part of this agreement is found to be unenforceable under present laws or those enacted during the term of this agreement, then the illegal parts of this agreement shall be severed from the agreement and the remaining parts shall continue in force.

**D. Waivers.**

No waiver or any breach or default by Recipient shall constitute a waiver of any subsequent default or breach by it.

**E. Choice of Law.**

The parties agree that the laws of the State of New Mexico shall govern the interpretation of this agreement.

**F. Forum-Selection.**

The parties agree that the exclusive forum for disputes under this agreement shall be the Twelfth Judicial District Court of the State of New Mexico sitting in Otero County.

If the Twelfth Judicial District Court finds that the amount in question in the suit is below its jurisdictional limits, the parties agree that the exclusive forum for disputes shall lie instead with the Otero County Magistrate Court.

**G. Submission to Jurisdiction.**

The parties agree to submit to the jurisdiction of both the Twelfth Judicial District Court and the Otero County Magistrate Court.

**H. Federal Court.**

The parties hereby waive their rights to file in or remove to Federal court any suit brought under this agreement.

**I. Running of Time.**

If the deadline for any act required under this agreement falls upon a Saturday, Sunday, legal holiday, or other day that the Otero County offices are closed, then the act shall be timely if done on the next weekday that Otero County offices are open.

**J. Non-appropriation.**

If the performance of Otero County is contingent upon sufficient appropriations and authorizations being made by the Legislature of New Mexico and sufficient appropriations and authorizations are not made by the Legislature of New Mexico, this agreement shall terminate upon written notice being provided by the Otero County to Recipient. Otero County's decision as to whether sufficient appropriations are available shall be accepted by Recipient and shall be final.

**J. Status of Recipient.**

Recipient agrees that it is an independent contractor of Otero County.

Recipient agrees that none of its employees or volunteers are employees of Otero County and therefore they shall not be entitled to any salary or benefits from Otero County.

**K. Notices.**

The parties agree to make any notices required under this agreement in writing. Any notices declaring a default or terminating this agreement shall be sent to the parties at the addresses below by the U.S. Postal Service or commercial carrier using a method of delivery that requires the addressee to sign for the item. Examples of such methods are certified mail, registered mail, and express mail.

Notices shall be sent to Otero County as follows:

County of Otero  
Attn: County Manager  
Otero County Administration Building  
1101 New York Avenue  
Alamogordo, New Mexico 88310

Notices shall be sent to Recipient as follows:

City of Alamogordo  
Attn: Program Director  
Alamo Senior Center – Meals on Wheels  
2201 Puerto Rico Avenue  
Alamogordo, New Mexico 88310

**OTERO COUNTY, NEW MEXICO**

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

Pamela Heltner  
County Manager

Attest: \_\_\_\_\_ (SEAL)  
Robyn Holmes  
Otero County Clerk

**CITY OF ALAMOGORDO, ALAMO SENIOR CENTER – MEALS ON  
WHEELS, a unit of local government**

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

Authorized Representative

## **Exhibit A**

Recipient agrees to provide community services as follows:

(See Attached Pages)



Alamo Senior Center Proposal  
Meals on Wheels/La Luz Residents

County of Otero  
2021/2022 Program Services

Agency: City of Alamogordo, Alamo Senior Center  
Address: 2201 Puerto Rico Avenue  
City, State: Alamogordo, NM 88310  
Telephone: (575) 439-4150  
Fax: (575) 439-4160  
E-mail: [mmorales@ci.alamogordo.nm.us](mailto:mmorales@ci.alamogordo.nm.us)

Agency: City of Alamogordo  
Program Director: Magdalena Morales  
Address: 2201 Puerto Rico Avenue  
City, State: Alamogordo, NM 88310  
Telephone: (575) 439-4150  
Fax: (575) 439-4160  
E-mail: [mmorales@ci.alamogordo.nm.us](mailto:mmorales@ci.alamogordo.nm.us)

Government Official: Mayor Richard Boss, City of Alamogordo  
Address: 1376 E. 9<sup>th</sup> Street  
City, State: Alamogordo, NM 88310  
Telephone: (575) 214-0024  
E-Mail: [rboos@ci.alamogordo.nm.us](mailto:rboos@ci.alamogordo.nm.us)

Amount requested for FY 2021-2022: \$22,537.50

First time funding applicant for FY 2020-2021? No

Amount received for the last two (2) years:

|           |              |
|-----------|--------------|
| 2019/2020 | \$ 30,050.00 |
| 2020/2021 | \$ 15,025.00 |

Signature of Official authorizing funding application:

  
\_\_\_\_\_  
City of Alamogordo  
Brian Cesar, City Manager

  
\_\_\_\_\_  
Dated

## **I. Proposal Summary**

The City of Alamogordo (COA) provides home delivered meals (HDM) to homebound senior citizens aged 60+ years who live outside the Alamogordo city limits, in the La Luz area south of Alamogordo. Two meals per day are delivered weekdays, to 18 individuals, in quantities sufficient for meals all seven days of the week. As the population of Otero County continues to age, we foresee an increasing trend in the number of Seniors in need of home-delivered meals. The funds requested are to reimburse the City of Alamogordo for services provided to Otero County residents who live outside the Alamogordo city limits. Therefore, the Alamo Senior Center hereby requests \$22,537.50 for FY 2021-2022. Please note that this request is midway between our FY2019-2020 request and our FY2020-2021 request (which was a 50% reduction from FY2019-2020). This is because demand for home-delivered meals has not decreased due the pandemic.

## **II. Introduction of the organization**

The mission of the Alamo Senior Center (ASC) is to provide community services for senior citizens aged 60 years or more plus their spouses regardless of age. Our Center is a social environment that provides education, nutrition, recreation, entertainment and support for senior citizens in Alamogordo and environs. Even during the Covid19 pandemic, our seniors have the opportunity to socialize with us and their friends from the socially distant safety of their cars while they wait in line for our drive-through lunch-line. The overarching goal is to provide opportunities for all seniors to maintain a vital role in life during aging that is full of dignity and respect.

Otero County funded the ASC \$30,050.00 for FY 2019-2020. During that fiscal year, we successfully provided 286 seniors with 37,045 Home-delivered meals. Of those, 12 seniors living in La Luz received 1871 meals.

Otero County funded us \$15,025.00 for FY 2020-2021. From 1 July 2020 through 31 Dec 2020, we successfully provided 187 seniors with 17,853 home-delivered meals. Of these, 12 seniors living in La Luz received 856 meals for the first half of the fiscal year.

## **III. Assessment of Needs**

This program was begun in 1974 by a group of Seniors who approached the Alamogordo City Commission to request funding for a Senior Center. They discovered that many retired seniors were not even bothering to get dressed for the day, because they felt unneeded, unwanted and alone. The City initiated our program by providing funding, along with Federal and State funding that was also available at that time. The goal of the Meals on Wheels program is to keep Seniors in their own homes for as long as possible by providing nutritional support to those Seniors unable to prepare meals for themselves. Many Seniors will die in their homes, which is far and away their preference, as opposed to being placed in a nursing home. According to the U.S. Census Bureau 2019 estimates, 17.3% of Otero County residents are aged 65 years or more and 20.1% of the population lives in poverty. Compared to the 2010 census, this represents a 2.6% increase in 65+ year olds and a 0.1% increase in poverty. Due to the high demand for this program, we have had to make some hard decisions about who is eligible for the program and how many participants we

Alamo Senior Center Proposal  
Meals on Wheels/La Luz Residents

can realistically support, given our limited financial and personnel resources. We have not had to turn anyone away from our program. However, in order to provide greater quantity of services that are in high demand during normal non-Covid pandemic times, we may sometimes reduce services that have a lower priority.

**IV. Goals and Objectives:**

In accordance with the Older Americans Act, our overall goal is to provide community social services for older persons in Alamogordo and Otero County. This includes providing nutritional support to help keep Seniors in their own homes for as long as possible. Our specific objective with the Home-Delivered Meals program is to deliver hot meals on a daily basis to seniors unable to cook for themselves. Inability to prepare meals can occur with seniors who are bedridden, recovering from surgery, cannot stand long enough to cook or are unable to leave their homes for groceries, and who have no one—whether friends, neighbors, relatives or home assistants—to prepare meals for them. All meals are planned to meet 1/3 of the daily RDA requirements. We also offer a breakfast meal that the homebound individual may receive if they so choose. Together, these two meals provide 2/3 of the daily nutritional requirements. For those who are alone on weekends, we also offer a frozen meal. The Home-Delivered Meals program is open to all homebound seniors 60+ years of age who have no one to prepare a meal for them. However, due to our resource limitations, we target low income and minority groups who fit those criteria. We are sponsored by the City of Alamogordo for City residents and have a contract with Otero County to provide services to La Luz. The Home-Delivered Meals Program operates five days per week, with weekend meals delivered on Fridays. The Kitchen Staff begin their day at 6:00 a.m. to prepare an average of 393 meals daily (261 curbside delivery plus 132 home-delivered meals) for all of our clients. Homebound seniors can receive seven days' worth of meals and breakfasts that are prepared by Kitchen staff and delivered by HDM staff and volunteers. Federal guidelines require that HDM services must be available by donation to all eligible clients. Our suggested donation is \$2.50 per lunch meal and \$1.25 per breakfast meal.

**V: Evaluation**

Each service provided by the ASC is tracked by units, and our Home-delivered Meals program is based on one unit per meal. This is done in order for us to receive State and Federal reimbursement funding. We track the number of units of service delivered in the Social Assistance & Management System (SAMS) on-line database. We will continue to use this well-established reporting process for Otero County. In addition, we are assessed annually by the NM Area Agency on Aging (NM-AAA), which reviews compliance of policies and procedures related to the services delivered by their client institutions including the ASC. The Home Services Supervisor is tasked with monitoring all units of service that are reported to State authorities.

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**Agreement for Community Services Funding  
Between the Board of County Commissioners of  
Otero County, New Mexico,  
and  
City of Alamogordo, Alamo Senior Center –  
Transportation,  
a Unit of Local Government**

*I. General Provisions.*

**A. Parties.**

The parties to this agreement are:

1. the Board of County Commissioners of Otero County, New Mexico, a political subdivision of the State of New Mexico established under N.M.S.A. 1978, § 4-19-1 (1899), to be referred to as "Otero County," and
2. City of Alamogordo, Alamo Senior Center – Transportation, a unit of local government, to be referred to as "Recipient."

**B. Parties Includes Officials, Employees, Agents, Etc.**

The parties agree that references to "parties," "Otero County" and "Recipient" shall be understood, where the context is appropriate, as including all their elected officials, directors, officers, employees, agents, contractors, licensees, invitees, and visitors.

**C. Purpose.**

The purpose of this agreement for Otero County to provide community services funding to Recipient so that it may provide community services in Otero County. These services are detailed in Exhibit A, which is attached to this agreement.

## *II. Essential Provisions.*

### **A. Term & Effective Date.**

The term of this agreement shall be a term of at most one year, which shall be Otero County's fiscal year 2022.

This agreement shall commence upon the later of (a) July 1st, 2021, or, (b) the date upon which both parties have signed this agreement.

Even if the commencement date is later than July 1st, 2021, this agreement shall terminate on June 30th, 2022, the last day of Otero County's fiscal year 2022.

This agreement is not renewable.

### **B. Amount of Funding.**

The parties agree that the community services funding shall be **\$12,250.00** for the fiscal year.

### **C. Payments.**

Otero County will make one single payment to Recipient if the funding is \$5,000.00 or less.

Otero County will make quarterly payments to Recipient if the funding is more than \$5,000.00.

Otero County will make payments by check or warrant.

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Recipient may not purchase any goods or services through Otero County or its purchasing department. If Recipient chooses to use funding provided by this agreement for the purchase of goods or services, it shall do so on its own account and with its own personnel.

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Recipient agrees to make its report in a form acceptable to the County Manager and to supply additional information to the County Manager if the County Manager believes the report as submitted is deficient. Such additional information shall be supplied by Recipient within fourteen days of the County Manager's request.

**G. W-9 and Vendor ID Forms.**

Recipient agrees to supply Otero County with both (1) a completed and signed Internal Revenue Service Form W-9, Request for Taxpayer Identification Number and Certification and (2) a completed Otero County vendor identification form.

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Recipient agrees that no payment can be made by Otero County until these forms are completed and returned to Otero County.

**H. No Invoices Accepted After June 1st, 2022.**

Recipient agrees that no request for payment shall be honored by Otero County if it is received by Otero County after June 1st, 2022.

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The parties agree that this agreement is non-transferable and it may not be assigned or sub-contracted to any other party.

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The parties agree that this agreement may be terminated at any time.

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**A. Taxes.**

Recipient acknowledges that it may be subject to Federal, state, and local taxes.

Recipient agrees that it is solely responsible for paying such taxes as well as any interest and penalties that may arise from its failure to do so.

Recipient agrees that upon demand of the County Commissioners, it shall provide evidence that it is current in its payment of Federal, State, and local taxes, including payments required under: (1) the Federal Insurance Contributions Act, 26 U.S.C. § 3101 et seq.; (2) the Unemployment Compensation Law, N.M.S.A. 1978, § 51-1-1 et seq.; (3) the Workers' Compensation Act, N.M.S.A. 1978, § 52-1-1 et seq.; and (4) the Gross Receipts and Compensating Tax Act, N.M.S.A. 1978, § 7-9-1 et seq.

Recipient agrees to indemnify Otero County for any action against the Otero County arising from Recipient's failure to pay any tax or make any payment required by law.

**B. Licenses and Permits.**

Recipient agrees to obtain all licenses or permits necessary for the conduct of its operations and will be solely responsible for the costs of the licenses or permits.

Recipient agrees to indemnify Otero County against any action arising from Recipient's failure to obtain any licenses or permits.

Recipient agrees to provide copies of all its licenses or permits to Otero County Commissioners upon demand.

**C. Corporate Status.**

Recipient warrants that it is either (a) a non-profit corporation in good standing with the New Mexico Secretary of State or (b) a unit of a local government.

If Recipient is a non-profit corporation, Recipient agrees that it shall keep its corporate status in good standing with the New Mexico Secretary of State.

Recipient shall give Otero County notice of any change in its corporate status within fourteen days.

Recipient agrees to provide Otero County a copy of a certificate of good standing upon demand.

**D. Non-profit Tax Status.**

Recipient warrants that it has tax-exempt status with the Internal Revenue Service because it is either (a) a non-profit corporation certified as tax exempt under section 501(c)(3) of the Internal Revenue Code of 1986 or (b) a unit of a local government.

If Recipient has tax-exempt status under section 501(c)(3) of the Internal Revenue Code of 1986, Recipient agrees that it shall keep this status with the Internal Revenue Service.

Recipient shall give Otero County notice of any change in its tax-exempt status under the Internal Revenue Code of 1986 within fourteen days.

Recipient agrees to provide Otero County proof of its tax status upon demand.

Recipient agrees to provide Otero County with a copy of its Internal Revenue Service Form 990 or audited financial statements upon demand.

**E. Anti-discrimination laws.**

Recipient agrees that it shall comply with all Federal, state, and local anti-discrimination laws, including:

- 1) the Civil Rights Act of 1964, Pub. L. 88-352, 78 Stat. 741;
- 2) the Age Discrimination in Employment Act of 1967, Pub. L. 90-202, 81 Stat. 602;
- 3) the Rehabilitation Act of 1973, Pub. L. 93-112, 87 Stat. 355;
- 4) the Older Americans Amendments Act of 1975, Pub. L. 94-135, 89 Stat. 713;
- 5) the Americans with Disabilities Act of 1990, Pub. L. 101-336, 104 Stat. 327;
- 6) the Civil Rights Act of 1991, Pub. L. 102-166, 105 Stat. 1071;
- 7) the ADA Amendments Act of 2008, Pub. L. 110-325, 122 Stat. 3553;
- 8) the Human Rights Act, N.M.S.A. 1978, § 28-1-1 et seq.; and
- 9) the Fair Pay for Women Act, N.M.S.A. 1978, § 28-23-1 et seq.



**F. Federal, State, and Local Laws.**

Recipient acknowledges that it is subject to Federal, state, and local laws and will comply with them.

Recipient agrees that will indemnify Otero County for any violation of Federal, state, or local law committed by it.

*IV. Contract Interpretation Provisions.*

**A. Entire Agreement.**

The parties agree that this document constitutes the entire agreement between them and any prior agreements or understandings between them have been merged into this document.

**B. Amendments.**

The parties agree that amendments to this agreement shall be done in writing and signed by representatives of them in the same manner that this contract was executed.

**C. Severability.**

The parties agree that if any part of this agreement is found to be unenforceable under present laws or those enacted during the term of this agreement, then the illegal parts of this agreement shall be severed from the agreement and the remaining parts shall continue in force.

**D. Waivers.**

No waiver or any breach or default by Recipient shall constitute a waiver of any subsequent default or breach by it.

**E. Choice of Law.**

The parties agree that the laws of the State of New Mexico shall govern the interpretation of this agreement.

**F. Forum-Selection.**

The parties agree that the exclusive forum for disputes under this agreement shall be the Twelfth Judicial District Court of the State of New Mexico sitting in Otero County.

If the Twelfth Judicial District Court finds that the amount in question in the suit is below its jurisdictional limits, the parties agree that the exclusive forum for disputes shall lie instead with the Otero County Magistrate Court.

**G. Submission to Jurisdiction.**

The parties agree to submit to the jurisdiction of both the Twelfth Judicial District Court and the Otero County Magistrate Court.

**H. Federal Court.**

The parties hereby waive their rights to file in or remove to Federal court any suit brought under this agreement.

**I. Running of Time.**

If the deadline for any act required under this agreement falls upon a Saturday, Sunday, legal holiday, or other day that the Otero County offices are closed, then the act shall be timely if done on the next weekday that Otero County offices are open.

**J. Non-appropriation.**

If the performance of Otero County is contingent upon sufficient appropriations and authorizations being made by the Legislature of New Mexico and sufficient appropriations and authorizations are not made by the Legislature of New Mexico, this agreement shall terminate upon written notice being provided by the Otero County to Recipient. Otero County's decision as to whether sufficient appropriations are available shall be accepted by Recipient and shall be final.

**J. Status of Recipient.**

Recipient agrees that it is an independent contractor of Otero County.

Recipient agrees that none of its employees or volunteers are employees of Otero County and therefore they shall not be entitled to any salary or benefits from Otero County.

**K. Notices.**

The parties agree to make any notices required under this agreement in writing. Any notices declaring a default or terminating this agreement shall be sent to the parties at the addresses below by the U.S. Postal Service or commercial carrier using a method of delivery that requires the addressee to sign for the item. Examples of such methods are certified mail, registered mail, and express mail.

Notices shall be sent to Otero County as follows:

County of Otero  
Attn: County Manager  
Otero County Administration Building  
1101 New York Avenue  
Alamogordo, New Mexico 88310

Notices shall be sent to Recipient as follows:

City of Alamogordo  
Attn: Program Director  
Alamo Senior Center – Transportaion  
2201 Puerto Rico Avenue  
Alamogordo, New Mexico 88310

**OTERO COUNTY, NEW MEXICO**

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

Pamela Heltner  
County Manager

Attest: \_\_\_\_\_ (SEAL)  
Robyn Holmes  
Otero County Clerk

**CITY OF ALAMOGORDO, ALAMO SENIOR CENTER –  
TRANSPORTATION a unit of local government**

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

Authorized Representative

## **Exhibit A**

Recipient agrees to provide community services as follows:

(See Attached Pages)

**County of Otero  
2021/2022 Program Services**

**Agency:** City of Alamogordo, Alamo Senior Center  
**Address:** 2201 Puerto Rico Avenue  
**City, State:** Alamogordo, NM 88310  
**Telephone:** (575) 439-4150  
**Fax:** (575) 439-4160  
**E-mail:** [mmorales@ci.alamogordo.nm.us](mailto:mmorales@ci.alamogordo.nm.us)

**Agency:** City of Alamogordo, Alamo Senior Center  
**Program Director:** Magdalena Morales  
**Address:** 2201 Puerto Rico Avenue  
**City, State:** Alamogordo, NM 88310  
**Telephone:** (575) 439-4150  
**Fax:** (575) 439-4160  
**E-mail:** [mmorales@ci.alamogordo.nm.us](mailto:mmorales@ci.alamogordo.nm.us)

**Government Official:** Mayor Richard Boss, City of Alamogordo  
**Address:** 1376 E. 9<sup>th</sup> Street  
**City, State:** Alamogordo, NM 88310  
**Telephone:** (575) 214-0024  
**E-Mail:** [rboss@ci.alamogordo.nm.us](mailto:rboss@ci.alamogordo.nm.us)

**Amount requested for 2021/2022:** \$12,250.00

**First time funding applicant for FY 2020-2021?** No

**Amount received for the last two (2) years:**

2019/2020 \$ 24,500.00

2020/2021 \$ 12,250.00

**Name, Title, and Signature of Official authorizing funding application:**

  
\_\_\_\_\_  
City of Alamogordo  
Brian Cesar, City Manager

  
\_\_\_\_\_  
Dated

## **I. Proposal Summary**

The City of Alamogordo provides transportation services for seniors 60 years of age and over who live in the area surrounding the city limits of Alamogordo, including Boles Acres, Dog Canyon, La Luz, Alamo-Rosa and five miles west of the railroad tracks. Seniors are transported to and from the Center on a daily basis for meals and activities. They are also taken for weekly grocery shopping at their choice of either Wal-Mart, Lowe's or Albertsons. We provide transportation to pick up commodities from the Salvation Army and Loaves and Fishes at the Civic Center. In addition, seniors are taken to medical appointments, banks, Post Office, and other necessary errands that we can schedule into the program. The Alamo Senior Center hereby requests \$12,250.00 for FY 2021-2022. This is the same figure requested for FY2020-2021 and 50% of the request for FY 2019-2020. We have requested this same reduced amount because demand for transportation remains at reduced levels due to the Covid19 pandemic shut-down.

## **II. Introduction of the organization**

The mission of the Alamo Senior Center (ASC) is to provide community services for senior citizens aged 60 years or more plus their spouses regardless of age. The Center is a social environment that provides education, nutrition, recreation, entertainment and support for senior citizens in Alamogordo and environs. The overarching goal is to provide opportunities for all seniors to maintain a vital role during aging full of dignity and respect.

Otero County funded us \$24,500.00 for FY 2019-20. In that fiscal year, we provided 150 seniors with 9351 rides throughout Otero County.

Otero County funded us \$12,250.00 for FY 2020-21. From 1 July– 31 Dec 2020, we provided 15 seniors with 504 rides during the first half of the fiscal year. The decrease in services was due to the Covid19 pandemic.

## **III. Assessment of Needs**

This program was begun in 1974 by a group of Seniors who approached the Alamogordo City Commission to request funding for a Senior Center. They had discovered that many retired seniors were not even bothering to get dressed for the day, because they felt unneeded, unwanted and alone. The City initiated our program by providing funding, along with Federal and State funding that was also available at that time. According to the U.S. Census Bureau 1999 estimates, 17.3% of Otero County residents are aged 65 years or more and 20.1% of the population lives in poverty. Compared to the 2010 census, this represents a 2.6% increase in 65+ year olds and a 0.1% increase in poverty. Our program tries to keep seniors involved so they can contribute to the community. We also try to keep people as independent as possible for as long as possible. Transportation is a high priority program and no eligible senior has ever been turned away. We make every effort to meet the community's needs in providing a wide range of transportation services based on a donation. Currently, demand is down due to the Covid19 pandemic and we do not have a waiting

list for our transportation program. However, in order to provide greater quantity of services that are in high demand, we may sometimes reduce services that have a lower priority.

#### **IV. Goals and Objectives:**

In accordance with the Older Americans Act, our overall goal is to provide community social services for older persons in Alamogordo and Otero County. This includes providing transportation services, which allows Seniors to attend healthcare provider appointments and conduct routine bill-paying and shopping tasks. Our specific objective with the Transportation program is to offer rides to necessary destinations for seniors who are no longer able to drive or do not have their own vehicle. Many clients in this program are frail and unable to walk to a bus stop. We provide para-transit (door-to-door) service and transportation for seniors, all for a suggested donation of \$1.00 per one-way ride. We do not request any additional donation for para-transit service. This stands in contrast to other local transit programs, which do have a direct charge.

Prior to the Covid19 pandemic, we offered bimonthly field trips to regional centers of interest, to allow seniors the opportunity to experience venues they would not normally be able to attend. Due to Covid restrictions on social distancing, we currently have a limited capacity of 2 people (in addition to the driver), for a two-hour timeframe, on all of our buses. We still take seniors to local grocery stores, on personal errands including bill-paying, hair-cuts, banks, as well as to appointments with physicians, allied health professionals, and other professional services. Transportation is also provided to Alamogordo's bimonthly commodities distributions, which is a food distribution service for qualified low-income seniors. Commodities consist primarily of rice, beans, cheese and other non-perishable food items. These commodities are typically distributed by the Salvation Army at various locations which they set up throughout the city, including the Civic Center, their office on 1<sup>st</sup> Street, and other convenient locations. Unlike other local services, our Transportation service has continued uninterrupted throughout the course of the pandemic. This has allowed many non-driving Seniors continuous access to critical activities of daily living that were (at least temporarily) not available elsewhere in Alamogordo. Our Transportation service remains an invaluable resource for our community's senior citizens and we are glad to be able to offer it strictly on a donation-only basis.

#### **V: Evaluation**

Each senior service offered by ASC is formally tracked by counting the number of units of service delivered to clients. Transportation is based on one unit per meal. In order to receive State and Federal reimbursement funding, we are required to track units of service using the on-line SAMS (Social Assistance Management System) database. We use this well-established and nearly universal reporting program for all of our operations. We are assessed annually by the NM Area Agency on Aging (AAA), which reviews compliance of policies and procedures and assesses non-duplicated units of service delivered by ASC to our senior clients. The Senior Services Supervisor

Alamo Senior Center Proposal  
Transportation

is also tasked with monitoring the exact number of units delivered and reported to State authorities. In addition, we conduct an annual attitudinal survey of our Transportation clients, in order to assess their level of satisfaction with the ride, timing, politeness of the driver, schedule and other aspects of the Transportation program.



# AGENDA REPORT

## CITY OF ALAMOGORDO

### CITY COMMISSION

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**Meeting Date:** 9/14/2021

**Report Date:** 9/7/2021

**Report No:** 11.

**Submitted By:** Rachel Hughs

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**Subject:** Consider, and act upon, Drought Adaptation Industries LEDA request. (*Laurie Anderson, Interim Executive Director, OCEDC and Jean and Glenn Bell, Drought Adaptation Industries*)

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**Fiscal Impact:**

Amount Budgeted:

Fund:

Additional Fiscal Impact:

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**Recommendation:**

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**Background:** Laurie Anderson will make a presentation on behalf of OCEDC, and Jean and Glenn Bell will be present on behalf of DAI.



# City of Alamogordo City Commission Meeting AGENDA REQUEST FORM

Today's Date: 8.17.21

**Request Date  
of Meeting:**

8.24.21

**Name and Title:**

Laurie Andersm, Interim Exec. Director

**Address:**

2400 N. Scenic Dr.

Alamogordo, NM 88310 ZIP 88310

**Phone Number:**

(575) 439-3688

**E-Mail Address:**

l.andersm@ocedc.com

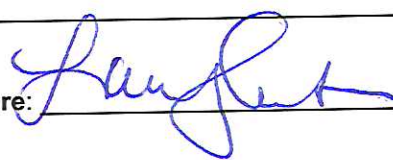
**Item requested will be for Information only**

**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**

TO present DAI ~~LED~~ LEDA request. at  
the request of Jean Bell, CEO - DAI.

Signature: 

**Please return to:**

**Rachel Hughs, CMC, City Clerk  
City of Alamogordo  
1376 E. 9<sup>th</sup> Street  
Alamogordo, NM 88310**

**Phone: (575) 439-4100**

**Fax: (575) 439-4396**

**E-mail: [rhughs@ci.alamogordo.nm.us](mailto:rhughs@ci.alamogordo.nm.us)**



Drought Adaptation Industries LLC  
1505 W. Highway 70  
Alamogordo, NM 88310  
575-489-4038

March 15, 2021

City of Alamogordo  
Brian Cesar, Manager  
Re: LEDA request

Dear Mr. Cesar,

Please find attached information to assist the city decision makers regarding investment in an existing manufacturing corporation in Alamogordo.

Basically, we need to upgrade infrastructure and equipment to capture markets heretofore unavailable to us. When we accomplish the needed upgrades our potential first year profits can soar to millions vs. the thousands previously acquired. The timing to accomplish these upgrades in the aftermath of the COVID 19 pandemic seems appropriate. Keeping our company alive and progressing towards the future in Alamogordo, NM.

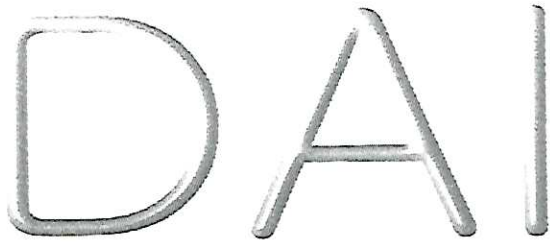
Our current equipment and infrastructure does not allow us sufficient product to bid in most cities "Requests for Bids" for fertilizer. Municipalities allow their Parks and Recreation Depts. to purchase product under \$20K without RFB's. However, the past has shown us the inadequacies of these purchases are non-sustaining. To compete in a market wholly owned by chemical fertilizer companies we must be able to manufacture sufficient product.

Jobs created will be machine operators, baggers, and sales personnel. Year 2022 we will add administrative support personnel. Pellet mill machine operators are highly skilled and will require training paid for by DAI in Colorado. Baggers, while also skilled, can be trained at our facility. We will endeavor to locate skilled sales personnel. However, they must undergo an extensive educational program on the benefits of our environmental products. DAI considers \$15 per hour as a minimum wage to sustain any employee with a 3 month probationary period. Benefits afforded each employee are 10 annual holidays paid and accrued paid vacation after probation period.

Jean Bell, CEO

[www.dai-nm.com](http://www.dai-nm.com)  
[www.dai-industries.com](http://www.dai-industries.com)





Drought Adaptation Industries LLC  
1505 W. Highway 70  
Alamogordo, NM 88310  
575-489-4038

### **Project Information**

**Description:** Infrastructure and equipment modernization to produce Natural Way Pellets in an effort to replace chemical fertilizer use in New Mexico. With funding achieved by mid-June, we anticipate completion of the project by October 2021. Most of the preliminary research and vendor acknowledgements of availability have been completed.

#### **Scope of Work:**

**Infrastructure** accomplishments (as described in cost projections) can be achieved consecutive to the purchase and installation of the equipment needed. The paving area needed is in between building one and building two and increases the value of the property. The cache hole is an in ground container that will allow us to store enough natural aged and composted cow manure to meet the needs of our pelleting equipment which runs much faster than the old equipment. Storage containers are necessary to contain other all natural farm waste material used and mixed in our pellet formula. Other infrastructure modernizations i.e. lighting and security, exterior building painting and sign enhance the overall value of the property and are necessary elements to this completed project.

**Equipment** purchases allowed in this project are necessary to increase our ability to supply Natural Way Pellets as prolifically as "synthetic" fertilizers are currently being used by cities, military bases, tribal entities, golf courses, farms, schools, and NM State agencies (see Back to Nature cover sheet/Exec. Summary.) These customers will purchase the NWP fertilizer in one ton tote bags. Smaller cities and purchasers can also order 40lb bags instead of totes (see "Potential Markets").

**Business History:** DAI began pelleting the NWP in late 2018. This product has been well received. R&D on the NWP was achieved using our smaller 30HP pellet mill. The company did not do as well in 2019 as our main product was still in its infancy and unknown to our customers. By the end of 2019 the NWP sales began to pick up as the product became known and then COVID hit.

**Assumptions:**

- 1) This project assumes receipt of LEDA funding by mid-June and all other projected infrastructure completed; equipment purchases installed; connected to electrical sources; and electronic automated systems installed and operational by October 2021.
- 2) DAI tonnage total capacity for finished project will be 5200 tons per year using one shift personnel.
- 3) Assuming available raw material in the form of aged, composted cow manure. Currently NM raw and unprocessed cow manure is gathered/collected by other state companies, composted, and resold to New Mexico. Enough raw material has been secured/contracted for two years of operation.
- 4) The labor requirements can be met. Securing skilled and talented machine operators, sales personnel, and training. Some new employees may require relocation. We will work with the NM Job Training Incentive Program (JTIP) to assist with high dollar salary and training requirements.
- 5) Assume sales projections can be met October thru December 2021 allowing sufficient cash flow and adequate capital to sustain company until spring 2022. Fertilizer usage by municipalities commences with February thru December purchases. City budgets determine allowances and are usually conducted mid-year.



Drought Adaptation Industries LLC  
301 7th Street  
Tularosa  
New Mexico 88352  
575-715-0011

**Limited Liability Company Operating  
Agreement  
for**

**Drought Adaptation Industries LLC**

**A Manager-Managed Limited Liability Company**

**Article I**

**Company Formation  
(see Addendum 2)**

- 1.1 **FORMATION.** The members have formed a Limited Liability Company ("Company") subject to the laws of the state in which it was formed. This operating agreement is entered into and effective upon adoption by the member(s).
- 1.2 **REGISTERED AGENT.** The name and location of the Company's registered agent will be as stated in the formation documents.
- 1.3 **TERM.** The Company will continue perpetually unless,
  - (a) Members unanimously vote for dissolution; or
  - (b) An event occurs which causes the Company's business to become unlawful; or
  - (c) Any other event causing the Company's dissolution under state laws.
- 1.4 **CONTINUANCE OF COMPANY.** In the event of an occurrence described in ARTICLE 1.3(c), if there is at least one remaining Member, the Member has the right to continue the Company's business.
- 1.5 **BUSINESS PURPOSE.** The purpose of the Company is to conduct any and all lawful business appropriate in carrying out the company's objectives.
- 1.6 **PRINCIPAL PLACE OF BUSINESS.** The location of the Company's principal place of business will be as stated in the formation documents or as selected by the Managers.
- 1.7 **THE MEMBERS.** The name and residential/business address of each member are contained in Exhibit 2 attached to this Agreement.
- 1.8 **ADMISSION OF ADDITIONAL MEMBERS.** Members may only be admitted to the Company through issuance of a new interest in the company with unanimous written consent of the members or the sale of a member's current interest, except as otherwise expressly provided in the Agreement.



## **ARTICLE II**

### **Capital Contributions**

- 2.1 **INITIAL CONTRIBUTIONS.** The Members will contribute the Company's initial capital as described in Exhibit 3 attached to this Agreement. The agreed total value of such property and cash is valued (per GUST website and Silicon Valley algorithm) at \$2,000,000 million US dollars.
- 2.2 **ADDITIONAL CONTRIBUTIONS.** Except as provided in ARTICLE 6.2, no Member is obligated to make any additional contributions to the Company's capital.

## **ARTICLE III**

### **Profits, Losses and Distributions**

- 3.1 **PROFITS/LOSSES.** For financial accounting and tax purposes the Company's net profits or net losses will be determined annually. Profits and losses will be allocated to the Members in proportion to each Member's relative capital interest in the Company as set forth in Exhibit 2 as amended and in accordance with Treasury Regulation 1.704-1.
- 3.2 **DISTRIBUTIONS.** The Members may determine and distribute available funds annually or more frequently as the Members see fit. "Available funds" refers to the net cash of the Company available after expenses and liabilities, as determined by the Managers. Upon liquidation of the Company or of a Member's interest, distributions must be made according to the positive capital or pursuant to Treasury Regulation 1.704-1(b)(2)(ii)(b)(2). To the extent a Member has a negative capital account balance, there must be a qualified income offset, as set forth in Treasury Regulation 1.704-1(b)(2)(ii)(d).

## **ARTICLE IV**

### **Management**

- 4.1 **MANAGEMENT OF THE BUSINESS.** The Company is managed by Managers. The name and residential/business address of each Manager is attached as Exhibit 1 of this Agreement. At least one Manager will be elected by a vote of the Members holding a majority of the capital interests in the Company, as set forth in Exhibit 2 and any amendments. One Manager will be elected by the Members as Chief Executive Manager. The Manager(s) may be Members or Non-Members.
- 4.2 **MEMBERS.** The liability of the Members is limited pursuant to applicable state law. Members that are not Managers may not take any part in the control, management, direction, or operation of the Company's affairs

and have no power to bind the Company. The Members may advise the Managers, but Managers are not required to accept such advice. The Managers have the exclusive right to control and manage the Company. No Member will be an agent of any other Member of the Company solely by reason of being a Member.

- 4.3 **POWERS OF MANAGERS.** The Managers are authorized to make all decisions regarding the Company's operations and legal affairs, including but not limited to (a) the sale, development, lease or other disposition of the Company's assets; (b) the purchase or other acquisition of other assets of all kinds; (c) the management of all or part of the Company's assets; (d) the borrowing of money and the granting of security interests in the Company's assets; (e) the prepayment, refinancing or extension of any loan affecting the Company's assets; (f) the compromise or release of any of the Company's claims or debts; and, (g) the employment of persons, firms or corporations for the operation and management of the Company's business. Managers are authorized to execute and deliver (a) all contracts, conveyances, assignments, leases, sub-leases, franchise agreements, licensing agreements, management contracts covering or affecting the Company's assets; (b) all checks, drafts and other orders for the payment of the Company's funds; (c) all promissory notes, loans, security agreements and other similar documents; and, (d) all other instruments of any other kind relating to the Company's business.
- 4.4 **CHIEF EXECUTIVE MANAGER.** The Chief Executive Manager has primary responsibility for managing company operations and for carrying out the decisions of the Managers.
- 4.5 **NOMINEE.** Title to the Company's assets will be held in the Company's name or in the name of any nominee that the Managers may designate. The Managers will have power to enter into a nominee agreement with any person/business, and such agreement may contain provisions indemnifying the nominee, except for his or her willful misconduct.
- 4.6 **COMPANY INFORMATION.** Upon request, the Managers will supply to any member, information regarding the Company or its activities. Any Member or a member's authorized representative may access, inspect, and copy all books, records and materials in the Manager's possession regarding the Company or its activities. These rights may be exercised at the requesting Member's expense.
- 4.7 **EXCULPATION.** Any act or omissions of the Managers, the effect of which may cause or result in loss or damage to the Company or the Members, if done in good faith to promote the best interests of the Company, will not subject the Managers to any liability.
- 4.8 **INDEMNIFICATION.** The Company will indemnify any person/company who was or is a party defendant or is threatened to be made a party defendant, in a pending or completed action, suit or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the Company) by reason of the fact that the person/company is or was a Member of the Company, employee, or agent of the Company, or is or was serving at the request of the Company. The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of "no lo



Contendere" does not imply that the party did or did not act in good faith and in a manner which he/she reasonably believed to be lawful and in the best interest of the Company.

- 4.9 **RECORDS.** The Managers must keep the following at the Company's principal place of business:
- (a) A copy of all formation documents, the operating agreement, and any amendments;
  - (b) A current list of the full name and the last known street address of each Member;
  - (c) Copies of the Company's federal, state and local income tax returns and reports, if any, for the three most recent years;
  - (d) Copies of the Company's financial statements for the three most recent years.

#### ARTICLE V

##### **Compensation**

- 5.1 **MANAGEMENT FEE.** Any Manager rendering services to the Company is entitled to compensation equal to the value of those services.
- 5.2 **REIMBURSEMENT.** The Company will reimburse the Managers or Members for all direct out-of-pocket expenses incurred in managing the Company.

#### ARTICLE VI

##### **Bookkeeping**

- 6.1 **BOOKS.** The Managers will keep complete and accurate accounting of the Company's affairs at the Company's principal place of business or other location agreed upon by the Managers. The Managers will choose the method of accounting and the Company's accounting period will be the calendar year.
- 6.2 **MEMBER'S ACCOUNTS.** The Managers must maintain separate capital and distribution accounts for each member. Each member's capital account must be determined and maintained in the manner set forth in the Treasury Regulation 1.704-1(b)(2)(iv) and will consist of the member's initial capital contribution increased by:
- (a) Any additional capital contribution made by the member;
  - (b) Credit balances transferred from the member's distribution account to the member's capital account; and decreased by:
    - (1) Distributions to the member in reduction of Company capital;
    - (2) The Member's share of Company losses if charged to the Member's capital account.
- 6.3 **REPORTS.** When the Managers close the books at the close of each calendar year, the managers will prepare and send to each member, a statement of that Member's distributive share of income and expense for income tax reporting purposes.

## ARTICLE VII

### Transfers

- 7.1 **ASSIGNMENT.** If a Member proposes to sell, assign or otherwise dispose of all or part of the Member's interest in the Company, he or she must comply with the following procedures:
- (a) First make a written offer, including the price, to sell such interest to the other Member(s). The exiting Member may only advertise the sale if the other Members decline or fail to elect such interest within 60 days after the offer.
  - (b) If the exiting member has a buyer of interest, the other current members(s) have first right of refusal to purchase the exiting members interest for the agreed purchase price. If there is more than one current remaining member, the remaining members may combine funds to purchase the exiting members interest. The exiting member must show that potential purchaser has full certified funds before 60 day right of refusal period ends.
  - (c) Current members must unanimously approve the sale of exiting member's interests to grant full membership benefits and functionality to the new member. If the current remaining members do not unanimously approve the sale, the purchaser or assignee will have no management or voting rights. The purchaser or assignee is only entitled to receive the share of the profits or other compensation by way of income and the return of contributions to which that Member would otherwise be entitled. The exiting member must disclose to the buyer or assignee if the current members will not approve the sale.
- 7.2 **VALUATION OF EXITING MEMBERS INTEREST.** If a member wants to exit the LLC, and does not have a buyer of its membership interest, exiting member will assign its interest to current members according to the following procedures:
- (a) A value must be placed upon this membership interest before assigned.
  - (b) If the exiting member and the current members do not agree on the value of the membership interest, the exiting member must pay for a certified appraiser to assess the company's value. The appraiser will assign the exiting members' interest a value according to the exiting members' interest percentage.
  - (c) The current members must approve the certified appraiser used by exiting member. Current members have 30 days to approve the exiting members certified appraiser. If current members disapprove the certified appraiser, they must show evidence to support their disapproval of the certified appraiser as a vendor qualified to appraise the company. Current members may not stall the process by disapproving all certified appraisers.
  - (d) When a certified appraiser places a value on the company, a value will be placed on the exiting members' interest according to exiting members' percentage of membership interest.
  - (e) If current members disagree with the value placed on exiting

members' interest, current members must pay for a certified appraiser to value the company and exiting members' interest according to the same terms.

(f) Current members' appraisal must be completed within 60 days or right of current members to dispute the value of exiting member's interest expires.

(g) Upon completion of current members' appraisal, the exiting member must approve the value placed on exiting members' interest. Exiting member has 30 days to approve this value.

(h) If the exiting member does not approve the current members' appraised value, then the value of the company will be determined by adding both parties' appraised values, then dividing that value in half, creating the value of the exiting members' interest.

7.3

**DISTRIBUTION OF EXITING MEMBERS INTEREST.** Upon determination of exiting members' interest value, the value will be a debt of the company. The exiting member will only be able to demand payment of this debt at dissolution of the company or by the following method:

(a) The company will make timely payments.

(b) The company will only be required to make payments towards exiting members' debt if the company is profitable and passes income to current members.

(c) The company must make a debt payment to the exiting member if the company's income surpassed 50% of the total determined value of the exiting members' interest in one taxable year. (Example: If exiting members' value was \$100,000 and current member(s) received over \$50,000 taxable income in the taxable year, the LLC would owe a debt payment to exiting member. If current member(s) only received \$40,000 in passed income, there would be no payment due.)

(d) The debt payment must be at least 10% of the value of the passed income to current members.

(e) The company must make payment to exiting member within 60 days of the end of the company's taxable year.

(f) The payment schedule will continue until the exiting member's debt is paid.

(g) If the company dissolves, the exiting member will be a regular debtor and payment will follow normal dissolution payment statutes.

(h) The exiting member's value of membership interest assigned current members may NOT accrue interest.

(i) The company may pay the amount owed to the exiting member at any time.

## ARTICLE VIII

### **Dissolution**

8.1 **DISSOLUTION.** The Member(s) may dissolve the LLC at any time. The Member(s) may NOT dissolve the LLC for a loss of membership interests. Upon dissolution the LLC must pay its debts first before distributing cash, assets, and/or initial capital to the Member or the Members interests. The dissolution may only be ordered by the Member(s), not by the owner of the Member's



interests.

**CERTIFICATION OF MEMBERS**

The undersigned hereby agree, acknowledge, and certify that the foregoing operating agreement is adopted and approved by each member, the agreement consisting of 12 pages, constitutes, together with Exhibit 1, Exhibit 2, Exhibit 3 and one addendum, the Operating Agreement of Drought Adaptation Industries LLC, adopted by the members as of April 24, 2017.

**Members:**

Glenn Bell, CEO  
Golden Zone Technologies LLC (a State of New Mexico LLC)

Upon initialization of the Company, Golden Zone Technologies LLC or GZT owns 100% shares of Drought Adaptation Industries LLC (DAI).

Signed: \_\_\_\_\_

A handwritten signature in black ink, appearing to read "Glenn Bell", is written over a horizontal line.

**EXHIBIT 1**  
**LIMITED LIABILITY OPERATING AGREEMENT**  
**FOR**  
**DROUGHT ADAPTATION INDUSTRIES LLC**

**LISTING OF MANAGERS**

By a majority vote of the Members the following Managers were elected to operate the Company pursuant to ARTICLE 4 of the Agreement:

Jean Bell  
Chief Executive Manager

301 7<sup>th</sup> Street  
Tularosa, NM 88352-2600

(No other Managers have been selected, elected, or approved as of this date)

The above listed Manager(s) will serve in their capacities until they are removed for any reason by a majority vote of the Members as defined by ARTICLE 4 or upon their voluntary resignation.

Signed and agreed this 24<sup>th</sup> day of April, 2017.

Signed: \_\_\_\_\_

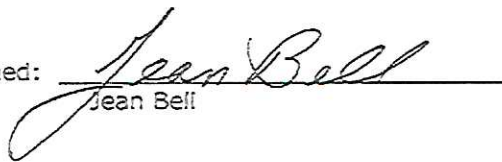
  
Jean Bell

EXHIBIT 2

**LIMITED LIABILITY COMPANY OPERATING AGREEMENT  
FOR**

**Drought Adaptation Industries LLC**

**LISTING OF MEMBERS**

As of the 24<sup>th</sup> day of April, 2017 the following is a list of  
Members of the Company:

Glenn Bell, CEO  
Golden Zone Technologies LLC (GZT)                      Percent: 100%  
301 7<sup>th</sup> Street  
Tularosa, NM 88352-2600

Authorized by Member(s) to provide Member Listing as of:

Date:

Signed:

 4/25/17  
Member

EXHIBIT 3

**LIMITED LIABILITY COMPANY OPERATING AGREEMENT  
FOR**

**Drought Adaptation Industries LLC**

**CAPITAL CONTRIBUTIONS**

Pursuant to ARTICLE 2, the Members' initial contribution to the Company capital is stated to be \$2,000,000. The description and each individual portion of this initial contribution is as follows:

Glenn Bell as CEO of Golden Zone Technologies LLC (GZT) contributes four (4) ready for market products for Drought Adaptation Industries LLC to manufacture. An accumulation of over ten (10) years of research and development has been rewarded with the Insta-Cubes, Drought Rings (known also as the Garden in a Box), Primordial Ooze, and the RDS System.

A venture capitalist group has evaluated GZT at \$3.6 to \$4.4 million in value. Golden Zone Technologies LLC is proud to be a Member of Drought Adaptation Industries LLC.

Date:

4/25/17

Signed:

  
Glenn Bell, CEO  
Golden Zone Technologies LLC

**ADDENDUM 1**

**LIMITED LIABILITY COMPANY OPERATING AGREEMENT  
FOR**

**Drought Adaptation Industries LLC**

**ADDITIONAL EXPLANATIONS**

Drought Adaptation Industries LLC (DAI) has been initiated to manufacture the products Researched and Developed by Golden Zone Technologies LLC (GZT).

GZT will remain the R&D company developing products to mitigate climate change and drought as it pertains to food production and water usage.

While DAI will have the option to manufacture future products GZT develops or not. The initial four (4) products presented by GZT (as described in Exhibit 3) will establish DAI as a viable and valuable entity.

Each Member Share is \$2,000 in value with a total of 1,000 shares available. The total value of all company shares is \$2 million US dollars. GZT will hold 51% of all common shares at all times as the primary investor. GZT will maintain 510 shares @ \$2,000 ea. = \$1,020,000 value.

This formula will allow for future investors to present cash, equipment, leases, and assets to DAI in exchange for Drought Adaptation Industries LLC shares.



## OLDER RESUME

**Jean Bell**  
301 7th Street  
Tulareca, NM 98352  
575 719-0011

### Experience:

**JBL Professional (Harman Int'l)** 01/07 to 03/09  
8500 Balboa Blvd  
Northridge, Ca. 91329  
HR Phone: 818-895-3337  
Supervisor: Lou Wilhelm 818-895-3423 (call for reference)

#### **Credit Administrator**

- Began employment January 2007 as a temporary employee in the JBL Division Credit Dept.
- Hired permanent in July 2007.
- Regional assignments for Collection/Account Reconciliations and overall maintenance of commercial accounts.
- Territory responsibility averaged over \$2 million each month in 1 to 120 days past due while total current receivables averaged \$5.5 million.
- Number of accounts managed were approx. 900. Ranging in commercial standing from small music stores to large distributors.
- The only cash involvement was processing credit card payments thru online software. Layoff due to the economy.

#### **Neighborhood Friends** 06/05 to 09/09

Research Analyst and Funding Agent - Non-Profit - No Salary

- Filed for non profit status as a 501 (c) 4 Social Welfare Organization. Involved in housing for seniors and low-to-moderate income level families.
- Researched, prepared, and filed the request for determination from the IRS. Granted.
- Met with other progressive advocacy groups, as well as, Los Angeles City and County housing policy makers, and council persons in an effort to educate on issues.
- Wrote newspaper articles that were published. As well as, quarterly newsletter for supporters/members.
- Researched and evaluated political climate; changes in laws; and other players in the affordable housing arena.
- Designed web pages.
- Grant Writing.
- Maintained Financial Records and Tax Filings.

**DS Waters of America (Sparkletts)**  
Credit & Receivables Sr. Specialist (Lead)  
Verify Employment: 800-367-5690 #12819

9/98 thru 06/05

**Two Divisions:**

**Retail Accounts Division:**

9/98 thru 3/02

- Performed credit checks and made recommendations using D&B reports. Resolved customer credit-hold issues and maintained/updated records. Cash applications via batch processing to general ledger.
- Created Microsoft Access database program to manage and validate Trades Promotions (charge backs) which became customer deductions as they paid their invoices. This became a liaison position between retail sales representatives and accounts payable for reporting functions.
- As a retail collector, I was responsible for very large commercial account reconciliation's and collections e.g. Wal-Mart, Walgreens, Albertson's, Safeway, etc.
- Performed in a leadership role training a team of personnel to validate deductions using Trades Promotion Microsoft Excel grids. The deductions were then coded, credit memos created, and the expense spread in the General Ledger.

**Home & Office Delivery Division:**

3/02 thru 6/05

- When McKesson Water Products merged with Danone Waters of N.A. I traveled to Connecticut as a senior member of a team transitioning the C&R department to the West Coast and training existing personnel in new software applications.
- Primary involvement with the reconciliation of very large commercial accounts for the entire Southwest. Revenue for HOD business in this region was approximately \$12 million of receivables.
- Collections management of such large accounts as Cingular Wireless, Albertson's, Vons/Safeway, Longs Drugs, various City and County accounts, Wells Fargo Bank, Motorola, American Express, etc. The sheer volume/size of these customers required tactical analysis to comply with their needs in what was often times two separate data storage environments. I retained the customer while protecting company assets and generated revenue by designing various Excel spreadsheets that incorporated the customers required information with DS Waters auto supplied information which allowed the customer to pay.

- I maintained customer relationships by assuming that my customers wished to keep their accounts current. This philosophy, while unique in the collection world, warranted me a leadership role in the Credit and Receivables department, as well as, the respect of my customers. While the spreadsheet formats became models for departmental use.
- As a performance leader in the Credit & Receivables department for four years, I performed in a team leadership role (lead) on several performance improvement projects i.e. policy handbook, best set practices for volume accounts, time management training, etc. These projects were implemented and applied inter-departmentally. Merger resulted in Lay-Off of all finance positions and headquarters moved to the East Coast.

#### **Skills and Abilities:**

Detail and Project Oriented  
Bookkeeping/Accounting  
Inventory Control  
Problem Identification & Analysis  
Good Judgment Skills

Communication Skills  
Team Player/Leadership Qualities  
Organized Self-Starter  
Time/Resource Mgmt Trainer  
Low Supervision Required

#### **Software Knowledge:**

Excel Intermediate Level  
SAP  
JD Edwards / World-Writer (Certified)  
Lotus Notes / Lotus 123  
Microsoft Word and Office  
Power Point  
Microsoft XP Pro

Access 2000 (Certified)  
Quicken / Quick Books  
MAPICS  
MRP II  
JIT  
Peachtree Complete  
Database Management (entry level)

### **PREVIOUS EMPLOYMENT**

**Stables, Schwab & Trujillo** (Drapery Design & Mfg) 02/96 thru 09/98  
**Office Mgr. & Bookkeeper:** F/C thru Trial Balance Part-Time  
Bank reconciliation's, Tax Deposits and reporting, Customer Accounts and Financial Statements, Invoicing and State Sales Tax reporting. Payroll. Quicken and Quick Books. Owner, Jim Trujillo, a friend and well-known drapery designer required my assistance. I worked part-time while taking care of a family illness.

**Pride Paper Corp** (mfg of Imageware Papers) Torrance 06/94 thru 01/96  
**Operations Manager:** Vendor scheduling, packaging, purchasing, order fulfillment, shipping, receiving, quality control, inventory control, warehousing,

facilities, capacity planning, budgets, etc. Small start-up company, all manual.  
Supervised 2 employees. Voluntary

**MPO Videotronics (POP-TV division)**    Nowbury Park    03/92 thru 06/94  
**Operations Manager:** Responsible for the distribution of TV/VCR units to retail stores to be used for promotion displays. Supervised 6 employees thru maintenance assembly lines, warehousing, shipping and receiving functions, and office personnel. Responsible for contract negotiations with shipping agents, software and hardware purchases for division quality control, MRP II software used to control inventory, capacity planning of floor space as well as scheduling based upon container/truck loads in-outs, cost/budgeting. Implemented barcode system. Conducted customer compliance surveys and addressed usage issues. Division became 75% of company revenue in first year. Lay-Off

**ACME-URDC (mfg of Electronic Batteries)** Salt Lake City    12/87 thru 12/91  
**Stores Supervisor:** Responsible for the orderly flow and accurate record keeping of 2,500 electronic parts. Processing from supplier thru production process (JIT) of all raw materials, purchased components, sub-assemblies, WIP and packing, shipping of finished goods. Maintained clean room inventory (government owned). Achieved 98% inventory reliability in one year. Supervision of 4 receiving and stores clerks. On-line MRPII software. Inventory Batch pulling to BOM. Moved back to California.





Drought Adaptation Industries LLC  
1505 W. Highway 70  
Alamogordo, NM 88310  
575-489-4038

**Resume for Jean Bell  
Manager of  
Golden Zone Technologies (GZT)  
And Drought Adaptation Industries (DAI)**

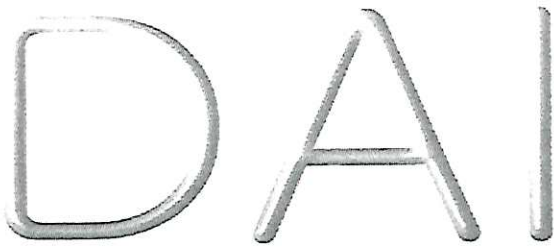
**Current GZT Duties:** this company is currently inactive. No new products are in development. Therefore, my duties consist of administration of income and expenses. As well as tax preparation for our CPA. GZT holds all intellectual property for the products manufactured by DAI and receives a royalty on sales.

**Past GZT Duties:** this company and its founder (Glenn Bell) have been researching and developing products to assist gardeners and save water since 2005. I was instrumental in acquiring intellectual property registrations and in 2015 registered GZT with the IRS and the State of New Mexico with the Secretary of State.

**DAI Duties:** all financial activities, logistics, market research, correspondence, HR duties, manufacturing issues, and facilities management. Also, recordkeeping, inventory management, and preparing tax documents for our CPA.

**Proficiencies:** Quickbooks, Excel, Word, Publisher, and Power Point.

**Memberships:** local Rotary and the Chamber of Commerce. DAI contributes funds to the Boys and Girls Club of Alamogordo and "as needed" charities.



Drought Adaptation Industries LLC  
1505 W. Highway 70  
Alamogordo, NM 88310

January 29, 2018

#### Bio for Glenn Bell

Glenn was born in Winnemucca, Nevada to Glenn Bell, Sr and Pauline Van Arsdale. Glenn Bell Sr. changed his name from Van Der Bell to Bell. Glenn is 100% Dutch. His father was a pilot in the 2nd World War and became a mining engineer. He flew his own plane from site to site and taught Glenn Jr to fly as well.

Glenn's formal education is limited. He mastered computers in the early nineties and is an avid reader, researcher, and engineer.

Glenn's youth was fraught with bad choices and dire consequences. As you might imagine, being too smart with little direction might lead to. However, God has a plan for all of us. And Glenn was to arise from his youth to marry his wife of 32 years now, Jean Bell. They helped each other grow up and now enjoy a rich family life with two children and six grandchildren.

His work background includes construction, master painter, and sales. He was an Executive Sales VP for a paint manufacturer used by the movie studios in Southern California. The studios would call Glenn when they had a difficult environment for paint (like underwater). He would chemically engineer the paint to withstand whatever environment they required.

In 1999 he was a member of an online "think tank" when a governmental agency named DARPA approached the members with a national security issue to the American people looking for answers. Having grown-up in rural areas of the country and being aware of the water issues facing us, Glenn took this project on. The project can best be described as this: make it possible for "regular" people to grow their own food using less water; less labor; less money; and no viable knowledge of gardening.

We came to Alamogordo in October 2010 and Glenn continued his research. We organized the research and development company with the State of New Mexico and the help of family and friends. This company is called Golden Zone Technologies. After determining that our products worked in test gardens throughout the US in varying climates, altitudes and water tables we began to think production. Drought Adaptation Industries was born.

Jean Bell  
Chief Exec. Manager

**BACK TO NATURE IN SOILS MANAGEMENT IS THE ANSWER TO GLOBAL WARMING!!** Drought Adaptation Industries is a leading Environmental Science manufacturing company providing answers to carbon sequestration and lands restoration. We work to convert chemical fertilizer usage to a natural and organic product by providing a composted product in pellet form. For the first time ever, compost can be applied without tilling in the soil using massive amounts of bagged manure, harmful chemical fertilizers, and excessive water. This product is called Natural Way Pellets®.

DAI is becoming New Mexico States leading soils management consultant. Purchase orders from municipality's grounds keepers will now have an alternative product from petro chemical products that dehydrate our soils and kill off microbiology. It is the microbiology in the soil that holds the water. By converting their ball parks, parks, and green spaces to natural/organic product these entities will save over 66% water usage from chemical products. We also consult Soils & Water Districts, Agricultural Depts., Forestry, DOT, Mining & Oil lands reclamation, and brown site redevelopment.

**Advantages of the NWP Product:** For commercial markets that desire natural product vs. chemical past issues have been 1) availability, 2) dispersal method, 3) storage, and 4) manpower. Most of these issues no longer exist when using our pellets.

- No smell or bad odor
- No off gassing into the atmosphere of N<sub>2</sub>O
- Safe for use in populated human, pet, and wildlife areas
- Corrects brown sites and erosion soils
- No tilling is required to effectively use the product on farms and ranches
- Dispersed using existing equipment – no new equipment purchasing
- Vast rangelands and acreage can be restored
- Minimal labor needs
- Dissolves immediately saving approximately 66% water over a period of two years
- Basic soils remediation to restore natural bio-cycle
- **Markets Include:** Markets for the Natural Way Pellets® are numerous and can comprise of almost anywhere soil is found. This list includes potential and existing commercial markets.
- Cities Parks and Recreation Departments
- Municipal Golf Course or Privately Owned
- Leisure Resorts (Private and Native American)
- Military Installations
- Native American Lands (stewardship)
- Farms and Ranches (reclamation of the soil)
- DOT Roadway Redevelopment
- Oil, Mining, and Gas leases land restoration
- Brown Sites
- Schools



## Potential City Markets

### Albuquerque City Market:

The City of Albuquerque alone has 915,000 residents. From New Mexico Parks and Recreation Association "A typical park and recreation agency has 9.5 acres of park land per 1,000 residents."

$915,000 \text{ divided by } 1,000 \text{ residents} = 915 \text{ parks}$

$915 \text{ parks} \times 9.5 \text{ acres each} = 8,692.5 \text{ total acres}$

$8,692.5 \text{ acres} \times 4 \text{ tons per acre annual fertilizer usage} = 34,770 \text{ tons per year}$

$34,770 \text{ tons} \times \$735 \text{ cost per ton} = \$25,555,950 \text{ total Albuquerque market}$

Six other major cities in New Mexico total population is 409,895 (Las Cruces, Rio Rancho, Santa Fe, Roswell, Farmington and Hobbs):  $409,895 \text{ divided by } 1,000 = 410 \text{ parks}$

$410 \text{ parks} \times 9.5 \text{ acres each} = 3,895 \text{ total acres}$

$3,895 \text{ acres} \times 4 \text{ tons per acre annual fertilizer usage} = 15,580 \text{ tons per year}$

$15,580 \text{ tons} \times \$735 \text{ cost per ton} = \$11,451,300 \text{ in six city market}$

**Total revenue from just the above 7 cities = over \$37 million annually**

### Market Acquisition and Activities:

The above annual market does not include city municipally managed golf courses, athletic fields, or green belts.

This market is huge. We acquired 5% of this market prior to the COVID pandemic. We anticipate acquiring up to 50% more within the next two years with available funding.

### Comments:

Securing this markets revenue is aided by a new political climate and the State of New Mexico's ongoing climate change legislation.



## Potential Military Markets

### Military Markets:

- a) Holloman Air Force Base – 59,639 total acres  
4 tons per acre per year = 238,556 tons  
10% of market in year one = 5,964 acres  
4 tons per acre in year one = 23,856 tons  
Year One Revenue (\$735 x 23,856 tons) = \$17,534,160
- b) Holloman Air Force Base – Year Two  
20% of market in year two = 11,928 acres  
4 tons per acre in year two = 47,712 tons  
Year Two Revenue (\$735 x 47,712 tons) = \$35,068,320
- c) Canon Air Force Base – 3,789 total acres  
4 tons per acre per year = 15,156 tons  
10% of market in year one = 379 acres  
4 tons per acre in year one = 1,516 tons  
Year One Revenue (\$735 x 1,516 tons) = \$1,114,260
- d) Canon Air Force Base – Year Two  
20% of market in year two = 758 acres  
4 tons per acre in year two = 3,032 tons  
Year Two Revenue (\$735 x 3,032 tons) = \$2,228,520

The Department of Defense (DOD) issued a report on the effects of a changing climate to 79 at risk military installations including the following issues: recurrent flooding, drought, desertification, wildfires, and thawing permafrost. These situations are a result of changing climates and inhibit mission readiness.

Air Force Bases currently suffering under Drought conditions = 20 and Desertification = 20

Army Bases currently suffering under Drought conditions = 14 and Desertification = 4

Navy Bases currently suffering under Drought conditions = 16 and Desertification = 18

Drought conditions have caused significant reduction in soil moisture at several Air Force bases resulting in deep or wide cracks in the soil, at times leading to ruptured utility lines and cracked road surfaces.

Desertification poses a number of challenges related to training and maneuvers. Desertification results in reductions in vegetation cover leading to increases in the amount of runoff from precipitation events. Greater runoff contributes to:

- ☑ higher erosion rates
- ☑ increased stream sediment loads
- ☑ deposition of sediment in unwanted areas

This reduces the effectiveness of flood risk management infrastructure while increasing the potential for siltation of water supply reservoirs. Following rain, eroded soil may be less suitable for native

## Potential Military Markets

vegetation, resulting in bare land or revegetation with non-native, weedy species. In cases where this results in the expansion of shrub-lands, this could affect the suitability of the landscape for military maneuvers and off-road use. These are direct quotes from the report dated January 2019.

### Market Acquisition Activities and Progress:

Our products have been presented to the Department of Defense in Washington, DC. The DOD has recently asked Holloman Air Force Base to review for potential purchasing. Our agent is a lieutenant at Holloman and we await an audience with the decision maker. We have successfully acquired two military product ID numbers for the NWP and Primordial Powders. This endeavor required three years to achieve.

Of the two air force base examples above:

Total Market Potential Year One = \$18,648,420

Total Market Potential Year Two = \$37,296,840

### Comments:

The above example is **only** two military bases. Why everyone seeks military contracts is not just potential profits. Once our NWP product is introduced to the military complex and a contract issued it will become a mandated product to restore soils land diminish water resource usage throughout every installation in the United States and beyond.

## Potential NMDOT Markets

### Roadway, Highway, and Pavement Reconstruction Current Projects:

- a) District 1 – 15.6 miles on both sides = 31.2 miles

4 tons per mile x 31.2 miles = 124.8 tons total

Revenue Potential for current Projects (\$735 x 124.8 tons total) = \$91,728

- b) District 2 – 155.9 mile on both side = 311.8 miles

4 tons per mile x 311.8 miles = 1,247 tons

Revenue Potential for current Projects (\$735 x 1,247 tons total) = \$916,545

- c) District 4 – 50 miles on both sides = 100 miles

4 tons per mile x 100 miles = 400 tons

Revenue Potential for current Projects (\$735 x 400 tons total) = \$294,000

Total Current Projects potential revenue in only 3 districts = \$1,302,273

### **Market Acquisition Activities and Progress:**

DAI is now a certified vendor for NMDOT and ready to take orders for projects that include road side/median soil redevelopment.

### **Comments:**

Each road construction project requires soil redevelopment on either side of the road and out 30 feet. Funding will allow us to provide a delivery and distribution service as well as product in the future to the NMDOT. Combining product and service in one contract is a desirable bidding position.

## **Potential School Districts**

877 Schools in New Mexico with an average of 4 acres per school.

Total 3,508 acres

4 tons per year per acre = 14,032 tons

$\$735 \times 14,032 = \$10,313,520$  total annual market acquisition

### **Market Acquisition and Activities:**

With funding we will be able to pursue this market. Current personnel restrictions have inhibited our ability to penetrate this market. There exists 147 school districts in New Mexico each with their own grounds maintenance personnel with little to no knowledge of soils maintenance beyond spreading chemical fertilizers, watering, and mowing.

### **Comments:**

Ammonium Nitrate contained in every bag of synthetic fertilizer poses a health risk for children. Natural and composted fertilizers like the NWP due not off gas nitrate's and are completely safe for people, pets, and wildlife.

## Potential Soil and Water Conservation District Markets

**New Mexico** – over 77 million total acres

4 tons per acre per year – 308,000,000 tons

10% of market in year one – 7,700,000 acres

4 tons per acre in year one – 30,800,000 tons

Year One Revenue (\$735 x 30,800,000 tons) = \$22,638,000,000

### Stewards of Land:

a) **Federal (25%)** – 19,250,000 total acres

4 tons per acre per year – 77,000,000 tons

10% of market in year one – 1,925,000 acres

4 tons per acre in year one – 770,000 tons

Year One Revenue (\$735 x 770,000 tons) = \$5,659,500,000

b) **State (12%)** – 9,240,000 total acres

4 tons per acre per year – 36,960,000 tons

10% of market in year one – 924,000 acres

4 tons per acre in year one – 3,696,000 tons

Year One Revenue (\$735 x 3,696,000 tons) = \$2,716,560,000

c) **Local Governments (2%)** – 1,540,000 total acres

4 tons per acre per year – 6,160,000 tons

10% of market in year one – 154,000 acres

4 tons per acre in year one – 616,000 tons

Year One Revenue (\$735 x 616,000 tons) = \$452,760,000

d) **Tribes (16%)** – 12,320,000 total acres

4 tons per acre per year – 49,280,000 tons

10% of market in year one – 1,232,000 acres

4 tons per acre in year one – 4,928,000 tons

Year One Revenue (\$735 x 4,928,000 tons) = \$3,622,080,000

e) **Over 10,000 Farmers and Ranchers (45%)** – 34,650,000 total acres

4 tons per acre per year – 138,600,000 tons

10% of market in year one – 3,465,000 acres

4 tons per acre in year one – 13,860,000 tons

Year One Revenue (\$735 x 13,860,000 tons) = \$10,187,100,000



## Potential Soil and Water Conservation District Markets

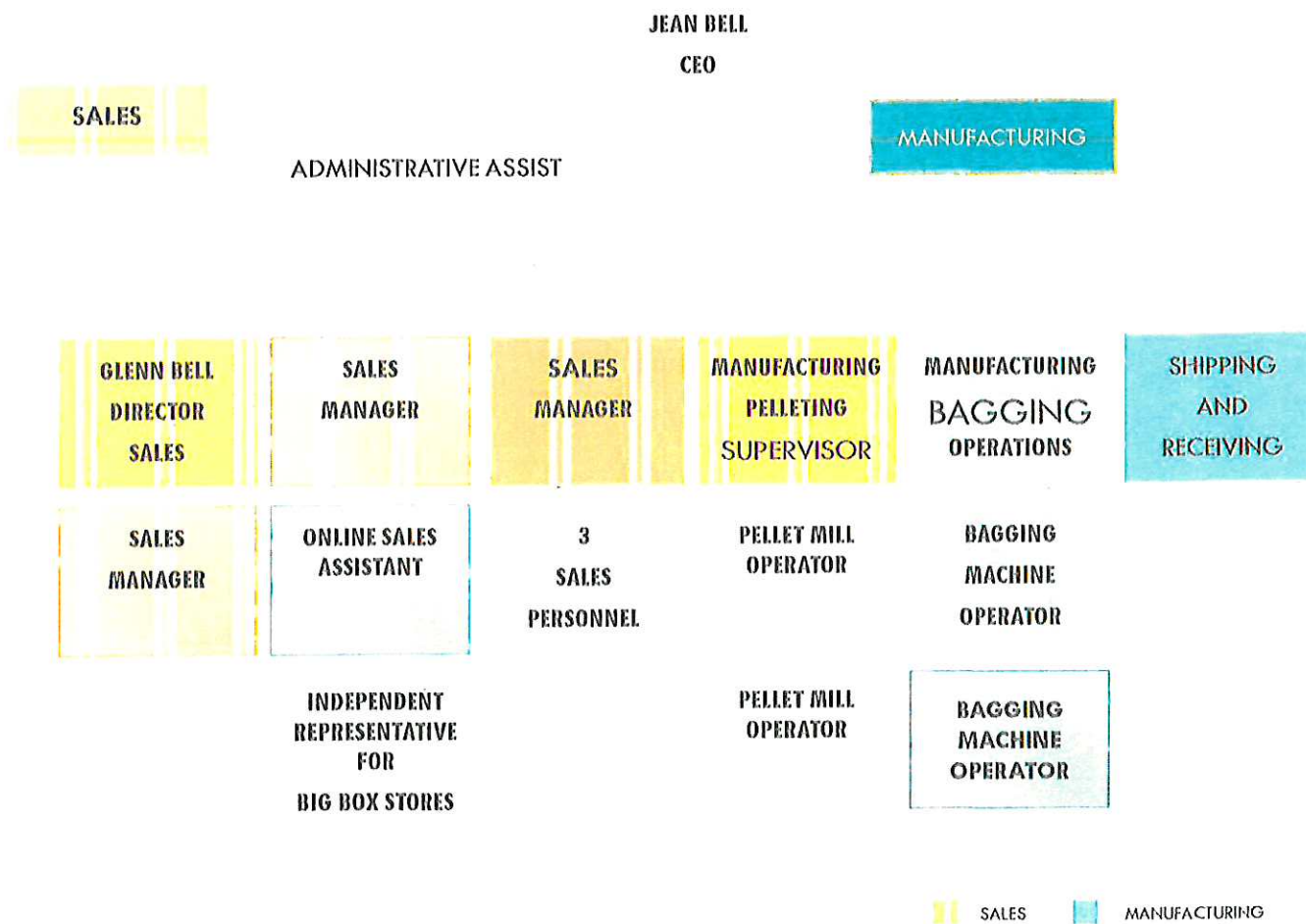
### Market Acquisition Activities and Progress:

The NWP and seeded pellets have been presented to a number of the 47 different Soil and Water Conservation Districts. Carlsbad SWCD has stated that once they order our NWP totes that half of the order will be distributed by aircraft. Deming SWCD are already considered a "Green" town district. They are ready to order with us for an alternative to their previous practices. Farmington will also be ordering with us upon their budget release.

### **Comments:**

The seeded pellets are currently in an R&D status. The SWCD contacts and contracts were lost during the COVID cut backs.

# DAI ORGANIZATION CHART



## DAI Projected City of Alamogordo LEDA Requirements Three Year Terms

| <u>Year One</u>                              | <u>Cost</u>        | <u>includes<br/>installation</u> |
|----------------------------------------------|--------------------|----------------------------------|
| Natural Way Pellets                          |                    |                                  |
| New Pellet Mill                              | \$ 150,000         |                                  |
| Silo                                         | \$ 30,000          | Yes                              |
| Drying Table                                 | \$ 150,000         |                                  |
| Bagging Machine                              | \$ 130,000         |                                  |
| Air Bladders                                 | \$ 5,000           | Yes                              |
| Conveyors                                    | \$ 50,000          |                                  |
| Electronics Equip                            | \$ 30,000          | Yes                              |
| Automation Consultant,<br>Equip and Software | \$ 30,000          |                                  |
| Infrastructure:                              |                    |                                  |
| Paving parking area                          | \$ 45,000          | Yes                              |
| Cache Hole for Raw Mat'l                     | \$ 30,000          |                                  |
| Storage Containers                           | \$ 30,000          | Yes                              |
| Paint Main Bldg & Sign                       | \$ 15,000          | Yes                              |
| Lighting & Security                          | \$ 10,000          | Yes                              |
| Facility Vehicles:                           |                    |                                  |
| Tractor (New)                                | \$ 18,000          |                                  |
| Spreader Truck (used)                        | \$ 70,000          |                                  |
| Flatbed Truck (used)                         | \$ 50,000          |                                  |
| Service Tractor & Implement                  | \$ 50,000          |                                  |
| Procurement Costs                            | \$ 20,000          |                                  |
| <b>Total Equip &amp; Infrastructure</b>      | <b>\$ 913,000</b>  |                                  |
| <b>Total LEDA</b>                            | <b>\$ 913,000</b>  |                                  |
| <b>Admin Expenses</b>                        |                    |                                  |
| WC Insurance                                 | \$ 12,000          |                                  |
| Marketing                                    | \$ 20,000          |                                  |
| Vehicle Insurance                            | \$ 5,000           |                                  |
| <b>Total Other Expenses</b>                  | <b>\$ 37,000</b>   |                                  |
| <b>Not included in LEDA</b>                  |                    |                                  |
| July thru Dec 2021                           |                    |                                  |
| Total (6 mos) Salaries                       | \$ 80,898          |                                  |
| Year One (Nov 21 thru Oct 22)                | \$281,962          |                                  |
| Year Two (Nov 22 thru Oct 23)                | \$392,208          |                                  |
| Year 3 (Nov 23 thru Oct 24)                  | <u>\$437,220</u>   |                                  |
| <b>Total wages</b>                           | <b>\$1,192,288</b> |                                  |



## Small Business Cash Flow Projection

### DAI - YEAR ONE

|                            |        |
|----------------------------|--------|
| Starting date              | Oct-21 |
| Cash balance alert minimum | 0      |

|                                    | Beginning | Nov-21  | Dec-21  | Jan-22  | Feb-22  | Mar-22    | Apr-22    | May-22    | Jun-22    | Jul-22    | Aug-22    | Sep-22    | Oct-22    | Total     |
|------------------------------------|-----------|---------|---------|---------|---------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|
| Cash on hand (beginning of month)  | 20,000    | 20,000  | 162,827 | 300,854 | 427,381 | 711,580   | 922,879   | 1,205,078 | 1,418,959 | 1,685,558 | 1,894,857 | 2,002,036 | 2,106,415 |           |
| <b>CASH RECEIPTS</b>               |           | Nov-21  | Dec-21  | Jan-22  | Feb-22  | Mar-22    | Apr-22    | May-22    | Jun-22    | Jul-22    | Aug-22    | Sep-22    | Oct-22    | Total     |
| Cash sales                         |           | 200,000 | 200,000 | 200,000 | 369,000 | 294,000   | 369,000   | 294,000   | 369,000   | 294,000   | 200,000   | 200,000   | 200,000   | 3,189,000 |
| Returns and allowances             |           |         |         |         |         |           |           |           |           |           |           |           |           | 0         |
| Collections on accounts receivable |           |         |         |         |         |           |           |           |           |           |           |           |           | 0         |
| Interest, other income             |           |         |         |         |         |           |           |           |           |           |           |           |           | 0         |
| Loan proceeds                      |           |         |         |         |         |           |           |           |           |           |           |           |           | 0         |
| Owner contributions                |           |         |         |         |         |           |           |           |           |           |           |           |           | 0         |
| <b>TOTAL CASH RECEIPTS</b>         |           | 200,000 | 200,000 | 200,000 | 369,000 | 294,000   | 369,000   | 294,000   | 369,000   | 294,000   | 200,000   | 200,000   | 200,000   | 3,189,000 |
| <b>Total cash available</b>        | 20,000    | 220,000 | 362,827 | 500,854 | 796,381 | 1,005,580 | 1,291,879 | 1,499,078 | 1,787,959 | 1,979,558 | 2,094,857 | 2,202,036 | 2,306,415 |           |

| CASH PAID OUT                      |        | Nov'21  | Dec'21  | Jan'22  | Feb'22  | Mar'22  | Apr'22    | May'22    | Jun'22    | Jul'22    | Aug'22    | Sep'22    | Oct'22    | Total   |
|------------------------------------|--------|---------|---------|---------|---------|---------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|---------|
| Advertising                        |        | 400     | 400     | 400     | 400     | 400     | 400       | 400       | 400       | 400       | 400       | 400       | 400       | 4,800   |
| Commissions and fees               |        | 0       | 0       | 4,000   | 10,780  | 5,880   | 10,780    | 5,880     | 10,780    | 5,880     | 14,000    | 14,000    | 4,000     | 85,980  |
| Contract labor                     |        | 1,667   | 5,667   | 5,667   | 5,667   | 8,467   | 5,667     | 5,667     | 8,467     | 5,667     | 5,667     | 8,467     | 5,667     | 72,404  |
| Employee benefit programs          |        | 0       | 0       | 0       | 0       | 0       | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0       |
| Insurance (other than health)      |        | 1,250   | 2,050   | 2,050   | 1,250   | 1,250   | 1,250     | 1,250     | 1,250     | 1,250     | 1,250     | 1,250     | 1,250     | 16,600  |
| Interest expense                   |        | 0       | 0       | 0       | 0       | 0       | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0       |
| Materials and supplies (in COGS)   |        | 15,520  | 15,520  | 15,520  | 15,520  | 15,520  | 15,520    | 15,520    | 15,520    | 15,520    | 15,520    | 15,520    | 15,520    | 186,240 |
| Meals and entertainment            |        | 551     | 551     | 551     | 551     | 551     | 551       | 551       | 551       | 551       | 551       | 551       | 551       | 6,612   |
| Mortgage interest                  |        | 0       | 0       | 0       | 0       | 0       | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0       |
| Office expense                     |        | 2,779   | 2,779   | 2,779   | 2,779   | 2,779   | 2,779     | 2,779     | 2,779     | 2,779     | 2,779     | 2,779     | 2,779     | 33,348  |
| Other interest expense             |        | 235     | 235     | 235     | 235     | 235     | 235       | 235       | 235       | 235       | 235       | 235       | 235       | 2,820   |
| Pension and profit-sharing plan    |        | 0       | 0       | 0       | 0       | 0       | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0       |
| Purchases for resale               |        | 0       | 0       | 0       | 0       | 0       | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0       |
| Rent or lease                      |        | 0       | 0       | 0       | 0       | 0       | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0       |
| Rent or lease: vehicles, equipment |        | 0       | 0       | 0       | 0       | 0       | 0         | 218       | 0         | 0         | 0         | 0         | 0         | 218     |
| Repairs and maintenance            |        | 1,131   | 1,131   | 1,131   | 1,131   | 1,131   | 1,131     | 1,131     | 1,131     | 1,131     | 1,131     | 1,131     | 1,131     | 13,572  |
| Supplies (not in COGS)             |        | 0       | 0       | 0       | 0       | 0       | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0       |
| Taxes and licenses                 |        | 1,192   | 1,192   | 1,192   | 1,192   | 1,192   | 1,192     | 1,192     | 1,192     | 1,192     | 1,192     | 1,192     | 1,192     | 14,304  |
| Travel and Events                  |        | 600     | 600     | 600     | 600     | 600     | 600       | 600       | 10,600    | 600       | 600       | 600       | 600       | 17,200  |
| Utilities                          |        | 486     | 486     | 486     | 486     | 486     | 486       | 486       | 486       | 486       | 486       | 486       | 486       | 5,832   |
| Wages (Gross)                      |        | 13,483  | 13,483  | 20,983  | 26,331  | 26,331  | 26,331    | 26,331    | 31,131    | 31,131    | 31,131    | 31,131    | 31,131    | 308,928 |
| Shipping expense                   |        | 15,200  | 15,200  | 15,200  | 15,200  | 15,200  | 15,200    | 15,200    | 15,200    | 15,200    | 15,200    | 15,200    | 15,200    | 182,400 |
| Tax Prep Service                   |        | 0       | 0       | 0       | 0       | 0       | 2,000     | 0         | 0         | 0         | 0         | 0         | 0         | 2,000   |
| Other expenses                     |        |         |         |         |         |         |           |           |           |           |           |           |           | 0       |
| Miscellaneous                      |        | 14      | 14      | 14      | 14      | 14      | 14        | 14        | 14        | 14        | 14        | 14        | 14        | 168     |
| SUBTOTAL                           |        | 54,508  | 59,308  | 70,808  | 82,136  | 80,036  | 84,136    | 77,454    | 99,736    | 82,036    | 90,156    | 92,956    | 80,156    | 953,426 |
| CASH PAID OUT                      |        | Nov'21  | Dec'21  | Jan'22  | Feb'22  | Mar'22  | Apr'22    | May'22    | Jun'22    | Jul'22    | Aug'22    | Sep'22    | Oct'22    | total   |
| Loan principal payment             |        | 338     | 338     | 338     | 338     | 338     | 338       | 338       | 338       | 338       | 338       | 338       | 338       | 4,056   |
| Capital purchases                  |        | 0       | 0       | 0       | 0       | 0       | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0       |
| Other startup costs                |        | 0       | 0       | 0       | 0       | 0       | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0       |
| To reserve and/or escrow           |        | 0       | 0       | 0       | 0       | 0       | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0       |
| Owners' withdrawal                 |        | 2,327   | 2,327   | 2,327   | 2,327   | 2,327   | 2,327     | 2,327     | 2,327     | 2,327     | 2,327     | 2,327     | 2,327     | 27,924  |
| TOTAL CASH PAID OUT                |        | 57,173  | 61,973  | 73,473  | 84,801  | 82,701  | 86,801    | 80,119    | 102,401   | 84,701    | 92,821    | 95,621    | 82,821    | 985,406 |
| Cash on hand (end of month)        | 20,000 | 162,827 | 300,854 | 427,381 | 711,580 | 922,879 | 1,205,078 | 1,418,959 | 1,685,558 | 1,894,857 | 2,002,036 | 2,106,415 | 2,223,594 |         |

[illegible]



## DAI - YEAR TWO

|        |
|--------|
| Nov-22 |
| 0      |

|                                    |           | Nov-22    | Dec-22    | Jan-23    | Feb-23    | Mar-23    | Apr-23    | May-23    | Jun-23    | Jul-23    | Aug-23    | Sep-23    | Oct-23    | Total     |
|------------------------------------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|
| <b>CASH RECEIPTS</b>               |           |           |           |           |           |           |           |           |           |           |           |           |           |           |
| Cash sales & Services              |           | 260,000   | 260,000   | 260,000   | 490,533   | 382,200   | 490,533   | 382,200   | 490,533   | 382,200   | 260,000   | 260,000   | 260,000   | 4,178,199 |
| Returns and allowances             |           |           |           |           |           |           |           |           |           |           |           |           |           | 0         |
| Collections on accounts receivable |           |           |           |           |           |           |           |           |           |           |           |           |           | 0         |
| Interest, other income             |           |           |           |           |           |           |           |           |           |           |           |           |           | 0         |
| Loan proceeds                      |           |           |           |           |           |           |           |           |           |           |           |           |           | 0         |
| Owner contributions                |           |           |           |           |           |           |           |           |           |           |           |           |           | 0         |
| <b>TOTAL CASH RECEIPTS</b>         |           | 260,000   | 260,000   | 260,000   | 490,533   | 382,200   | 490,533   | 382,200   | 490,533   | 382,200   | 260,000   | 260,000   | 260,000   | 4,178,199 |
| <b>Total cash available</b>        | 2,108,415 | 2,366,415 | 2,526,837 | 2,687,259 | 3,078,214 | 3,343,756 | 3,714,531 | 3,978,073 | 4,351,730 | 4,604,172 | 4,747,514 | 4,907,936 | 5,065,258 |           |

| Year cash available                |           | 2019      |           |           |           |           |           |           |           |           |           |           |           | Total     |  |
|------------------------------------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|--|
| CASH PAID OUT                      |           | Nov/22    | Dec/22    | Jan/23    | Feb/23    | Mar/23    | Apr/23    | May/23    | Jun/23    | Jul/23    | Aug/23    | Sep/23    | Oct/23    | Total     |  |
| Advertising                        |           | 520       | 520       | 520       | 520       | 520       | 520       | 520       | 520       | 520       | 520       | 520       | 520       | 6,240     |  |
| Commissions and fees               |           | 18,200    | 18,200    | 18,200    | 35,280    | 35,280    | 35,280    | 35,280    | 35,280    | 35,280    | 18,200    | 18,200    | 18,200    | 320,880   |  |
| Contract labor                     |           | 4,000     | 4,000     | 4,000     | 4,000     | 7,100     | 4,000     | 4,000     | 7,100     | 4,000     | 4,000     | 7,100     | 4,000     | 57,300    |  |
| Employee benefit programs          |           | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         |  |
| Insurance (other than health)      |           | 1,798     | 1,798     | 1,798     | 1,798     | 1,798     | 1,798     | 1,798     | 1,798     | 1,798     | 1,798     | 1,798     | 1,798     | 21,576    |  |
| Interest expense                   |           | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         |  |
| Materials and supplies (in COGS)   |           | 15,520    | 15,520    | 15,520    | 15,520    | 15,520    | 15,520    | 15,520    | 15,520    | 15,520    | 15,520    | 15,520    | 15,520    | 186,240   |  |
| Meals and entertainment            |           | 716       | 716       | 716       | 716       | 716       | 716       | 716       | 716       | 716       | 716       | 716       | 716       | 8,592     |  |
| Mortgage interest                  |           | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         |  |
| Office expense                     |           | 3,613     | 3,613     | 3,613     | 3,613     | 3,613     | 3,613     | 3,613     | 3,613     | 3,613     | 3,613     | 3,613     | 3,613     | 43,356    |  |
| Other interest expense             |           | 226       | 226       | 226       | 226       | 226       | 226       | 226       | 226       | 226       | 226       | 226       | 226       | 2,712     |  |
| Pension and profit-sharing plan    |           | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         |  |
| Purchases for resale               |           | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         |  |
| Rent or lease                      |           | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         |  |
| Rent or lease: vehicles, equipment |           | 0         | 0         | 0         | 0         | 0         | 0         | 218       | 0         | 0         | 0         | 0         | 0         | 218       |  |
| Repairs and maintenance            |           | 1,470     | 1,470     | 1,470     | 1,470     | 1,470     | 1,470     | 1,470     | 1,470     | 1,470     | 1,470     | 1,470     | 1,470     | 17,640    |  |
| Supplies (not in COGS)             |           | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         |  |
| Taxes and licenses                 |           | 1,550     | 1,550     | 1,550     | 1,550     | 1,550     | 1,550     | 1,550     | 1,550     | 1,550     | 1,550     | 1,550     | 1,550     | 18,600    |  |
| Travel and Events                  |           | 780       | 780       | 780       | 780       | 780       | 780       | 780       | 10,780    | 780       | 780       | 780       | 780       | 19,360    |  |
| Utilities                          |           | 632       | 632       | 632       | 632       | 632       | 632       | 632       | 632       | 632       | 632       | 632       | 632       | 7,584     |  |
| Wages (Gross)                      |           | 32,684    | 32,684    | 32,684    | 32,684    | 32,684    | 32,684    | 32,684    | 32,684    | 32,684    | 32,684    | 32,684    | 32,684    | 392,208   |  |
| Shipping expense                   |           | 15,200    | 15,200    | 15,200    | 15,200    | 15,200    | 15,200    | 15,200    | 15,200    | 15,200    | 15,200    | 15,200    | 15,200    | 182,400   |  |
| Tax Prep Service                   |           | 0         | 0         | 0         | 0         | 0         | 2,000     | 0         | 0         | 0         | 0         | 0         | 0         | 2,000     |  |
| Other expenses                     |           |           |           |           |           |           |           |           |           |           |           |           |           | 0         |  |
| Miscellaneous                      |           | 18        | 18        | 18        | 18        | 18        | 18        | 18        | 18        | 18        | 18        | 18        | 18        | 216       |  |
| SUBTOTAL                           |           | 96,927    | 96,927    | 96,927    | 114,007   | 117,107   | 116,007   | 114,225   | 127,107   | 114,007   | 96,927    | 100,027   | 96,927    | 1,287,122 |  |
| CASH PAID OUT                      |           | Nov/22    | Dec/22    | Jan/23    | Feb/23    | Mar/23    | Apr/23    | May/23    | Jun/23    | Jul/23    | Aug/23    | Sep/23    | Oct/23    | Total     |  |
| Loan principal payment             |           | 324       | 324       | 324       | 324       | 324       | 324       | 324       | 324       | 324       | 324       | 324       | 324       | 3,888     |  |
| Capital purchases                  |           | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         |  |
| Other startup costs                |           | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         |  |
| To reserve and/or escrow           |           | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         |  |
| Owners' withdrawal                 |           | 2,327     | 2,327     | 2,327     | 2,327     | 2,327     | 2,327     | 2,327     | 2,327     | 2,327     | 2,327     | 2,327     | 2,327     | 27,924    |  |
| TOTAL CASH PAID OUT                |           | 99,578    | 99,578    | 99,578    | 116,658   | 119,758   | 118,658   | 116,876   | 129,758   | 116,658   | 99,578    | 102,678   | 99,578    | 1,318,934 |  |
| Cash on hand (end of month)        | 2,106,415 | 2,266,837 | 2,427,259 | 2,587,681 | 2,961,556 | 3,223,998 | 3,595,873 | 3,861,197 | 4,221,972 | 4,487,514 | 4,647,936 | 4,805,258 | 4,965,680 |           |  |

[illegible]



### Small Business Cash Flow Projection DAI - YEAR THREE

|                            |        |
|----------------------------|--------|
| Starting date              | Nov-22 |
| Cash balance alert minimum | 0      |

|                                    | Beginning | Nov/23    | Dec/23    | Jan/24    | Feb/24    | Mar/24    | Apr/24    | May/24    | Jun/24    | Jul/24    | Aug/24    | Sep/24    | Oct/24    | Total     |
|------------------------------------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|
| Cash on hand (beginning of month)  | 4,805,258 | 4,805,258 | 4,914,111 | 5,022,964 | 5,246,755 | 5,607,500 | 5,826,311 | 6,220,118 | 6,326,873 | 6,709,580 | 6,816,553 | 6,925,406 | 7,031,159 |           |
| <b>CASH RECEIPTS</b>               |           | Nov/23    | Dec/23    | Jan/24    | Feb/24    | Mar/24    | Apr/24    | May/24    | Jun/24    | Jul/24    | Aug/24    | Sep/24    | Oct/24    | Total     |
| Cash sales & Services              |           | 247,200   | 247,200   | 397,200   | 538,867   | 397,200   | 538,867   | 247,200   | 538,867   | 247,200   | 247,200   | 247,200   | 247,200   | 4,141,401 |
| Returns and allowances             |           |           |           |           |           |           |           |           |           |           |           |           |           | 0         |
| Collections on accounts receivable |           |           |           |           |           |           |           |           |           |           |           |           |           | 0         |
| Interest, other income             |           |           |           |           |           |           |           |           |           |           |           |           |           | 0         |
| Loan proceeds                      |           |           |           |           |           |           |           |           |           |           |           |           |           | 0         |
| Owner contributions                |           |           |           |           |           |           |           |           |           |           |           |           |           | 0         |
| <b>TOTAL CASH RECEIPTS</b>         |           | 247,200   | 247,200   | 397,200   | 538,867   | 397,200   | 538,867   | 247,200   | 538,867   | 247,200   | 247,200   | 247,200   | 247,200   | 4,141,401 |
| <b>Total cash available</b>        | 4,805,258 | 5,052,458 | 5,161,311 | 5,420,164 | 5,785,622 | 6,004,700 | 6,365,178 | 6,467,318 | 6,865,740 | 6,956,780 | 7,063,753 | 7,172,606 | 7,278,359 |           |

| CASH PAID OUT                      |           | Nov'23    | Dec'23    | Jan'24    | Feb'24    | Mar'24    | Apr'24    | May'24    | Jun'24    | Jul'24    | Aug'24    | Sep'24    | Oct'24    | Total     |
|------------------------------------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|
| Advertising                        |           | 676       | 676       | 676       | 676       | 676       | 676       | 676       | 676       | 676       | 676       | 676       | 676       | 8,112     |
| Commissions and fees               |           | 51,987    | 51,987    | 54,987    | 59,700    | 56,867    | 56,700    | 53,867    | 56,700    | 53,867    | 51,987    | 51,987    | 51,987    | 652,623   |
| Contract labor                     |           | 4,000     | 4,000     | 4,000     | 4,000     | 4,000     | 4,000     | 4,000     | 7,100     | 4,000     | 4,000     | 7,100     | 4,000     | 57,300    |
| Employee benefit programs          |           | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         |
| Insurance (other than health)      |           | 2,338     | 2,338     | 2,338     | 2,338     | 2,338     | 2,338     | 2,338     | 2,338     | 2,338     | 2,338     | 2,338     | 2,338     | 28,056    |
| Interest expense                   |           | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         |
| Materials and supplies (in COGS)   |           | 15,520    | 15,520    | 27,160    | 27,160    | 27,160    | 15,520    | 15,520    | 15,520    | 15,520    | 15,520    | 15,520    | 15,520    | 221,160   |
| Meals and entertainment            |           | 931       | 931       | 931       | 931       | 931       | 931       | 931       | 931       | 931       | 931       | 931       | 931       | 11,172    |
| Mortgage interest                  |           | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         |
| Office expense                     |           | 4,697     | 4,697     | 4,697     | 4,697     | 4,697     | 4,697     | 4,697     | 4,697     | 4,697     | 4,697     | 4,697     | 4,697     | 56,364    |
| Other interest expense             |           | 226       | 226       | 226       | 226       | 226       | 226       | 226       | 226       | 226       | 226       | 226       | 226       | 2,712     |
| Pension and profit-sharing plan    |           | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         |
| Purchases for resale               |           | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         |
| Rent or lease                      |           | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         |
| Rent or lease: vehicles, equipment |           | 0         | 0         | 0         | 0         | 0         | 0         | 218       | 0         | 0         | 0         | 0         | 0         | 218       |
| Repairs and maintenance            |           | 1,911     | 1,911     | 1,911     | 1,911     | 1,911     | 1,911     | 1,911     | 1,911     | 1,911     | 1,911     | 1,911     | 1,911     | 22,932    |
| Supplies (not in COGS)             |           | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         |
| Taxes and licenses                 |           | 2,015     | 2,015     | 2,015     | 2,015     | 2,015     | 2,015     | 2,015     | 2,015     | 2,015     | 2,015     | 2,015     | 2,015     | 24,180    |
| Travel and Events                  |           | 1,014     | 1,014     | 1,014     | 1,014     | 1,014     | 1,014     | 1,014     | 11,014    | 1,014     | 1,014     | 1,014     | 1,014     | 22,168    |
| Utilities                          |           | 822       | 822       | 1,644     | 1,644     | 1,644     | 822       | 822       | 822       | 822       | 822       | 822       | 822       | 12,330    |
| Wages (Gross)                      |           | 34,335    | 34,335    | 42,735    | 42,735    | 42,735    | 34,335    | 34,335    | 34,335    | 34,335    | 34,335    | 34,335    | 34,335    | 437,220   |
| Shipping expense                   |           | 15,200    | 15,200    | 26,400    | 26,400    | 26,400    | 15,200    | 15,200    | 15,200    | 15,200    | 15,200    | 15,200    | 15,200    | 216,000   |
| Tax Prep Service                   |           | 0         | 0         | 0         | 0         | 0         | 2,000     | 0         | 0         | 0         | 0         | 0         | 0         | 2,000     |
| Other expenses                     |           |           |           |           |           |           |           |           |           |           |           |           |           | 0         |
| Miscellaneous                      |           | 24        | 24        | 24        | 24        | 24        | 24        | 24        | 24        | 24        | 24        | 24        | 24        | 288       |
| SUBTOTAL                           |           | 135,696   | 135,696   | 170,758   | 175,471   | 175,738   | 142,409   | 137,794   | 153,509   | 137,576   | 135,696   | 138,796   | 135,696   | 1,774,835 |
| CASH PAID OUT                      |           | Nov'23    | Dec'23    | Jan'24    | Feb'24    | Mar'23    | Apr'23    | May'24    | Jun'24    | Jul'24    | Aug'24    | Sep'24    | Oct'24    | Total     |
| Loan principal payment             |           | 324       | 324       | 324       | 324       | 324       | 324       | 324       | 324       | 324       | 324       | 324       | 324       | 3,888     |
| Capital purchases                  |           | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         |
| Other startup costs                |           | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         |
| To reserve and/or escrow           |           | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 0         |
| Owners' withdrawal                 |           | 2,327     | 2,327     | 2,327     | 2,327     | 2,327     | 2,327     | 2,327     | 2,327     | 2,327     | 2,327     | 2,327     | 2,327     | 27,924    |
| TOTAL CASH PAID OUT                |           | 138,347   | 138,347   | 173,409   | 178,122   | 178,389   | 145,060   | 140,445   | 156,160   | 140,227   | 138,347   | 141,447   | 138,347   | 1,806,647 |
| Cash on hand (end of month)        | 4,805,258 | 4,914,111 | 5,022,964 | 5,246,755 | 5,607,500 | 5,826,311 | 6,220,118 | 6,326,873 | 6,709,580 | 6,816,553 | 6,925,406 | 7,031,159 | 7,140,012 |           |

[illegible]



## U.S. Return of Partnership Income

OMB No. 1545-0123

For calendar year 2018, or tax year beginning \_\_\_\_\_ ending \_\_\_\_\_  
**EXTENSION GRANTED TO 09/16/19****2018**

A Principal business activity

**MANUFACTURING**

B Principal product or service

**GARDEN PRODUCTS**

C Business code number

**339900**

Name of partnership

**DROUGHT ADAPTATION INDUSTRIES LLC**

Type of Print Number, street, and room or suite no. If a P.O. box, see instructions.

**1505 W HIGHWAY 70**

City or town, state or province, country, and ZIP or foreign postal code

**ALAMOGORDO****NM 88310**

D Employer identification number

**82-1268315**

E Date business started

**10/01/2017**

F Total assets

**S 238,295.**G Check applicable boxes: (1) ☐ Initial return (2) ☐ Final return (3) ☐ Name change (4) ☐ Address change (5) ☐ Amended returnH Check accounting method: (1) ☒ Cash (2) ☐ Accrual (3) ☐ Other (specify) **4**I Number of Schedules K-1. Attach one for each person who was a partner at any time during the tax year **4**J Check if Schedules C and M-3 are attached ☐

Caution: Include only trade or business income and expenses on lines 1a through 22 below. See instructions for more information.

|                                                                                           |                                                                                             |                        |                        |                 |                 |
|-------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------|------------------------|------------------------|-----------------|-----------------|
| Income                                                                                    | 1 a Gross receipts or sales                                                                 | 1a                     | <b>73,524.</b>         | 1c              | <b>73,524.</b>  |
|                                                                                           | b Returns and allowances                                                                    | 1b                     |                        | 2               | <b>26,474.</b>  |
|                                                                                           | c Balance. Subtract line 1b from line 1a                                                    |                        |                        | 3               | <b>47,050.</b>  |
|                                                                                           | 2 Cost of goods sold (attach Form 1125-A)                                                   |                        |                        | 4               |                 |
|                                                                                           | 3 Gross profit. Subtract line 2 from line 1c                                                |                        |                        | 5               |                 |
|                                                                                           | 4 Ordinary income (loss) from other partnerships, estates, and trusts (attach statement)    |                        |                        | 6               |                 |
|                                                                                           | 5 Net farm profit (loss) (attach Schedule F (Form 1040))                                    |                        |                        | 7               | <b>357,840.</b> |
|                                                                                           | 6 Net gain (loss) from Form 4797, Part II, line 17 (attach Form 4797)                       |                        |                        | 8               | <b>404,890.</b> |
| 7 Other income (loss) (attach statement)                                                  |                                                                                             | <b>SEE STATEMENT 1</b> | 9                      | <b>176,787.</b> |                 |
| 8 Total income (loss). Combine lines 3 through 7                                          |                                                                                             |                        | 10                     |                 |                 |
| Deductions (see instructions for limitations)                                             | 9 Salaries and wages (other than to partners) (less employment credits)                     |                        |                        | 11              |                 |
|                                                                                           | 10 Guaranteed payments to partners                                                          |                        |                        | 12              |                 |
|                                                                                           | 11 Repairs and maintenance                                                                  |                        |                        | 13              | <b>840.</b>     |
|                                                                                           | 12 Bad debts                                                                                |                        |                        | 14              | <b>20,137.</b>  |
|                                                                                           | 13 Rent                                                                                     |                        |                        | 15              | <b>1,223.</b>   |
|                                                                                           | 14 Taxes and licenses                                                                       |                        | <b>SEE STATEMENT 2</b> | 16a             | <b>162,443.</b> |
|                                                                                           | 15 Interest (see instructions)                                                              |                        |                        | 16b             | <b>162,443.</b> |
|                                                                                           | 16 a Depreciation (if required, attach Form 4562)                                           |                        |                        | 16c             | <b>162,443.</b> |
|                                                                                           | b Less depreciation reported on Form 1125-A and elsewhere on return                         |                        |                        | 17              |                 |
|                                                                                           | 17 Depletion (Do not deduct oil and gas depletion.)                                         |                        |                        | 18              |                 |
|                                                                                           | 18 Retirement plans, etc.                                                                   |                        |                        | 19              |                 |
|                                                                                           | 19 Employee benefit programs                                                                |                        |                        | 20              | <b>104,462.</b> |
| 20 Other deductions (attach statement)                                                    |                                                                                             | <b>SEE STATEMENT 3</b> | 21                     | <b>465,892.</b> |                 |
| 21 Total deductions. Add the amounts shown in the far right column for lines 9 through 20 |                                                                                             |                        | 22                     | <b>-61,002.</b> |                 |
| 22 Ordinary business income (loss). Subtract line 21 from line 8                          |                                                                                             |                        | 23                     |                 |                 |
| Tax and Payments                                                                          | 23 Interest due under the look-back method-completed long-term contracts (attach Form 8697) |                        |                        | 24              |                 |
|                                                                                           | 24 Interest due under the look-back method-income forecast method (attach Form 8866)        |                        |                        | 25              |                 |
|                                                                                           | 25 BBA AAR imputed underpayment (see instructions)                                          |                        |                        | 26              |                 |
|                                                                                           | 26 Other taxes (see instructions)                                                           |                        |                        | 27              |                 |
|                                                                                           | 27 Total balance due. Add lines 23 through 27                                               |                        |                        | 28              |                 |
|                                                                                           | 28 Payment (see instructions)                                                               |                        |                        | 29              |                 |
|                                                                                           | 29 Amount owed. If line 28 is smaller than line 27, enter amount owed                       |                        |                        | 30              |                 |
|                                                                                           | 30 Overpayment. If line 28 is larger than line 27, enter overpayment                        |                        |                        |                 |                 |

Sign  
Here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than partner or limited liability company member) is based on all information of which preparer has any knowledge.

Signature of partner or limited liability company member

Date

May the IRS discuss this return with the preparer shown below (see instr.)?

☒ Yes ☐ No

Print/Type preparer's name

**GWEN S SANDERS**

Preparer's signature

**GWEN S SANDERS**

Date

**03/26/19**Check ☐ if

self-employed

PTIN

**P00075515**

Paid

Preparer

Use Only

Firm's name

**CARR, RIGGS & INGRAM, LLC**Firm's EIN **72-1396621**

Firm's address

**115 SOUTH FLORIDA AVE, SUITE E  
ALAMOGORDO, NM 88310**Phone no. **575.437.5573**

CLIENT COPY



Department of the Treasury  
Internal Revenue Service

For calendar year 2019, or tax year beginning \_\_\_\_\_ ending \_\_\_\_\_

2019

Go to [www.irs.gov/Form1065](http://www.irs.gov/Form1065) for instructions and the latest information.

A Principal business activity

Name of partnership

D Employer identification number

MANUFACTURING

DROUGHT ADAPTATION INDUSTRIES LLC

82-1268315

B Principal product or service

Type  
or  
Print

Number, street, and room or suite no. If a P.O. box, see instructions.

E Date business started

1505 W HIGHWAY 70

10/01/2017

GARDEN PRODUCTS

City or town, state or province, country, and ZIP or foreign postal code

F Total assets

C Business code number

ALAMOGORDO

NM 88310

S 210,996.

G Check applicable boxes: (1) ☐ Initial return (2) ☐ Final return (3) ☐ Name change (4) ☐ Address change (5) ☐ Amended returnH Check accounting method: (1) ☒ Cash (2) ☐ Accrual (3) ☐ Other (specify) ▶

I Number of Schedules K-1. Attach one for each person who was a partner at any time during the tax year ▶ 11

J Check if Schedules C and M-3 are attached ▶ ☐K Check if partnership: (1) ☐ Aggregated activities for section 465 at-risk purposes (2) ☐ Grouped activities for section 469 passive activity purposes

Caution: Include only trade or business income and expenses on lines 1a through 22 below. See instructions for more information.

|                                               |                                                                    |                                                                                          |                         |
|-----------------------------------------------|--------------------------------------------------------------------|------------------------------------------------------------------------------------------|-------------------------|
| Income                                        | 1a                                                                 | Gross receipts or sales                                                                  | 43,469.                 |
|                                               | 1b                                                                 | Returns and allowances                                                                   |                         |
|                                               | 1c                                                                 | Balance. Subtract line 1b from line 1a                                                   | 43,469.                 |
|                                               | 2                                                                  | Cost of goods sold (attach Form 1125-A)                                                  | 3,456.                  |
|                                               | 3                                                                  | Gross profit. Subtract line 2 from line 1c                                               | 40,013.                 |
|                                               | 4                                                                  | Ordinary income (loss) from other partnerships, estates, and trusts (attach statement)   |                         |
|                                               | 5                                                                  | Net farm profit (loss) (attach Schedule F (Form 1040 or 1040-SF))                        |                         |
|                                               | 6                                                                  | Net gain (loss) from Form 4797, Part II, line 17 (attach Form 4797)                      |                         |
| Deductions (see instructions for limitations) | 7                                                                  | Other income (loss) (attach statement)                                                   |                         |
|                                               | 8                                                                  | Total income (loss). Combine lines 3 through 7                                           | 40,013.                 |
|                                               | 9                                                                  | Salaries and wages (other than to partners) (less employment credits)                    | 75,697.                 |
|                                               | 10                                                                 | Guaranteed payments to partners                                                          |                         |
|                                               | 11                                                                 | Repairs and maintenance                                                                  |                         |
|                                               | 12                                                                 | Bad debts                                                                                |                         |
|                                               | 13                                                                 | Rent                                                                                     | 85.                     |
|                                               | 14                                                                 | Taxes and licenses                                                                       | SEE STATEMENT 1 7,955.  |
|                                               | 15                                                                 | Interest (see instructions)                                                              | 3,232.                  |
|                                               | 16a                                                                | Depreciation (if required, attach Form 4562)                                             | 8,035.                  |
|                                               | 16b                                                                | Less depreciation reported on Form 1125-A and elsewhere on return                        |                         |
|                                               | 16c                                                                | Depreciation (if required, attach Form 4562)                                             | 8,035.                  |
| Tax and Payments                              | 17                                                                 | Depletion (Do not deduct oil and gas depletion.)                                         |                         |
|                                               | 18                                                                 | Retirement plans, etc.                                                                   |                         |
|                                               | 19                                                                 | Employee benefit programs                                                                |                         |
|                                               | 20                                                                 | Other deductions (attach statement)                                                      | SEE STATEMENT 2 56,923. |
|                                               | 21                                                                 | Total deductions. Add the amounts shown in the far right column for lines 9 through 20   | 151,927.                |
|                                               | 22                                                                 | Ordinary business income (loss). Subtract line 21 from line 8                            | -111,914.               |
|                                               | 23                                                                 | Interest due under the look-back method-completed long-term contracts (attach Form 8697) |                         |
|                                               | 24                                                                 | Interest due under the look-back method-income forecast method (attach Form 8866)        |                         |
|                                               | 25                                                                 | BBA AAR imputed underpayment (see instructions)                                          |                         |
|                                               | 26                                                                 | Other taxes (see instructions)                                                           |                         |
|                                               | 27                                                                 | Total balance due. Add lines 23 through 26                                               |                         |
|                                               | 28                                                                 | Payment (see instructions)                                                               |                         |
| 29                                            | Amount owed. If line 28 is smaller than line 27, enter amount owed |                                                                                          |                         |
| 30                                            | Overpayment. If line 28 is larger than line 27, enter overpayment  |                                                                                          |                         |

Sign  
Here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than partner or limited liability company member) is based on all information of which preparer has any knowledge.

Signature of partner or limited liability company member

Date

May the IRS discuss this return with the preparer shown below? See instr. ☒ Yes ☐ No

Print/Type preparer's name

Preparer's signature

Date

Check ☐ if self-employed

PTIN

GWEN S SANDERS

GWEN S SANDERS

03/15/20

P00075515

Paid

Firm's name ▶

Preparer

CARR, RIGGS &amp; INGRAM, LLC

Firm's EIN ▶ 72-1396621

Use Only

Firm's address ▶ 115 SOUTH FLORIDA AVE, SUITE E

ALAMOGORDO, NM 88310

Phone no. 575.437.5573

COPY

## DAI Market Scale 2021 Project

### JOB CREATION/PERFORMANCE

| <u>Job Title<br/>or Type</u>         | <u>Est Pay<br/>Scale</u> | <u>Start Up<br/>Wage</u> | <u>Comm</u> | <u>Year<br/>Two</u> | <u>Comm</u> | <u>Year<br/>Three</u> | <u>Comm</u> |
|--------------------------------------|--------------------------|--------------------------|-------------|---------------------|-------------|-----------------------|-------------|
| Sales Manager (salary + commissions) | Salary                   | 60,000                   | 59,280      | 61,800              | 66,480      | 63,654                | 76,779      |
| (1) Manufacturing Supervisor         | Salary                   | 37,000                   | 0           | 38,110              | 0           | 39,253                | 0           |
| (3) Outside Sales Reps               | Hourly                   | 7,200                    | 49,400      | 7,440               | 166,200     | 7,680                 | 441,747     |
| (1) Inside Sales Rep                 | Hourly                   | 2,400                    | 0           | 2,480               | 0           | 2,560                 | 0           |
| (1) Admin Assistant                  | Hourly                   | 0                        | 0           | 2,720               | 0           | 2,880                 | 0           |
| Second Shift Machine Operators(3)    | Hourly                   | 0                        | 0           | 0                   | 0           | 8,400                 | 0           |
| (3) Machine Operator                 | Hourly                   | 8,400                    | 0           | 8,655               | 0           | 8,913                 | 0           |
| (2) Part Time Baggers                | Hourly                   | 4,800                    | 0           | 7,000               | 0           | 14,000                | 0           |
| (1) Shipping & Receiving             | Hourly                   | 2,400                    | 0           | 2,480               | 0           | 2,560                 | 0           |

NM Sales 2020

| Invoice No. | Amount | Invoice No.      | Amount   |
|-------------|--------|------------------|----------|
| 10226       | 36.95  | 10438            | 12.55    |
| 10225       | 17.95  | 10446            | 91.80    |
| 10228       | 60.00  | 10455            | 91.20    |
| 10230       | 28.00  | 10459            | 735.00   |
| 10231       | 28.00  | 10477            | 39.60    |
| 10234       | 19.95  | 10483            | 10.25    |
| 10235       | 112.00 | 10484            | 23.90    |
| 10239       | 31.45  | 1262 & 1263      | 14091.00 |
| 10240       | 49.95  | 10041-A          | 735.00   |
| 10241       | 18.95  | 1260             | 3600.00  |
| 10243       | 30.90  |                  |          |
| 10244       | 28.35  | Total NM Sales   | 21828.75 |
| 10247       | 11.45  | Total Sales 2020 | 23124.30 |
| 10248       | 28.70  |                  |          |
| 10249       | 149.90 | Percentage       |          |
| 10250       | 112.00 | NM vs Overall    | 94%      |
| 10253       | 28.00  |                  |          |
| 10259       | 30.60  |                  |          |
| 10271       | 79.80  |                  |          |
| 10279       | 69.25  |                  |          |
| 10283       | 28.00  |                  |          |
| 10288       | 56.00  |                  |          |
| 10292       | 28.00  |                  |          |
| 10293       | 39.90  |                  |          |
| 10298       | 169.85 |                  |          |
| 10303       | 8.50   |                  |          |
| 10315       | 44.35  |                  |          |
| 10320       | 37.15  |                  |          |
| 10324       | 32.90  |                  |          |
| 10327       | 37.90  |                  |          |
| 10333       | 406.65 |                  |          |
| 10350       | 84.00  |                  |          |
| 10352       | 29.85  |                  |          |
| 10370       | 18.90  |                  |          |
| 10373       | 45.00  |                  |          |
| 10374       | 43.90  |                  |          |
| 10376       | 60.80  |                  |          |
| 10384       | 84.00  |                  |          |
| 10404       | 56.00  |                  |          |
| 10420       | 22.80  |                  |          |
| 10428       | 28.00  |                  |          |
| 10431       | 35.85  |                  |          |
| 10433       | 28.00  |                  |          |

12:13 PM  
03/22/21

Drought Adaptation Industries  
**Employee Earnings Summary**  
January through December 2020

|                          | Salary          | Hourly          | Cash Ad...  | Federal Withh... | Medicare Em... | Social Security E... | Federal Unemp... | Medicare Co... | Social Security ... |
|--------------------------|-----------------|-----------------|-------------|------------------|----------------|----------------------|------------------|----------------|---------------------|
| Chris Jones              | 7,920.00        | 6,135.50        | 0.00        | -911.00          | -203.80        | -871.44              | 42.00            | 203.80         | 871.44              |
| Jean A Bell <i>OWE R</i> | 30323.12        | 0.00            | 0.00        | -2,429.00        | -439.69        | -1,880.03            | 42.00            | 439.69         | 1,880.03            |
| Lazarin Jimmy            | 0.00            | 330.75          | 0.00        | 0.00             | -4.80          | -20.51               | 1.98             | 4.80           | 20.51               |
| Natalie E Stewart        | 0.00            | 5,578.00        | 0.00        | -185.00          | -80.88         | -345.84              | 33.47            | 80.88          | 345.84              |
| Timothy J Page           | 0.00            | 2,088.00        | 0.00        | -132.00          | -30.28         | -129.46              | 12.53            | 30.28          | 129.46              |
| <b>TOTAL</b>             | <b>38243.12</b> | <b>14132.25</b> | <b>0.00</b> | <b>-3,657.00</b> | <b>-759.46</b> | <b>-3,247.28</b>     | <b>131.98</b>    | <b>759.46</b>  | <b>3,247.28</b>     |

*\$ 22,052.25 Gross Wages*



NEW MEXICO

DRIVER'S LICENSE



License # 510051181 ISSUED 12/05/2018  
Date of Birth [REDACTED] 1943 EXPIRES 12/25/2022  
BELL  
JEAN ARLENE

301 7TH ST  
TULAROSA, NM 88352

WEIGHT 150 SEX F CLASS D  
HEIGHT 5'04" EYES GRN ENDORSEMENTS NONE  
RESTRICTIONS B



# LEDA PROJECT APPLICATION

*The purpose of the Application is to identify the project area and to present a detailed plan on how the proceeds of the LEDA funds will be put to use. This Plan is presented to demonstrate to the City, what the public benefits of this project are and to help the City evaluate the application's merit in comparison to other projects submitted, as well as assist the review committee in determining eligibility according to the City's LEDA Act. The applicant and its agent will endeavor to provide the City any additional information reasonably requested.*

### APPLICANT INFORMATION

|                                      |                                        |                                         |                                         |
|--------------------------------------|----------------------------------------|-----------------------------------------|-----------------------------------------|
| Legal Name                           | DROUGHT ADAPTATION INDUSTRIES LLC      |                                         |                                         |
| Trade Name (dba)                     | DAI                                    |                                         |                                         |
| Project Name if different from above | DAI MARKET SCALE 2021                  |                                         |                                         |
| Address                              | 1505 US Hwy 70                         |                                         |                                         |
| City, State, Zip                     | ALAMOGORDO, NM 88310                   |                                         |                                         |
| Phone                                | 575-489-4038                           |                                         |                                         |
| Fax                                  | N/A                                    |                                         |                                         |
| Primary Contact Person               | JEAN BELL                              |                                         |                                         |
| Federal Tax ID #                     | 82-1268315                             |                                         |                                         |
| NM State Tax and Rev. #              | 03-391264-005                          |                                         |                                         |
| City/County Business License #       | 21-00023819                            |                                         |                                         |
| NAICS Code                           | 325314 + WOSB 562910                   |                                         |                                         |
| This business is organized as a:     | <input type="checkbox"/> C-Corporation | <input type="checkbox"/> S-Corporation  | <input checked="" type="checkbox"/> LLC |
|                                      | <input type="checkbox"/> Partnership   | <input type="checkbox"/> Proprietorship | <input type="checkbox"/> NPO            |

Please attach copies of (exhibit 1, 2, etc.):

☒ Incorporation Papers

☐ By-laws

☒ Resumes of all principals (owners, partners, directors or officers)

**A) Project Information:**

- a. Description of Proposed Development, its product and its timeline.
- b. Provide a detailed scope of work that is specific to the funding request/award
- c. Business Plan or detailed information such as:
  - i. Executive Summary; Business description and history
  - ii. Infrastructure Development/Needs
  - iii. Market analysis and strategy
  - iv. Summary of competition
  - v. Tax Reporting Status
  - vi. Effect on Existing Industry and Commerce during and after Construction
  - vii. Land Acquisition
  - viii. Local Purchasing
  - ix. Water Conservation
  - x. Relocation of Individuals or Businesses
  - xi. Construction Schedule
    - 1. Target Close Date
    - 2. General Contract Signed
    - 3. Construction Start
    - 4. Construction End
    - 5. New Facility Operational Date
  - xii. Operations plan; Organizational chart
  - xiii. Any document or record that the local governing body, in its sole discretion, deems necessary.

**B) Financial Information**

- a. Detailed assumptions for business and proposed projects; pro-forma cash flow analysis; three year projected income statements, whichever is applicable
- b. Financial statements with independent audits, if available, or Tax returns, for the past three years.\
- c. City/County business license number/proof or statement that registration will be pursued or secured.
- d. Does the amount requested reasonably represent the money needed to complete the project?
- e. If a gap exists, please define/explain options being pursued or solution to fund that gap.
- f. Provide schedule of funding commitments. Provide copies of any term/commitment letters
- g. What is the equity investment from the applicant?



- h. What is the collateral/security to be pledged to the funds awarded?
- i. What is the method of appraisal for stated security?

| Funding Type                                             | Source                | Amount     |
|----------------------------------------------------------|-----------------------|------------|
| Equity Investment                                        |                       |            |
| City funding                                             | LEDA                  | \$ 913,000 |
| Bank Loans                                               |                       |            |
| Cash down and % it represents of the total project costs |                       |            |
| Other Loans                                              |                       |            |
| Other Sources                                            | PNM - 3 Phase Upgrade |            |
|                                                          | TOTAL                 |            |

### C) History and Background

- a. Track record with projects of this type?
- b. Explain the commitment to build, operate, and manage the project?
- c. Any officers ever filed for bankruptcy?
- d. List Current officers and directors
- e. Applicant or any of its officers ever defaulted on any loans or financial obligation?
- f. Does the applicant have any loans or other financial obligations on which payments are not current?

### D) Community Aspects

- a. What are the infrastructure needs at the community level, not yet in place or in process that will affect this project's application?
- b. What specific incentives are being REQUESTED from the COMMUNITY (e.g. parcel of land, building lease, waiver of fees, utility access/extension)?

Property Tax Abatements \_\_\_\_\_  
 Infrastructure Improvement \_\_\_\_\_  
 Tax Increment Financing \_\_\_\_\_

Industrial Revenue Bonds \_\_\_\_\_  
 Access to Loan Funds \_\_\_\_\_  
 Public Improvement Districts ~~\_\_\_\_\_~~

Grey Water \_\_\_\_\_  
Other \_\_\_\_\_

Other Customized Incentives \_\_\_\_\_

- c. What specific incentives are being PROVIDED from the COMMUNITY (e.g. parcel of land, building lease, waiver of fees, utility access/extension)?

**E) Job Creation/Performance**

- Outline the number and types of jobs to be created.
- Outline the proposed pay scale and payroll proposed by the entity
- Outline the benefits offered to the employees, including but not limited to health care and retirement?
- Outline any efforts being made or proposed by the applicant to employment opportunities to people within the local employment pool

| SAMPLE                    |                     |             | Number of Jobs Created |                     |
|---------------------------|---------------------|-------------|------------------------|---------------------|
| Job Title or Type         | Estimated Pay Scale | At Start-up | Beginning of Year 2    | Beginning of Year 3 |
| <i>see attached</i>       |                     |             |                        |                     |
|                           |                     |             |                        |                     |
|                           |                     |             |                        |                     |
|                           |                     |             |                        |                     |
|                           |                     |             |                        |                     |
|                           |                     |             |                        |                     |
|                           |                     |             |                        |                     |
|                           |                     |             |                        |                     |
| Total No. of Jobs Created |                     |             |                        |                     |
| Total Estimated Payroll   |                     |             |                        |                     |

Please indicate in the above chart which jobs will be:

- Fill locally (L)
- Fill by transfer from other facilities (T) or recruited from outside the COMMUNITY (R)

JOB RETENTION INFORMATION (IF APPLICABLE)

|                           |                     |             | Number of Retained/Impacted |                     |
|---------------------------|---------------------|-------------|-----------------------------|---------------------|
| Job Title or Type         | Estimated Pay Scale | At Start-up | Beginning of Year 2         | Beginning of Year 3 |
|                           |                     |             |                             |                     |
|                           |                     |             |                             |                     |
|                           |                     |             |                             |                     |
|                           |                     |             |                             |                     |
|                           |                     |             |                             |                     |
|                           |                     |             |                             |                     |
| Total No. of Jobs Created |                     |             |                             |                     |
| Total Estimated Payroll   |                     |             |                             |                     |



**F) Impacts (environmental, fiscal, economic, etc.)**

- a. Outline any impacts to the environment
- b. Status of permitting/regulatory matters needed for project
- c. By request, NMEDD can provide the Economic Impact Analysis to address the impact to the local tax base, the school system, etc.)

☒ Yes    ☐ No

*Any supplemental documents that are submitted to support the application are to be included with this application and noted as "exhibit 1, 2" etc.*

*A review of the application and its contents will be done by a committee put together for the express purpose of accomplishing due diligence in review of all applicable information, accomplish any validation needed as to qualifying entities eligibility, and provide a recommendation to City Staff and the City Commission; applicant will be advised of any missing or supplemental information needed. This process may take upwards of 60 to 90 day to complete. Applicant's patience and accommodation towards any additional items asked for is greatly appreciated.*

Department, its contractors, agents, and/or employees from any liability which may be incurred as a result of the collection and use of information.

3. I understand I may revoke this authorization in writing at any time.
4. This authorization will automatically expire in 60 days from the date it is signed.

FULL NAME: JEAN BELL

SIGNATURE: Jean Bell

SSN: [REDACTED]

DOB: [REDACTED] 46

DATE: \_\_\_\_\_

\* PLEASE INCLUDE A PHOTO COPY OF THE INDIVIDUAL'S PHOTO ID.

Scribed and sworn to me on this 7<sup>th</sup> day of  
April, 20 21, Otero County, New  
Mexico

Signed [Signature]  
Notary Public

My Commission  
expires: 04-09-2023



OFFICIAL SEAL  
ABIMAE VALCARCEL  
NOTARY PUBLIC - State of New Mexico

My Commission Expires 04-09-2023

# EXECUTIVE SUMMARY

## A REPORT OF THE ECONOMIC IMPACT OF DAI MARKET SCALE 2021 IN ALAMOGORDO, NM

May 17, 2021

Prepared by:

Joel Salas

New Mexico Economic Development Department

Joseph Montoya Building

1100 S. St. Francis Drive

Santa Fe, New Mexico 87505



Prepared using Total Impact



## PURPOSE & LIMITATIONS

This report presents the results of an analysis undertaken by the New Mexico Economic Development Department using Total Impact, an economic and fiscal impact analysis tool developed and supported by the Austin, TX based economic consulting firm, Impact DataSource.

The Total Impact model is a customized software program licensed to the New Mexico Economic Development Department. The model includes estimates, assumptions, and other information developed by Impact DataSource from its independent research effort detailed in New Mexico Economic Development Department's Total Impact User Guide.

The analysis relies on prospective estimates of business activity that may not be realized. New Mexico Economic Development Department made reasonable efforts to ensure that the project-specific data entered into the Total Impact model reflects realistic estimates of future activity.

No warranty or representation is made by New Mexico Economic Development Department or Impact DataSource that any of the estimates or results contained in this study will actually be achieved.

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## Introduction

This report presents the results of an economic impact analysis performed using Total Impact, a model developed by Impact DataSource. The report estimates the impact that a potential project in the Alamogordo may have on the state and local economy and estimates the costs and benefits for the state and local taxing districts over a 10-year period.

## Description of the Project

We have an existing location - no new building or land purchase. Expansion of current pelleting operations and equipment will allow us to compete in RFP requests for fertilizer. Our original equipment was purchased as a Research and Development project to proof pelletizing our raw materials. Having succeeded we now need to produce over 5,200 tons of Natural Way Pellets per year to compete with "chemical" fertilizer purchases thru State and City RFP's.

## Existing & Expanded Operations

The Project under analysis represents the expansion of an existing company in the Alamogordo. The existing operations currently support 5.0 direct jobs in the community and 7.3 indirect and induced jobs. The direct workers earn \$52,375 per year and the company supports \$0.2 million per year in taxable sales and spending in the community. Additionally, the company supports taxable property valued at \$0.4 million annually. The table below illustrates the company's economic impact over the next 10 years - including both the existing and expanded operations.

Table 1. Economic Impact of Existing and Expanded Operations Over the Next 10 Years

|                    | Existing<br>Operations | Expansion     | Existing &<br>Expanded Ops |
|--------------------|------------------------|---------------|----------------------------|
| Economic Output:   |                        |               |                            |
| Direct             | \$21,991,761           | \$73,604,037  | \$95,595,798               |
| Indirect & Induced | \$14,809,252           | \$49,564,958  | \$64,374,210               |
| Total              | \$36,801,013           | \$123,168,995 | \$159,970,008              |
| Jobs               |                        |               |                            |
| Direct             | 5.0                    | 18.0          | 23.0                       |
| Indirect & Induced | 7.3                    | 26.4          | 33.7                       |
| Total              | 12.3                   | 44.4          | 56.7                       |
| Salaries           |                        |               |                            |
| Direct             | \$2,867,459            | \$1,632,490   | \$4,499,949                |
| Indirect & Induced | \$3,391,918            | \$1,931,072   | \$5,322,990                |
| Total              | \$6,259,377            | \$3,563,562   | \$9,822,939                |
| Taxable Sales      |                        |               |                            |
| Direct             | \$951,334              | \$4,662,309   | \$5,613,643                |
| Indirect & Induced | \$825,821              | \$470,153     | \$1,295,974                |
| Total              | \$1,777,155            | \$5,132,462   | \$6,909,617                |

The table below illustrates the company's fiscal impact - the net benefits for local taxing districts - over the next 10 years - including both the existing and expanded operations.

Table 2. Fiscal Impact of Existing and Expanded Operations Over the Next 10 Years

|                           | Net Benefits        |           |                         |
|---------------------------|---------------------|-----------|-------------------------|
|                           | Existing Operations | Expansion | Existing & Expanded Ops |
| State of New Mexico       | \$491,013           | \$173,410 | \$664,423               |
| Alamogordo                | \$62,759            | \$198,705 | \$261,464               |
| Otero County              | \$25,711            | \$70,067  | \$95,778                |
| Alamogordo Public Schools | \$9,559             | \$33,546  | \$43,105                |
| Special Taxing Districts  | \$1,517             | \$3,153   | \$4,670                 |
| Total                     | \$590,559           | \$478,881 | \$1,069,440             |

The remainder of this report will focus on only the economic and fiscal impact associated with the expanded operations.

### Economic Impact Overview

The Project's operations will support employment and other economic impacts in the state. The 18.0 workers directly employed by the Project will earn approximately \$19,000 per year initially. This direct activity will support 26.4 indirect and induced workers in the state earning \$16,000 on average. The total additional payroll or workers' earnings associated with the Project is estimated to be approximately \$3.6 million over the next 10 years.

Accounting for various taxable sales and purchases, including activity associated with the Project, worker spending, and visitors' spending in the state, the Project is estimated to support approximately \$5.1 million in taxable sales over the next 10 years.

Table 3. Economic Impact Over the Next 10 Years Statewide

|                                                                      | Direct       | Indirect & Induced | Total         |
|----------------------------------------------------------------------|--------------|--------------------|---------------|
| Economic output generated by direct, indirect, and induced activity  | \$73,604,037 | \$49,564,958       | \$123,168,995 |
| Number of permanent direct, indirect, and induced jobs to be created | 18.0         | 26.4               | 44.4          |
| Salaries to be paid to direct, indirect, and induced workers         | \$1,632,490  | \$1,931,072        | \$3,563,562   |
| Taxable sales and purchases                                          | \$4,662,309  | \$470,153          | \$5,132,462   |



The project is not expected to result in a consequential increase in the state's population. A majority of newly hired employees would likely be current New Mexico residents. However, it is estimated that approximately 10.0% of the new direct workers may be new residents to Otero County. The local population impacts may result in new residential properties constructed in the county and increase the enrollment of local public schools.

Table 4. Population Impacts Over the Next 10 Years for the County

|                                                                             | Direct | Indirect & Induced | Total |
|-----------------------------------------------------------------------------|--------|--------------------|-------|
| Number of direct, indirect, and induced workers who will move to the County | 1.8    | 0.0                | 1.8   |
| Number of new residents in the County                                       | 4.7    | 0.1                | 4.8   |
| Number of new residential properties to be built in the County              | 0.1    | 0.0                | 0.1   |
| Number of new students expected to attend local school district             | 1.1    | (0.0)              | 1.1   |

The Project is estimated to support an average of approximately \$0.2 million in new non-residential taxable property each year over the next 10 years. The taxable value of property supported by the Project over the 10-year period is shown in the following table.

Table 5. Value of Taxable Property Supported by the Project Over the Next 10 Years

| Year | New Residential Property | The Project's Property |                                           |                                  |                                  | Total Residential & Nonresidential Property |
|------|--------------------------|------------------------|-------------------------------------------|----------------------------------|----------------------------------|---------------------------------------------|
|      |                          | Land                   | Buildings & Other Real Prop. Improvements | Furniture, Fixtures, & Equipment | Subtotal Nonresidential Property |                                             |
| 1    | \$3,610                  | \$0                    | \$43,333                                  | \$261,000                        | \$304,333                        | \$307,943                                   |
| 2    | \$3,682                  | \$0                    | \$44,200                                  | \$234,900                        | \$279,100                        | \$282,782                                   |
| 3    | \$3,756                  | \$0                    | \$45,084                                  | \$208,800                        | \$253,884                        | \$257,640                                   |
| 4    | \$3,831                  | \$0                    | \$45,986                                  | \$182,700                        | \$228,686                        | \$232,517                                   |
| 5    | \$3,908                  | \$0                    | \$46,905                                  | \$156,600                        | \$203,505                        | \$207,413                                   |
| 6    | \$3,986                  | \$0                    | \$47,844                                  | \$130,500                        | \$178,344                        | \$182,329                                   |
| 7    | \$4,065                  | \$0                    | \$48,800                                  | \$104,400                        | \$153,200                        | \$157,266                                   |
| 8    | \$4,147                  | \$0                    | \$49,776                                  | \$78,300                         | \$128,076                        | \$132,223                                   |
| 9    | \$4,230                  | \$0                    | \$50,772                                  | \$52,200                         | \$102,972                        | \$107,202                                   |
| 10   | \$4,314                  | \$0                    | \$51,787                                  | \$52,200                         | \$103,987                        | \$108,302                                   |

The taxable value of residential property represents the value of properties that may be constructed as a result of new workers moving to the community.

This analysis assumes the residential real property appreciation rate to be 2.0% per year. The Project's real property is assumed to appreciate at a rate of 2.0% per year. The analysis assumes the Project's furniture, fixtures, and equipment will depreciate over time according to the depreciation schedule shown in Appendix A.

## Temporary Construction Impact

The Project will include an initial period of construction lasting 1 year(s) where \$0.1 million will be spent to construct new buildings and other real property improvements. It is assumed that 50.0% of the construction expenditure will be spent on materials and 50.0% on labor. The temporary construction activity will support temporary economic impacts in the community in the form of temporary construction employment and sales for local construction firms.

Table 5. Spending and Estimated Direct Employment Impact of Project-Related Construction Activity

|                                                                        | Amount    |
|------------------------------------------------------------------------|-----------|
| Total construction expenditure                                         | \$130,000 |
| Materials                                                              | \$65,000  |
| Labor                                                                  | \$65,000  |
| Temporary Construction Workers Supported (Average Earnings = \$54,900) | 1.2       |

The following table presents the temporary economic impacts resulting from the construction.

Table 6. Temporary Economic Impact of Project-Related Construction Activity

|                                                                              | Direct    | Indirect & Induced | Total     |
|------------------------------------------------------------------------------|-----------|--------------------|-----------|
| Number of temporary direct, indirect, and induced job years to be supported* | 1.2       | 0.8                | 2.0       |
| Salaries to be paid to direct, indirect, and induced workers                 | \$65,000  | \$31,883           | \$96,883  |
| Revenues or sales for businesses related to construction                     | \$130,000 | \$108,082          | \$238,082 |

\* A job year is defined as full employment for one person for 2080 hours in a 12-month span.

Gross receipt tax calculations related to construction activity are presented in the following table. The gross receipts tax revenue generated from construction-period taxable spending is included in the fiscal impact for affected districts.

Table 7. Construction-Related Taxable Spending

|                                                               | Estimate         |
|---------------------------------------------------------------|------------------|
| Expenditure for Materials                                     | \$65,000         |
| Percent of Materials subject to local gross receipts tax      | 75.0%            |
| <u>Subtotal Taxable Materials</u>                             | <u>\$48,750</u>  |
| Expenditure for Labor / Paid to construction workers          | \$65,000         |
| Percent of gross earnings spent on taxable goods and services | 24.0%            |
| Percent of taxable spending done locally                      | 25.0%            |
| <u>Subtotal Taxable Construction Worker Spending</u>          | <u>\$3,900</u>   |
| Expenditure for Furniture, Fixtures, & Equipment (FF&E)       | \$783,000        |
| Percent of FF&E subject to local gross receipts tax           | 25.0%            |
| <u>Subtotal Taxable FF&amp;E Purchases</u>                    | <u>\$195,750</u> |
| Total Construction-Related Taxable Spending                   | \$248,400        |

The above construction analysis focuses on the impact resulting from the Project's initial construction investments over the first 1 year(s).



## Fiscal Impact Overview

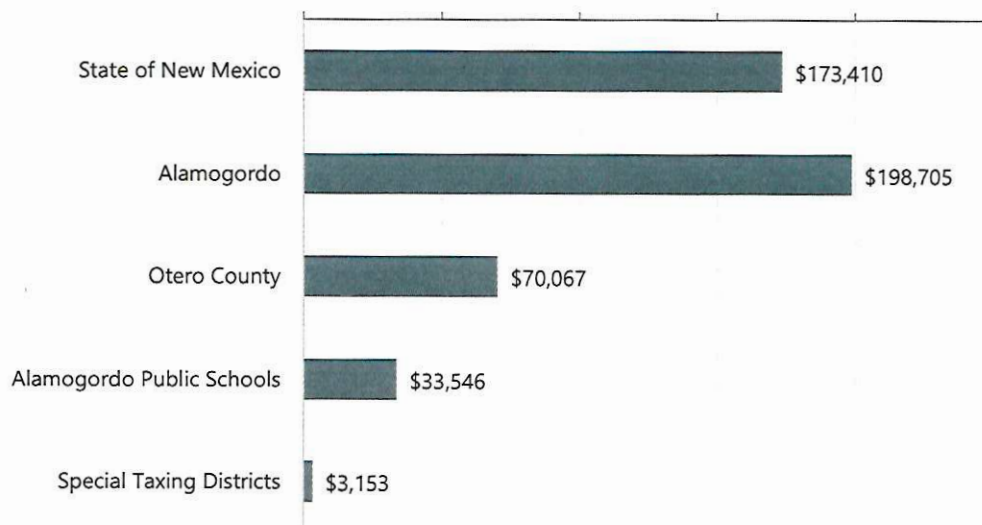
The Project will generate additional benefits and costs for local taxing districts, a summary of which is provided below. The source of specific benefits and costs are provided in greater detail for each taxing district on subsequent pages. Overall, the City will receive approximately \$198,700 in net benefits over the 10-year period and the Project will generate \$478,900 in total for all local taxing districts.

Table 8. Fiscal Net Benefits Over the Next 10 Years for the State and Local Taxing Districts

|                           | Benefits    | Costs       | Net Benefits | Present Value of Net Benefits* |
|---------------------------|-------------|-------------|--------------|--------------------------------|
| State of New Mexico       | \$673,259   | (\$499,849) | \$173,410    | \$177,081                      |
| Alamogordo                | \$279,789   | (\$81,084)  | \$198,705    | \$152,150                      |
| Otero County              | \$92,503    | (\$22,436)  | \$70,067     | \$54,675                       |
| Alamogordo Public Schools | \$62,114    | (\$28,568)  | \$33,546     | \$25,295                       |
| Special Taxing Districts  | \$3,153     | \$0         | \$3,153      | \$2,552                        |
| Total                     | \$1,110,818 | (\$631,937) | \$478,881    | \$411,753                      |

\* The Present Value of Net Benefits expresses the future stream of net benefits received over several years as a single value in today's dollars. Today's dollar and a dollar to be received at differing times in the future are not comparable because of the time value of money. The time value of money is the interest rate or each taxing entity's discount rate. This analysis uses a discount rate of 5% to make the dollars comparable.

Figure 1. Net Benefits Over the Next 10 Years for the State and Local Taxing Districts





## State of New Mexico

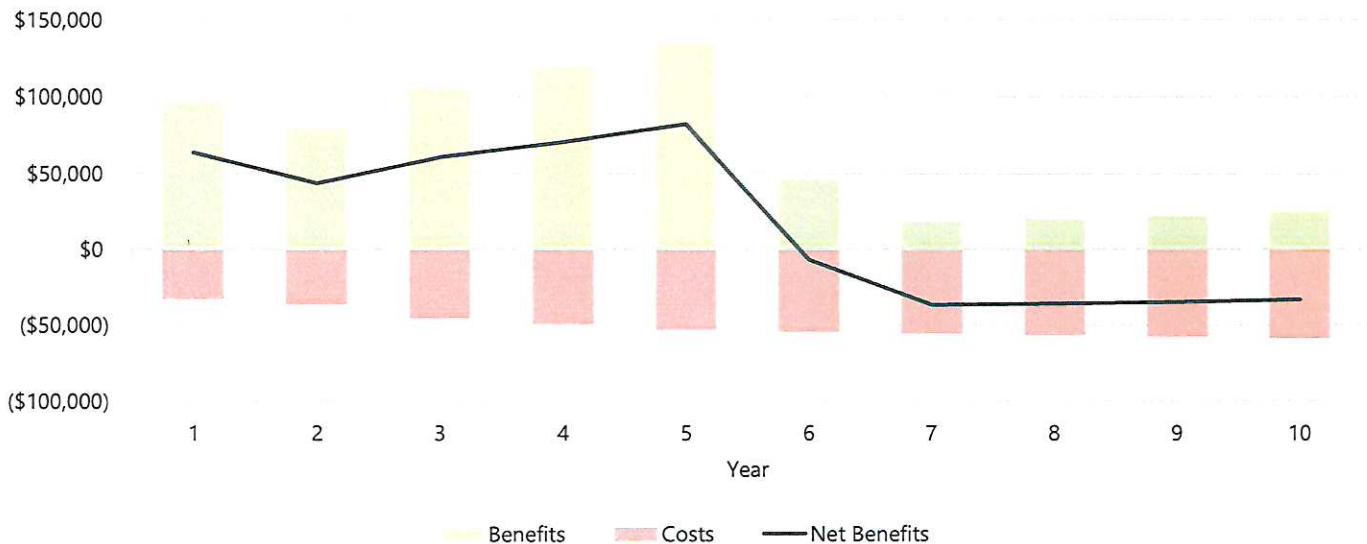
The table below displays the estimated additional benefits to be received by the State of New Mexico over the first 10 years. The project is expected to have a small effect on the statewide population and therefore some additional statewide costs to provide additional services were estimated for the state. Appendix C contains the year-by-year calculations.

Table 9. State of New Mexico: Benefits, Costs, and Net Benefits Over the Next 10 Years

|                                         | Amount             |
|-----------------------------------------|--------------------|
| Gross Receipts Taxes                    | \$200,166          |
| Real Property Taxes - Project           | \$645              |
| FF&E Property Taxes - Project           | \$1,988            |
| Property Taxes - New Residential        | \$54               |
| Personal Income Taxes                   | \$208,113          |
| Corporate Income Taxes                  | \$35,759           |
| Miscellaneous Taxes & User Fees         | \$226,533          |
| <b>Subtotal Benefits</b>                | <b>\$673,259</b>   |
| Cost of Providing State Services        | (\$499,849)        |
| <b>Subtotal Costs</b>                   | <b>(\$499,849)</b> |
| <b>Net Benefits</b>                     | <b>\$173,410</b>   |
| <i>Present Value (5% discount rate)</i> | <i>\$177,081</i>   |

Gross receipts taxes are estimated on new taxable gross receipts resulting from the project. Property taxes are estimated on the firm's property and new residential property constructed. Personal income taxes are estimated based on an effective income tax rate and the earnings of new direct and indirect workers. Corporate income taxes on the direct activity is based on the net taxable income projected by the company. Corporate income taxes on the indirect activity is estimated on a per indirect worker basis and the observed statewide corporate income tax collections per worker. To the extent that the project will result in an increase in new households in the state, additional miscellaneous taxes and user fees have been estimated for the state. Additionally, the costs to provide state services to these new households were also estimated based on recent state expenditure data as detailed in the Appendix.

Figure 2. Annual Fiscal Net Benefits for the State of New Mexico



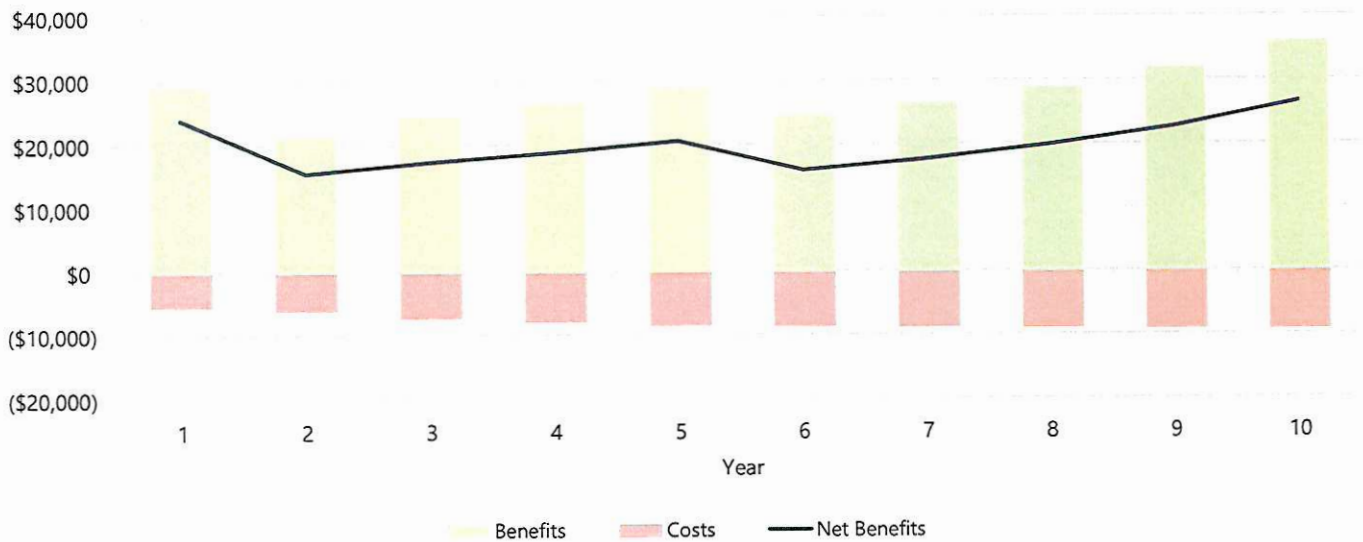
## Alamogordo

The table below displays the estimated additional benefits, costs, and net benefits to be received by the City over the next 10 years of the Project. Appendix C contains the year-by-year calculations.

Table 10. Alamogordo: Benefits, Costs, and Net Benefits Over the Next 10 Years

|                                         | Amount            |
|-----------------------------------------|-------------------|
| Gross Receipts Taxes                    | \$177,426         |
| Real Property Taxes - Project           | \$4,222           |
| FF&E Property Taxes - Project           | \$13,004          |
| Property Taxes - New Residential        | \$274             |
| Utility Revenue                         | \$33,374          |
| Utility Franchise Fees                  | \$5,525           |
| Building Permits and Fees               | \$0               |
| Lodgers Taxes                           | \$7,018           |
| Miscellaneous Taxes & User Fees         | \$38,947          |
| <b>Subtotal Benefits</b>                | <b>\$279,789</b>  |
| Cost of Providing Municipal Services    | (\$45,040)        |
| Cost of Providing Utility Services      | (\$36,044)        |
| <b>Subtotal Costs</b>                   | <b>(\$81,084)</b> |
| <b>Net Benefits</b>                     | <b>\$198,705</b>  |
| <i>Present Value (5% discount rate)</i> | <i>\$152,150</i>  |

Figure 3. Annual Fiscal Net Benefits for the Alamogordo





## Otero County

The table below displays the estimated additional benefits, costs, and net benefits to be received by the County over the next 10 years of the Project. Appendix C contains the year-by-year calculations.

Table 11. Otero County: Benefits, Costs, and Net Benefits Over the Next 10 Years

|                                         | Amount            |
|-----------------------------------------|-------------------|
| Gross Receipts Taxes                    | \$49,868          |
| Real Property Taxes - Project           | \$5,623           |
| FF&E Property Taxes - Project           | \$17,320          |
| Property Taxes - New Residential        | \$274             |
| Building Permits and Fees               | \$0               |
| Miscellaneous Taxes & User Fees         | \$19,419          |
| <u>Subtotal Benefits</u>                | <u>\$92,503</u>   |
| Cost of Providing County Services       | (\$22,436)        |
| <u>Subtotal Costs</u>                   | <u>(\$22,436)</u> |
| Net Benefits                            | \$70,067          |
| <i>Present Value (5% discount rate)</i> | <i>\$54,675</i>   |

## Alamogordo Public Schools

The table below displays the estimated additional benefits, costs, and net benefits to be received by the school district over the next 10 years of the Project. Appendix C contains the year-by-year calculations.

Table 12. Alamogordo Public Schools: Benefits, Costs, and Net Benefits Over the Next 10 Years

|                                         | Amount            |
|-----------------------------------------|-------------------|
| Real Property Taxes - Project           | \$4,783           |
| FF&E Property Taxes - Project           | \$14,734          |
| Property Taxes - New Residential        | \$392             |
| State Equalization Guarantee            | \$42,205          |
| <u>Subtotal Benefits</u>                | <u>\$62,114</u>   |
| Cost of Educating New Students          | (\$28,568)        |
| <u>Subtotal Costs</u>                   | <u>(\$28,568)</u> |
| Net Benefits                            | \$33,546          |
| <i>Present Value (5% discount rate)</i> | <i>\$25,295</i>   |

## Benefits for Other Taxing Districts

The table below displays the estimated additional property taxes to be received by other property taxing districts over the next 10 years of the Project. Appendix C contains the year-by-year calculations.

Table 13. Other Taxing Districts: Benefits Over the Next 10 Years

|                                         | Amount         |
|-----------------------------------------|----------------|
| Real Property Taxes - Project           | \$759          |
| FF&E Property Taxes - Project           | \$2,339        |
| Property Taxes - New Residential        | \$55           |
| Benefits                                | \$3,153        |
| <i>Present Value (5% discount rate)</i> | <i>\$2,552</i> |



## City Non-Tax Incentives

The City is considering the following non-tax incentives for the Project.

Table 17. City Incentives Under Consideration

| Year  | LEDA      |
|-------|-----------|
| 1     | \$913,000 |
| 2     | \$0       |
| 3     | \$0       |
| 4     | \$0       |
| 5     | \$0       |
| 6     | \$0       |
| 7     | \$0       |
| 8     | \$0       |
| 9     | \$0       |
| 10    | \$0       |
| Total | \$913,000 |

These financial incentives may be considered an investment in the Project made by the city. Four calculations analyzing possible investments were made:

1. Net Benefits - detailed above
2. Present Value of Net Benefits - detailed above
3. Rate of Return on Investment - discussed and detailed below
4. Payback Period - discussed and detailed below

The rate of return on investment calculates the average annual rate of return to the city, treating the incentives as the initial investment and the net benefits to the city as the return on investment. The payback period is the number of years that it will take the city to recover the cost of incentives from the additional revenues that it will receive as a result of the Project.

The table below shows an analysis of these incentives, including a calculation of incentives per job, rate of return, and payback period.

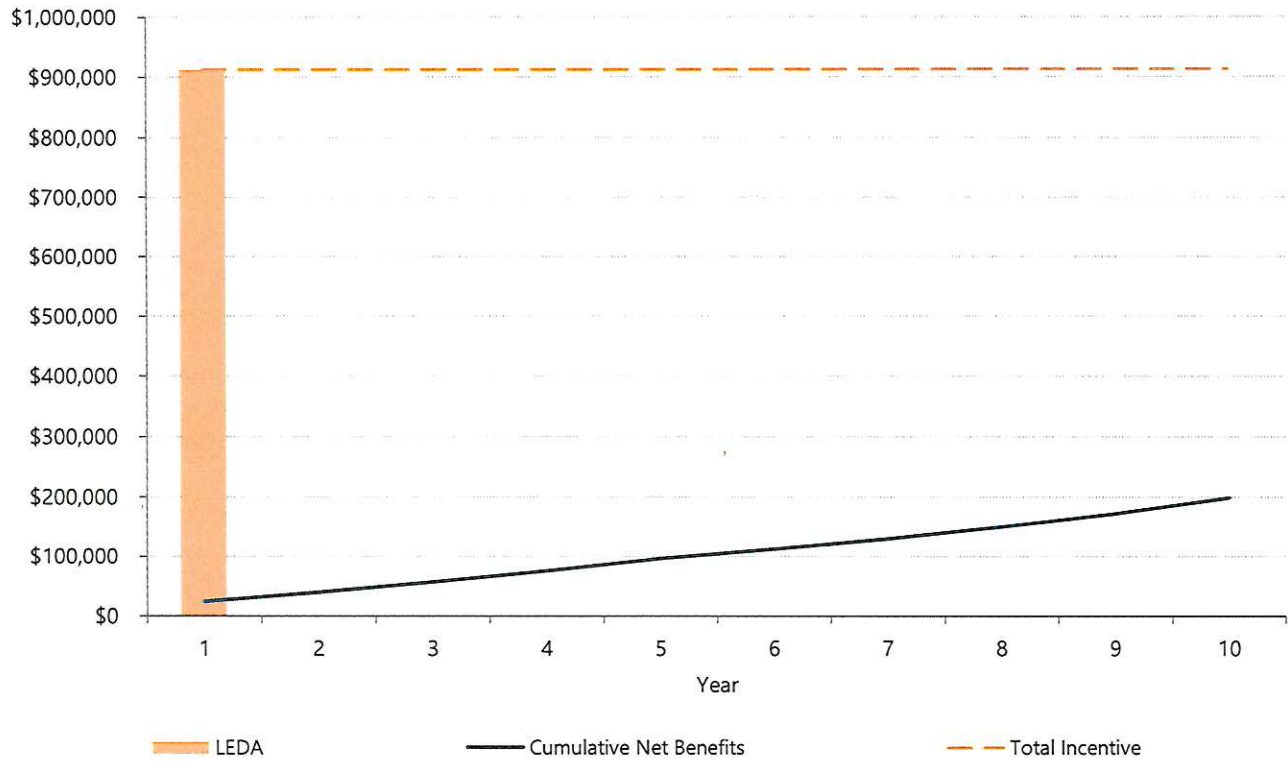
Table 18. Analysis of City Incentives

|                         |           |
|-------------------------|-----------|
| Total Non-Tax Incentive | \$913,000 |
| Incentive Per Job       | \$50,722  |
| Rate of Return          | 2.2%      |
| Payback period (years)  | 29.6      |

Note: The Rate of Return and Payback Period are calculated based on the sum of annual incentives, not the present value of the incentives.

The graph below depicts the total incentives currently under consideration versus the cumulative net benefits to the City. The intersection indicates the length of time until the incentives are paid back.

Figure 4. City Incentives Under Consideration







City LEDA @ \$913,000

The NMEDD has not verified the information provided by the company. This report shall not be used as an indication of support from the State.

## Overview of Methodology

This report presents the results of an analysis undertaken by the New Mexico Economic Development Department using Total Impact, an economic and fiscal impact analysis tool developed and supported by the Austin, TX based economic consulting firm, Impact DataSource.

The Total Impact model combines project-specific attributes with community data, tax rates, and assumptions to estimate the economic impact of the Project and the fiscal impact for local taxing districts over a 10-year period.

The economic impact as calculated in this report can be categorized into two main types of impacts. First, the direct economic impacts are the jobs and payroll directly created by the Project. Second, this economic impact analysis calculates the indirect and induced impacts that result from the Project. Indirect jobs and salaries are created in new or existing area firms, such as maintenance companies and service firms, that may supply goods and services for the Project. In addition, induced jobs and salaries are created in new or existing local businesses, such as retail stores, gas stations, banks, restaurants, and service companies that may supply goods and services to new workers and their families.

The economic impact estimates in this report are based on the Regional Input-Output Modeling System (RIMS II), a widely used regional input-output model developed by the U. S. Department of Commerce, Bureau of Economic Analysis. The RIMS II model is a standard tool used to estimate regional economic impacts. The economic impacts estimated using the RIMS II model are generally recognized as reasonable and plausible assuming the data input into the model is accurate or based on reasonable assumptions. Impact DataSource utilizes county-level multipliers to estimate the impact occurring at the sub-county level.

Two types of regional economic multipliers were used in this analysis: an employment multiplier and an earnings multiplier. An employment multiplier was used to estimate the number of indirect and induced jobs created or supported in the area. An earnings multiplier was used to estimate the amount of salaries to be paid to workers in these new indirect and induced jobs. The employment multiplier shows the estimated number of total jobs created for each direct job. The earnings multiplier shows the estimated amount of total salaries paid to these workers for every dollar paid to a direct worker. The multipliers used in this analysis are listed below:

| Multiplier            |                          | City   | County | State  |
|-----------------------|--------------------------|--------|--------|--------|
| Employment Multiplier | (Type II Direct Effect ) | 1.5659 | 1.7545 | 2.4619 |
| Earnings Multiplier   | (Type II Direct Effect ) | 1.4579 | 1.6105 | 2.1829 |

### Calculation of Fiscal Impact

#### *Calculation of Revenues for the State*

The state's revenues from gross receipts taxes, property taxes, personal and corporate income taxes were estimated directly using data entered about the project and state tax rates and assumptions about workers moving to the area and possibly building new property.

Impact DataSource estimated the miscellaneous taxes and user fees as a function of statewide personal income. The data used to estimate these factors were obtained from the US Census of Governments and the Bureau of Economic Analysis. Next, these percentages were applied to the total increase in workers' earnings from the economic impact calculations to determine the annual miscellaneous taxes and user fees to be collected by the state related to the permanent increase in economic activity supported by the project.

The fiscal costs associated with the project result from the portion of new worker households that relocate to New Mexico to take a job and the resulting costs to provide state services to these new residents. Impact DataSource estimated the cost of providing state services to new worker households moving to the state by applying the average per household cost of state expenditures to the estimated number of new workers new to the state.

Impact DataSource determined the marginal cost to provide state government services on per household in the state by using approximately 40% of the average cost. The data used to estimate these costs were obtained from the US Census of Governments and US Census. On average, the state incurs \$5,000 in costs to provide these services to households.

#### *Calculation of Revenues for the City*

The city's revenues from gross receipts taxes, property taxes, city-owned utilities, utility franchise fees, lodging taxes, and building permits and fees were estimated directly using data entered about the project and local tax rates and assumptions about workers moving to the area and possibly building new property.

The new firm was not asked for nor could reasonably provide some data for calculating some other revenues for the city. For example, while the city will likely receive revenues from fines paid on speeding tickets given to new workers at the firm, the firm may not reasonably know the propensity of its workers to speed. Therefore, some other city revenues were calculated using an average revenue approach. This approach uses two assumptions:

- 1 - The city has two general revenue sources -- revenues from residents and revenues from businesses.
- 2 - The city will collect (a) about the same amount of other revenues from each household of new workers that may move to the city as it currently collects from an average household of existing residents, and (b) about the same amount of other revenues from the new firm (on a per worker basis) will be collected as the city collects from other businesses in the city.

Using this average revenue approach, revenues likely to be received by the city were calculated from the households of new workers who may move to the city and from the new firm using average city revenues per household and per worker calculations. These revenues are labeled as miscellaneous taxes and user fees.

The total annual city revenues used to make average revenue calculations in this analysis were obtained from the city's latest annual budget and the per household and per worker and calculations are detailed in Appendix A.

#### *Calculation of Costs for the City*

This analysis sought to answer the question, what additional monies will the city have to spend to provide services to households of new workers who may move to the city and to the firm. A marginal cost approach was used to calculate additional city costs from the new firm and its workers.

This approach uses two assumptions:

- 1 - The city spends money on services for two general groups -- residents and businesses.
- 2 - The city will spend (a) about the same amount for variable or marginal cost for each household of new workers that may move to the city as it currently spends for an average household of existing residents, and (b) about the same amount for variable or marginal costs for the new firm (on a per worker basis) as it spends for other businesses in the city.

#### *Calculation of Net Benefits for the City*

Net benefits calculated in this analysis are the difference between additional city revenues over a ten-year period and additional city costs to provide services to the new firm and its workers and indirect workers who may move to the city.



#### *Calculation of Revenues, Costs and Net Benefits for the County*

The model estimates additional revenues, costs and net benefits for the county using the same methodology described for the city relying on county budget data.

#### *Calculation of Revenues for Public Schools*

The school district's revenues from property taxes were calculated on the new residential property for some new direct and indirect workers who may move to the county and on the firm's property that will be added to local tax rolls.

However, school district revenues from state and federal funds and other local funding were calculated using an average revenue approach. This approach used the assumption that the school district will collect about the same amount of these revenues for each new student in the household of a new worker who may move to the county as it currently collects for each existing student.

#### *Calculation of Costs for Public Schools*

A marginal cost approach was used to calculate additional school district costs from the new firm and its workers. This approach uses the assumption that the school district will spend about the same amount for variable or marginal cost for each new student as it spends for each existing student.

#### *Calculation of Net Benefits for Public Schools*

Net benefits calculated in this analysis are the difference between additional school district revenues over a ten-year period and marginal costs for the school district to provide services to students in the households of new workers who may move to the county.

The school district's total annual revenues and expenses to make average revenue and marginal costs calculations in this analysis were obtained from the school district's latest annual budget.

#### *Calculation of Property Taxes to be Collected by Countywide Special Taxing Districts*

Revenues for countywide special taxing districts from property taxes were calculated on the new residential property for some new direct and indirect workers who may move to the county and on the firm's property that will be added to local tax rolls.

While each of these special taxing districts may incur additional costs from new residents and from the new firm, these additional costs were not calculated in this analysis.

### About Impact DataSource

Impact DataSource is an Austin economic consulting, research, and analysis firm founded in 1993. The firm has conducted over 2,500 economic impact analyses of firms, projects, and activities in most industry groups in New Mexico and more than 30 other states.

In addition, Impact DataSource has prepared and customized more than 50 economic impact models for its clients to perform their own analyses of economic development projects. These clients include the Frisco EDC in Texas and the Metro Orlando (Florida) Economic Development Commission.

## Drought Adaptation Industries Audit #3

### Drought Adaptation Industries Payroll for Year 2020

|                    |                  |
|--------------------|------------------|
| January - March    | 15,278.42 ✓      |
| April - June       | 17,307.72 ✓      |
| July - September   | 8,653.86 ✓       |
| October - December | 11,135.37 ✓      |
|                    | <u>52,375.37</u> |

|                   |                  |
|-------------------|------------------|
| Qualified Payroll | <u>22,052.25</u> |
|-------------------|------------------|

|                       |           |
|-----------------------|-----------|
| Payroll not Qualified | 30,323.12 |
|-----------------------|-----------|

|                         |                   |
|-------------------------|-------------------|
| Estimated Project Costs | 357,840.00        |
| Grant Credit Audit #1   | 147,186.85        |
| Grant Credit Audit #2   | 69,066.20         |
| Grant Credit Audit #3   | <u>22,052.25</u>  |
| Balance                 | <u>335,787.75</u> |

Approved Audit

  
Stephanie Hernandez

Date Approved

4-13-2021



(SCHEDULE A)

NM DEPARTMENT OF WORKFORCE SOLUTIONS, P.O. BOX 2281, ALBUQUERQUE, NM 87103-2281 (505) 841-2060

IF NO WAGES, SHOW 'NONE'

DAI  
Drought Adaptation Industries  
1505 HIGHWAY 70 W  
  
ALAMOGORDO NM 88310

- ## UI Annual Taxable Wage Base 2020

(Each Employee)

**\$25,800.**

FOR EACH MONTH OF THIS QUARTER,  
REPORT IN THE BOXES BELOW THE  
NUMBER OF COVERED WORKERS WHO  
WORKED DURING OR RECEIVED PAY FOR  
THE PAYROLL PERIOD WHICH INCLUDED  
THE 12TH OF THE MONTH.

PAGE 1 OF 1  
IF ADDITIONAL SPACE IS  
NEEDED FOR SCHEDULE B,  
ATTACH THE SUPPLEMENTAL  
PAGE AND COMPLETE THE  
PAGE NUMBER INFORMATION  
ON EACH PAGE.

**SCHEDULE B**

9

| 1ST MONTH | 2ND MONTH | 3RD MONTH |
|-----------|-----------|-----------|
| 4         | 3         | 3         |

11 NAME OF EMPLOYEE

12 GROSS WAGES FOR  
THIS QUARTER

13 THIS QUARTER'S  
EXCESS WAGE

74 STATE INCOME  
TAX WITHHOLDING \*15 WC  
EFF-DN 1

TO EMPLOYEE SOCIAL SECURITY NUMBER 11 NAME OF EMPLOYEE 12 THIS QUARTER 13 EXCESS WAGES 14 TAX WITHHELD 15 PER 100 PER 100

Des Moines, Iowa - State Will Not Process Paper Report

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INCOMPLETE AND/OR UNSIGNED REPORTS ARE SUBJECT TO BEING RETURNED AND LATE REPORT PENALTIES BEING ASSESSED.

I certify that this report is true and correct according to law and department regulations, and that no part of the contribution was deducted from any employee's wages.

DATE \_\_\_\_\_ SIGNED \_\_\_\_\_

TITLE CEO

REV 01/10

REV 03/11/20 QBDT

DOI-0949

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ES903A

ES903A  
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SCHEDULE A  
NM DEPARTMENT OF WORK-FORCE SOLUTIONS, P.O. BOX 2281, ALBUQUERQUE, NM 87105-2281 (505) 341-2000

NEW DEPARTMENT OF WORKFORCE SOLUTIONS, P.O. BOX 2281, ALBUQUERQUE, NM 87103-2281 (505) 841-2080

IF NO WAGES, SHOW 'NONE'

|                           |  |                |  |
|---------------------------|--|----------------|--|
| EMPLOYER'S NUMBER         |  | TOTAL TAX RATE |  |
| 10027779                  |  | 1.00000        |  |
| QUARTER ENDING            |  | DUE DATE       |  |
| 06/30/20                  |  | 07/31/20       |  |
| FEDERAL IRS NUMBER        |  | FIELD CODE     |  |
| 82-1268315                |  |                |  |
| CRS IDENTIFICATION NUMBER |  |                |  |
| 03-391264-005             |  |                |  |

DAI  
Drought Adaptation Industries  
1505 HIGHWAY 70 W  
  
ALAMOGORDO NM 88310

|   |                                                                                     |    |                   |
|---|-------------------------------------------------------------------------------------|----|-------------------|
| 1 | TOTAL WAGES (TOTAL COLUMN 12) . . . . .                                             | \$ | <u>17307.72</u>   |
| 2 | DEDUCT EXCESS WAGES (TOTAL COLUMN 13) . . . . .                                     | \$ | <u>0.00</u>       |
| 3 | TAXABLE WAGES (ITEM 1 LESS ITEM 2) . . . . .                                        | \$ | <u>17307.72</u>   |
| 4 | TOTAL TAX DUE (TAXABLE WAGES X TOTAL TAX RATE) . . . . .                            | \$ | <u>173.08</u>     |
| 5 | INTEREST DUE (1% PER MONTH AFTER DUE DATE) . . . . .                                | \$ | <u>          </u> |
| 6 | LATE REPORT PENALTY (ADD \$50.00) . . . . .                                         | \$ | <u>          </u> |
| 7 | LATE PAYMENT PENALTY (ADD 5% OF TAX DUE OR \$25.00, WHICHEVER IS GREATER) . . . . . | \$ | <u>          </u> |
| 8 | AMOUNT OF NMDWS REMITTANCE . . . . .                                                | \$ | <u>173.08</u>     |

## UI Annual Taxable Wage Base 2020

(Each Employee) \$25,800.

FOR EACH MONTH OF THIS QUARTER,  
REPORT IN THE BOXES BELOW THE  
NUMBER OF COVERED WORKERS WHO  
WORKED DURING OR RECEIVED PAY FOR  
THE PAYROLL PERIOD WHICH INCLUDED  
THE 12TH OF THE MONTH.

PAGE 1 OF 1  
IF ADDITIONAL SPACE IS  
NEEDED FOR SCHEDULE B,  
ATTACH THE SUPPLEMENTAL  
PAGE AND COMPLETE THE  
PAGE NUMBER INFORMATION  
ON EACH PAGE.

9

| 1ST MONTH | 2ND MONTH | 3RD MONTH |
|-----------|-----------|-----------|
| 1         | 1         | 0         |

**SCHEDULE B**TO EMPLOYEE SOCIAL  
SECURITY NUMBER

11 NAME OF EMPLOYEE

12 GROSS WAGES FOR THIS QUARTER

**13 THIS QUARTER'S  
EXCESS WAGES**

14 STATE INCOME  
TAX WITHHOLDING \*15 VAC  
555-011

10 EMPLOYEE SOCIAL SECURITY NUMBER 11 NAME OF EMPLOYEE 12 GROSS WAGES FOR THIS QUARTER 13 EMPLOYEE'S GROSS EXCESS WAGES 14 STATE INCOME TAX WITHHELD 15 IN FEE DUES

[illegible]

\*14 data collection only: Payment payable to Taxation and Revenue, P.O. Box 25128, Santa Fe, NM 87504 (CRS-1)  
\*15 data collection only: Payment payable to Taxation and Revenue, P.O. Box 2527, Santa Fe, NM 87504 (WC-1)

\*15 data collection only: Payment payable to Taxation and Revenue, P.O. Box 2527, Santa Fe, NM 87504 (WC-1)

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I certify that this report is true and correct according to law and department regulations, and that no part of the contribution was deducted from any employee's wages.

DATE \_\_\_\_\_ SIGNED \_\_\_\_\_ TITLE CFO

REV 01/09

REV 06/18/20 QBDY

001-0949

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**ES903A**

DATE RECEIVED

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NM DEPARTMENT OF WORKFORCE SOLUTIONS, P.O. BOX 2281, ALBUQUERQUE, NM 87103-2281 (505) 841-2080

NM DEPARTMENT OF WORKFORCE SOLUTIONS, P.O. BOX 2281, ALBUQUERQUE, NM 87103-2281 (505) 841-2000

IF NO WAGES, SHOW 'NONE'

DAI  
Drought Adaptation Industries  
1505 HIGHWAY 70 W

ALAMOGORDO

NM 88310

QB  
submitted  
10-16-20

|   |                                                                           |    |         |
|---|---------------------------------------------------------------------------|----|---------|
| 1 | TOTAL WAGES (TOTAL COLUMN 12)                                             | \$ | 8653.86 |
| 2 | DEDUCT EXCESS WAGES (TOTAL COLUMN 13)                                     | \$ | 1638.50 |
| 3 | TAXABLE WAGES (ITEM 1 LESS ITEM 2)                                        | \$ | 7015.36 |
| 4 | TOTAL TAX DUE (TAXABLE WAGES X TOTAL TAX RATE)                            | \$ | 70.15   |
| 5 | INTEREST DUE (1% PER MONTH AFTER DUE DATE)                                | \$ |         |
| 6 | LATE REPORT PENALTY (ADD \$50.00)                                         | \$ |         |
| 7 | LATE PAYMENT PENALTY (ADD 5% OF TAX DUE OR \$25.00, WHICHEVER IS GREATER) | \$ |         |
| 8 | AMOUNT OF NMOWS REMITTANCE                                                | \$ | 70.15   |

## UI Annual Taxable Wage Base 2020

(Each Employee)

**\$25,800.**

FOR EACH MONTH OF THIS QUARTER,  
REPORT IN THE BOXES BELOW THE  
NUMBER OF COVERED WORKERS WHO  
WORKED DURING OR RECEIVED PAY FOR  
THE PAYROLL PERIOD WHICH INCLUDED  
THE 12TH OF THE MONTH.

PAGE 1 OF 1  
IF ADDITIONAL SPACE IS  
NEEDED FOR SCHEDULE B,  
ATTACH THE SUPPLEMENTAL  
PAGE AND COMPLETE THE  
PAGE NUMBER INFORMATION  
ON EACH PAGE

**SCHEDULE B**

9

| 1ST MONTH | 2ND MONTH | 3RD MONTH |
|-----------|-----------|-----------|
| 1         | 0         | 1         |

10 EMPLOYEE SOCIAL  
SECURITY NUMBER

11 NAME OF EMPLOYEE

12 GROSS WAGES FOR  
THIS QUARTER. --

13 THIS QUARTER'S  
EXCESS WAGES

14 STATE INCOME  
TAX WITHHELD15 VIC  
REF-PLN

TO EMPLOYEE SOCIAL SECURITY NUMBER      FIRST NAME      LAST NAME      EMPLOYEE ID      THIS QUARTER      EXCESS WAGES      TAX WITHHELD      RES. DED.      RES. CREDIT

|                                                                                                                |         |         |        |      |
|----------------------------------------------------------------------------------------------------------------|---------|---------|--------|------|
| Bell, Jean A                                                                                                   | 8653.86 | 1638.50 | 306.87 | 4.30 |
|                                                                                                                |         |         |        |      |
|                                                                                                                |         |         |        |      |
|                                                                                                                |         |         |        |      |
|                                                                                                                |         |         |        |      |
|                                                                                                                |         |         |        |      |
|                                                                                                                |         |         |        |      |
|                                                                                                                |         |         |        |      |
|                                                                                                                |         |         |        |      |
|                                                                                                                |         |         |        |      |
|                                                                                                                |         |         |        |      |
|                                                                                                                |         |         |        |      |
|                                                                                                                |         |         |        |      |
|                                                                                                                |         |         |        |      |
|                                                                                                                |         |         |        |      |
|                                                                                                                |         |         |        |      |
|                                                                                                                |         |         |        |      |
|                                                                                                                |         |         |        |      |
|                                                                                                                |         |         |        |      |
|                                                                                                                |         |         |        |      |
| Enter total of columns 12, 13, 14, and 15 this page.                                                           | 8653.86 | 1638.50 | 306.87 | 4.30 |
| Enter total of columns 12, 13, 14, and 15 from this page and all supplemental pages attached to this . . . . . | 8653.86 | 1638.50 | 306.87 | 4.30 |

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I certify that this report is true and correct according to law and department regulations, and that no part of the contribution was deducted from any employee's wages.

DATE \_\_\_\_\_ SIGNED \_\_\_\_\_

TITLE CEO

REV 01/10

REV 08/18/20 Q8DT

001-0949

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## DATE RECEIVED \_\_\_\_\_

**SCHEDULE A**

NM DEPARTMENT OF WORKFORCE SOLUTIONS, P.O. BOX 2281, ALBUQUERQUE, NM 87105-2281 (505) 241-7000

IF NO WAGES, SHOW NONE

DAI  
Drought Adaptation Industries  
1505 HIGHWAY 70 W  
ALAMOGORDO NM 88310

### UI Annual Taxable Wage Base 2020

|                 |           |
|-----------------|-----------|
| (Each Employee) | \$25,800. |
|-----------------|-----------|

FOR EACH MONTH OF THIS QUARTER.  
REPORT IN THE BOXES BELOW THE  
NUMBER OF COVERED WORKERS WHO  
WORKED DURING OR RECEIVED PAY FOR  
THE PAYROLL PERIOD WHICH INCLUDED  
THE 12TH OF THE MONTH.

PAGE 1 OF 1  
IF ADDITIONAL SPACE IS  
NEEDED FOR SCHEDULE B,  
ATTACH THE SUPPLEMENTAL  
PAGE AND COMPLETE THE  
PAGE NUMBER INFORMATION  
ON EACH PAGE.

**SCHEDULE B**

**C**

| 1ST MONTH | 2ND MONTH | 3RD MONTH |
|-----------|-----------|-----------|
| 1         | 3         | 0         |

11 NAME OF EMPLOYEE

12 GROSS WAGES FOR

73 THIS QUARTER'S

14 STATE INCOME

15 WC

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**INCOMPLETE AND/OR UNSIGNED REPORTS ARE SUBJECT TO BEING RETURNED AND LATE REPORT PENALTIES BEING ASSESSED.**

I certify that this report is true and correct according to law and department regulations, and that no part of the contribution was deducted from any employee's wages.

| DATE | SIGNED | TITLE | CEO |
|------|--------|-------|-----|
|------|--------|-------|-----|

REV 01/10

REV 12/22/20 QBDT

001-0949

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12:13 PM

03/22/21

Drought Adaptation Industries  
**Employee Earnings Summary**  
 January through December 2020

|                            | Salary          | Hourly          | Cash Ad...  | Federal Withh... | Medicare Em... | Social Security E... | Federal Unemp... | Medicare Co... | Social Security ... |
|----------------------------|-----------------|-----------------|-------------|------------------|----------------|----------------------|------------------|----------------|---------------------|
| Chris Jones                | 7,920.00        | 6,135.50        | 0.00        | -911.00          | -203.80        | -871.44              | 42.00            | 203.80         | 871.44              |
| Jean A Bell <i>OWR 1/2</i> | 30323.12        | 0.00            | 0.00        | -2,429.00        | -439.69        | -1,880.03            | 42.00            | 439.69         | 1,880.03            |
| Lazarin Jimmy              | 0.00            | 330.75          | 0.00        | 0.00             | -4.80          | -20.51               | 1.98             | 4.80           | 20.51               |
| Natalie E Stewart          | 0.00            | 5,578.00        | 0.00        | -185.00          | -80.88         | -345.84              | 33.47            | 80.88          | 345.84              |
| Timothy J Page             | 0.00            | 2,088.00        | 0.00        | -132.00          | -30.28         | -129.46              | 12.53            | 30.28          | 129.46              |
| <b>TOTAL</b>               | <b>38243.12</b> | <b>14132.25</b> | <b>0.00</b> | <b>-3,657.00</b> | <b>-759.45</b> | <b>-3,247.28</b>     | <b>131.98</b>    | <b>759.45</b>  | <b>3,247.28</b>     |

*\$ 22,052.25 Gross Wages*

## Drought Adaptation Industries

[illegible]

Drought Adaptation Industries Audit #3

| Employee Last Name               | Quarter<br>Ending<br>3/31/20 | Quarter<br>Ending<br>6/30/20 | Quarter<br>Ending<br>9/30/19 | Quarter<br>Ending<br>12/31/19 | Grand Total      |
|----------------------------------|------------------------------|------------------------------|------------------------------|-------------------------------|------------------|
| Jones                            | 6,135.50                     | -                            | -                            | 7,920.00                      | 14,055.50        |
| Lazarin                          | -                            | -                            | -                            | 330.75                        | 330.75           |
| Page                             | 2,088.00                     | -                            | -                            | -                             | 2,088.00         |
| Stewart                          | 5,578.00                     | -                            | -                            | -                             | 5,578.00         |
| <b>Total Qualified Payroll</b>   | <b>13,801.50</b>             | <b>-</b>                     | <b>-</b>                     | <b>8,250.75</b>               | <b>22,052.25</b> |
| <b>Ball</b>                      | <b>1,476.92</b>              | <b>17,307.72</b>             | <b>8,653.86</b>              | <b>2,884.62</b>               | <b>30,323.12</b> |
| <b>Total Unqualified Payroll</b> | <b>1,476.92</b>              | <b>17,307.72</b>             | <b>8,653.86</b>              | <b>2,884.62</b>               | <b>30,323.12</b> |
| <b>Payroll Grand Total</b>       | <b>15,278.42</b>             | <b>17,307.72</b>             | <b>8,653.86</b>              | <b>11,135.37</b>              | <b>52,375.37</b> |



# AGENDA REPORT

## CITY OF ALAMOGORDO

### CITY COMMISSION

---

**Meeting Date:** 9/14/2021

**Report Date:** 9/7/2021

**Report No:** 12.

**Submitted By:** Petria Bengoechea

---

**Subject:** Consider, and act upon, approval of final settlement in the amount of \$468,326.44 from *City of Albuquerque, et al v. New Mexico Taxation and Revenue Department*. (Petria Bengoechea, City Attorney)

---

**Fiscal Impact:**

Amount Budgeted:

Fund:

Additional Fiscal Impact:

---

**Recommendation:**

---

**Background:** The City of Alamogordo joined most New Mexico cities and counties in a lawsuit against the Taxation and Revenue Department (TRD) to recoup monies that the City believed were illegally withheld by TRD. For the past several months, the City, via its lawyers, have been in settlement negotiations with TRD, and have finally reached a settlement, which will see \$525,287.28 returned to the City of Alamogordo. After the attorneys receive their contingency fee, the amount that the City will receive is \$468,326.44.

**RELEASE OF CLAIMS**  
**FOR THE CITY OF ALAMOGORDO**

**Re: No. D-202-CV-2018-08036, *City of Albuquerque, et al v. Stephanie Schardin Clarke and New Mexico Taxation and Revenue Department, in the Second Judicial District Court of New Mexico (the “Lawsuit”)***

In the above-referenced Lawsuit, Petitioners are 44 municipalities and counties, including the City of Alamogordo (“Alamogordo”), in this state (collectively “Petitioners”), and Respondents are the New Mexico Taxation and Revenue Department and its Cabinet Secretary (collectively the “Department”). Petitioners and the Department shall be referred to as the “Parties,” collectively.

By a Mediation Settlement Agreement, dated \_\_\_\_\_, 2021, the Parties reached an agreement to settlement and compromise the claims asserted in the Lawsuit, *subject to approval by (1) the respective governing bodies of Petitioners and (2) the Cabinet Secretary of the Department.* Under the Mediation Settlement Agreement, the Department, among other things, has agreed to pay certain amounts in settlement of any and all claims that have been asserted or could have been asserted by Petitioners in the Lawsuit arising from reductions that the Department made to distributions of gross receipts tax under NMSA 1978, § 7-1-6.15 through May 31, 2021. Also, among other things, Petitioners have agreed to release any and all claims that have been asserted or could have been asserted by Petitioners, respectively, in the Lawsuit arising from reductions that the Department made to distributions of gross receipts tax to Petitioners, respectively, under NMSA 1978, § 7-1-6.15 through May 31, 2021.

**Release by Alamogordo in favor of TRD**

In exchange for the payment made or to be made by the Department and other valid and sufficient consideration provided by the Department to Alamogordo, Alamogordo, for itself and its legal representatives, successors and assigns, hereby RELEASE AND DISCHARGE the Department and its legal representatives, successors, assigns, agents, attorneys, and all other persons or entities to whom or for whose conduct the Department may be liable (collectively “the Department Released Parties”), from any and all claims, demands and causes of action of whatever nature, whether known or unknown, whether in contract or in tort, arising under or by virtue of any statute or regulation or under common law, for any losses or claims of any kind, including but not limited to claims for damages and/or economic losses and/or attorneys’ fees, which have accrued or may accrue to

Alamogordo relating to reductions that the Department made to distributions of gross receipts tax under NMSA 1978, § 7-1-6.15 through May 31, 2021.

### **Representations and Warranties**

The undersigned, on behalf of Alamogordo and its legal representatives, successors and assigns, hereby represents and warrants to the Department that (1) he or she is competent to execute this Release, (2) he or she is authorized to execute this Release on behalf of Alamogordo, (3) Alamogordo has fully informed itself of the terms, contents, conditions and effect of this Release, (4) Alamogordo has had the benefit and advice of counsel of his or her own choosing before executing this Release, (5) except for the above-noted consideration, no promise or representation of any kind had been made to Alamogordo concerning the subject matter of this Release, (6) Alamogordo has relied solely and completely upon their own judgment and the advice of counsel of its own choosing before the execution of this Release, (7) Alamogordo fully understands that this Release operates as a full, complete and final release of any and all claims that have been asserted or could have been asserted by Alamogordo against the Department relating to any and all claims made by Alamogordo arising from reductions that the Department made to distributions of gross receipts tax to Alamogordo pursuant to NMSA 1978, § 7-1-6.15 through May 31, 2021, and (8) Alamogordo has not assigned, sold or otherwise attempted to convey any right, claim or interest that is the subject of this Release.

[Signature to follow on succeeding page]

**THE CITY OF ALAMOGORDO**

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

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

STATE OF NEW MEXICO     §  
                                          §  
COUNTY OF \_\_\_\_\_ §

Before me, the undersigned authority, on this \_\_\_\_ day of \_\_\_\_\_, 2021,  
personally appeared \_\_\_\_\_, the authorized representative of  
the City of Alamogordo, who upon his or her oath averred that he has executed the  
foregoing Release for the purposes expressed therein.

\_\_\_\_\_  
Notary Public in for the State of New Mexico  
My commission expires: \_\_\_\_\_

**APPROVAL OF MEDIATION SETTLEMENT AGREEMENT,  
SETTLEMENT AMOUNT AND CONTINGENT FEE  
ON BEHALF OF THE CITY OF ALAMOGORDO**

**Re: No. D-202-CV-2018-08036, *City of Albuquerque, et al v. Stephanie Schardin Clarke and New Mexico Taxation and Revenue Department*, in the Second Judicial District Court of New Mexico (the “Lawsuit”)**

In the above-referenced Lawsuit, Petitioners are 44 municipalities and counties, including the City of Alamogordo (“Alamogordo”), in this state (collectively “Petitioners”), and Respondents are the New Mexico Taxation and Revenue Department and its Cabinet Secretary (collectively the “Department”). Petitioners and the Department shall be referred to as the “Parties,” collectively.

**Approval of Mediation Settlement Agreement**

By a Mediation Settlement Agreement, dated \_\_\_\_\_, 2021, the Parties reached an agreement to settle and compromise the claims asserted in the Lawsuit, *subject to approval by (1) the respective governing bodies of Petitioners and (2) the Cabinet Secretary of the Department*. Under the Mediation Settlement Agreement, the Department, among other things, has agreed to pay certain amounts in settlement of any and all claims that have been asserted or could have been asserted by Petitioners in the Lawsuit arising from reductions that the Department made to distributions of gross receipts tax under NMSA 1978, § 7-1-6.15 through May 31, 2021. Also, among other things, Petitioners have agreed to release any and all claims that have been asserted or could have been asserted by Petitioners, respectively, in the Lawsuit arising from reductions that the Department made to distributions of gross receipts tax to Petitioners, respectively, under NMSA 1978, § 7-1-6.15 through May 31, 2021.

Under the Mediation Settlement Agreement, the Department has agreed to pay a substantial amount to settle the claims asserted in the Lawsuit. Petitioners have agreed to a methodology for allocating the total settlement amount among themselves. The Department has agreed to distribute the individual settlement amounts via one-time payments to Petitioners on or before the first distribution attributable to gross receipts tax following (a) the approval of the Mediation Settlement Agreement by all of the Parties and (b) the Department’s receipt the releases executed by each Petitioner, which the Department will hold in trust pending Petitioners’ confirmation of receipt of one-time payments. Petitioners will be allowed fifteen (15) days following the one-time payments to confirm receipt of the payments (as shown on their ACH transfer); Petitioners’ counsel shall advise the

Department regarding such confirmation; and, assuming upon confirmation of receipt of the one-time payments, the executed releases shall no longer be held by the Department in trust. Petitioners will be obligated to move to dismiss the lawsuit with prejudice within thirty (30) days following the one-time payments.

Under the settlement agreement, Alamogordo will be receiving a gross amount of **\$525,287.28** (the “Settlement Amount”).

Alamogordo approves and joins in the Mediation Settlement Agreement and agrees to accept the Settlement Amount as consideration for the settlement and release of the claims asserted by Alamogordo in the Lawsuit.

### **Approval of Contingent Fee**

Alamogordo acknowledges that the Settlement Amount does not reflect the contingency fee owed to Petitioners’ counsel’s law firm, Gallagher & Kennedy, P.A., under a Legal Services Agreement between Gallagher & Kennedy, P.A., and Alamogordo, dated January 22, 2019 (the “Fee Agreement”).

Considering the settlement under the Mediation Settlement Agreement has been accomplished without further litigation, and as an accommodation to Alamogordo and the other municipalities and counties, Gallagher & Kennedy, P.A., has agreed to accept fees based on the lowest contingent fee percentage structure under its contingency fee agreements with all municipalities and counties, although the law firm may be entitled to a higher percentage contingent fee under the Fee Agreement. Also, Gallagher & Kennedy, P.A. has agreed to bear all litigation expenses, and to provide a credit for any expenses that may have been billed to and paid by Alamogordo. Under the terms of the Fee Agreement, Gallagher & Kennedy, P.A. is entitled to recover applicable gross receipts tax (“GRT”) on fees to be collected from the Department.

The Fee Agreement contemplates that Alamogordo will have responsibility for reimbursing its share of expenses incurred by the New Mexico Municipal League (“NMML”) related to the Lawsuit. As a further accommodation to Alamogordo, Gallagher & Kennedy, P.A. has agreed to satisfy the NMML’s claim for reimbursement, leaving Alamogordo with no responsibility for reimbursing the NMML for any of its expenses incurred related to the Lawsuit.

After these accommodations, the amount owed under the Fee Agreement (including GRT) is **\$56,960.84** (the “Contingent Fee”). After payment of the Contingent Fee (including GRT), the net amount of recovery is **\$468,326.44**.



Gallagher & Kennedy, P.A. will invoice Alamogordo for the amount of the Contingent Fee. The Contingent Fee will be due and payable upon receipt of the settlement funds by Alamogordo.

Alamogordo approves the payment of the Contingent Fee, and Alamogordo agrees to promptly pay the Invoice for the Contingent Fee upon receipt of the settlement funds by Alamogordo.

**THE CITY OF ALAMOGORDO**

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Signature

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Printed Name

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Title

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Date

## **MEDIATION SETTLEMENT AGREEMENT**

**Re: No. D-202-CV-2018-08036, *City of Albuquerque, et al v. Stephanie Schardin Clarke and New Mexico Taxation and Revenue Department*, in the Second Judicial District Court of New Mexico (the "Lawsuit")**

In the above-referenced Lawsuit, Petitioners are 44 municipalities and counties in this state (collectively "Petitioners"), and Respondents are the New Mexico Taxation and Revenue Department and its Cabinet Secretary (collectively the "Department"). Petitioners and the Department shall be referred to as the "Parties," collectively.

Through their respective counsel and/or authorized representatives, the Parties participated in the mediation of the Lawsuit before Hon. Michael Bustamante (the "Mediator") on April 28, 2021. At that time, the Parties did not reach a settlement agreement. However, the Parties continued settlement discussions with the assistance of the Mediator. Through such efforts, the Parties reached a settlement agreement-in-principle, *subject to the approval by (1) the respective governing bodies of Petitioners and (2) the Cabinet Secretary of the Department*, on August 4, 2021.

Under the settlement agreement-in-principle, the Parties have agreed to the following:

(1) The Department will pay a total amount of Fifty Million and No/100 (\$50,000,000.00) in settlement of any and all claims that have been asserted or could have been asserted by Petitioners in the Lawsuit arising from reductions that the Department made to distributions of gross receipts tax under NMSA 1978, § 7-1-6.15 through May 31, 2021.

(2) Each Petitioner will release any and all claims that have been asserted or could have been asserted by the Petitioner in the Lawsuit arising from reductions that the Department made to distributions of gross receipts tax to Petitioners, respectively, under NMSA 1978, § 7-1-6.15 through May 31, 2021.

(3) If any Petitioner does not approve this Mediation Settlement Agreement, then upon notice from Petitioners' counsel to that effect, the Department may (1) elect to disapprove the Settlement Agreement, in which case it shall be null and void and either Party may notify the Court and propose a scheduling conference, or (2) elect to approve this Mediation Settlement Agreement as to all Petitioners who have accepted it and to nullify the Mediation Settlement Agreement only as to the

Petitioner(s) who did not approve it, in which case the Lawsuit may proceed only as to the Petitioner(s) who did not accept the Mediation Settlement Agreement.

(4) Petitioners have agreed to a methodology for allocating the total settlement amount to be paid by the Department among themselves, and Petitioners' counsel will provide a schedule of the allocated amounts to the Department's counsel.

(5) The Department will distribute the total settlement amount via a one-time payment to each Petitioner according to the schedule of allocated amounts to be provided by Petitioners' counsel.

(6) The Department will make the one-time payments on or before the Department's first monthly distribution attributable to gross receipts tax following (a) the approval of this Mediation Settlement Agreement by all of the Parties and (b) the Department's receipt of the releases executed by each Petitioner, which the Department will hold in trust pending confirmation of each Petitioner's receipt of the one-time payments.

(7) Following confirmation by Petitioners' counsel of receipt of the one-time payments, or if Petitioners' counsel does not inform the Department, in writing, within fifteen (15) days following the one-time payments that any Petitioner has not received the payment (as shown on their ACH transfer) the corresponding executed releases shall no longer be held by the Department in trust.

(8) If any Petitioner does not receive, or is unable to confirm receipt of, its one-time payment within 15 days from the Department's transmission of the one-time payment, that Petitioner and the Department shall seek to resolve the issue informally for an additional 30 days, after which that Petitioner or the Department may seek enforcement of this Mediation Settlement Agreement.

(9) Within thirty (30) days following receipt of the one-time payments by all Petitioners, Petitioners will move to dismiss the Lawsuit with prejudice. If one or more Petitioners do not approve this Mediation Settlement Agreement and the Department elects to proceed with the settlement payment and releases as to the other Petitioners, then those Petitioners for whom the settlement is accepted and who have released their claims shall move to be dismissed as parties to the Lawsuit.

(10) The Parties agree to be responsible for their own attorneys' fees, Mediator fees, and costs.

(11) In the event there is any dispute over this Mediation Settlement Agreement, the Parties agree to submit the dispute to non-binding mediation before the Mediator; and if the mediation should not be successful, the Parties agree to submit the dispute to a District Judge in Bernalillo County in the Second District of New Mexico, who will decide the dispute without a jury (as the Parties hereby agree to waive any right to trial by jury regarding this issue).

(12) The Parties acknowledge that, in reaching this Mediation Settlement Agreement, the Parties have relied on their own counsel and have not relied on any representation by any opposing Parties or the opposing Parties' counsel, or the Mediator. Rather, the Parties to this Mediation Settlement Agreement have made certain that this agreement has been independently reviewed by their own legal counsel before executing this Mediation Settlement Agreement.

The Parties have read and understand this Mediation Settlement Agreement, and further agree to be bound by this Mediation Settlement Agreement, which is *subject to final approval by (1) the respective governing bodies of Petitioners and (2) the Cabinet Secretary of the Department.*

AGREED:

  
Counsel for Petitioners

Date: September 7, 2021



Counsel for the Department

Date: Sept. 7, 2021

# AGENDA REPORT

## CITY OF ALAMOGORDO

### CITY COMMISSION

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**Meeting Date:** 9/14/2021

**Report Date:** 9/7/2021

**Report No:** 13.

**Submitted By:** Richard Denton

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**Subject:** Consider, and act upon, a Commissioner being appointed to the Tularosa Basin Regional Dispatch Authority (public safety answering point). (*Richard Denton, Chief of Police*)

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**Fiscal Impact:**

Amount Budgeted:

Fund:

Additional Fiscal Impact:

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**Recommendation:** Please appoint a commissioner to be a representative on the board for the public safety answering point. The name of the board will be the Tularosa Basin Regional Dispatch Authority.

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**Background:** This is out of the Joint Powers Agreement for the City of Alamogordo. It is recommended that a commissioner be appointed to the board.

Four (4) members of the City of Alamogordo shall be appointed to the Board. There shall be an alternate appointed in the event a board member is not able to attend a meeting. It is recommended the members would include the City Manager or designee, the Chief of Police or designee, the Fire Chief or designee, and one (1) City Commissioner.

# AGENDA REPORT

## CITY OF ALAMOGORDO

### CITY COMMISSION

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**Meeting Date:** 9/14/2021

**Report Date:** 9/7/2021

**Report No:** 14.

**Submitted By:** Evelyn Huff

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**Subject:** Consider, and act upon, approval of Resolution No. 2021-35 Requesting approval for the establishment of a new special revenue fund for the American Rescue Plan Act funds totaling \$7,905,784. *(Evelyn Huff, Finance Director)* **(Roll Call Vote Required)**

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**Fiscal Impact:**

Amount Budgeted:

Fund:

Additional Fiscal Impact:

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**Recommendation:** Approve the resolution

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**Background:** The American Rescue Plan Act (ARPA) became effective March 11, 2021. Part of this act included allocations of funding to Non-Entitlement Units (NEU's) including local governments. The amount of the funding is \$7,905,784 to be used on four categories:

1. To respond to the public health emergency or its negative impacts, including assistance to households, small businesses and non-profits, or aid to impacted industries such as tourism, travel and hospitality
2. To respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to eligible workers
3. For the provision of government services to the extent of the reduction in revenue due to COVID-19 public health emergency relative to revenues collected in the most recent full fiscal year prior to the emergency
4. To necessary improvements in water, sewer, or broadband infrastructure

These funds will be received in two payments, with the City having already received the first payment of 3,952,892. The City's intent is to use these funds to provide utility assistance to qualified households and to fund improvements in the water and sewer infrastructure. DFA has suggested that entities receiving these funds create a new accounting fund to make tracking of the information and reporting easier. The Finance Department is requesting approval of this new fund, Fund 124.



**RESOLUTION NO. 2021-35**

**A RESOLUTION REQUESTING THE DEPARTMENT OF FINANCE AND ADMINISTRATION, STATE OF NEW MEXICO, APPROVE ESTABLISHMENT OF A SPECIAL REVENUE FUND FOR THE AMERICAN RESCUE PLAN ACT**

**WHEREAS**, the City of Alamogordo, New Mexico, propose to establish a new fund in FY2021-2022, Titled "American Rescue Plan Act" Fund 124; and

**WHEREAS**, the City of Alamogordo, New Mexico, wishes approval to create a special revenue fund to specifically account for the financial activity of the American Rescue Plan Act; and

**WHEREAS**, the budget will be established within the special revenue fund in FY 2021-2022; and

**NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF ALAMOGORDO, NEW MEXICO**, is requesting from the Department of Finance and Administration, Local Government Division, to approve this new fund;

**PASSED, APPROVED AND ADOPTED** by the Governing Body of the City of Alamogordo, New Mexico, at a Regular Meeting held this 14th day of August 2021.

CITY OF ALAMOGORDO, NEW MEXICO,  
A NEW MEXICO MUNICIPAL CORPORATION

By: \_\_\_\_\_  
Richard A. Boss, Mayor

ATTEST:

\_\_\_\_\_  
Rachel Hughs, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Petria Bengoechea, City Attorney

# AGENDA REPORT

## CITY OF ALAMOGORDO

### CITY COMMISSION

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**Meeting Date:** 9/14/2021

**Report Date:** 9/3/2021

**Report No:** 15.

**Submitted By:** Teresa Gutierrez

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**Subject:** Notification of vacancies for Boards and Committees. (*Richard Boss, Mayor*)

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**Fiscal Impact:**

Amount Budgeted:

Fund:

Additional Fiscal Impact:

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**Recommendation:**

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**Background: Alamogordo Public Library Board** - One (1) vacancy.  
No applications received.

**Mayor's Committee on Aging** - One vacancy.  
No applications received.

**Parks and Recreation Board** - One (1) vacancy due to the expiring term of Stephen Enslinger.  
No applications received.

**Senior Volunteer Programs Advisory Council** - One (1) vacancy due to the expiring term of Samuel Davis.  
No applications received.

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.