



Alamogordo City Commission

NOTICE OF MEETING

Regular Meeting Agenda

February 8, 2022 - 6:30 PM
City Hall, City Commission Chambers
1376 E. Ninth St.

Susan L. Payne Mayor
Dusty Wright Mayor Pro -Tem, District 6
Nick Paul District 1
Stephen Burnett District 2
Vacant District 3
Josh Rardin District 4
Sharon McDonald District 5

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 of 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

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.

CITY MANAGER'S REPORT

REMARKS AND INQUIRIES BY THE CITY COMMISSION

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

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

1. Approve the minutes for the January 25, 2022 Regular meeting. *(Rachel Hughs, City Clerk)*

2. Consider, and act upon, adoption and final publication of Ordinance 1644 amending Chapter 29, Section 01-090 of the Alamogordo Code of Ordinances regarding the regulation of special events. *(Petria Bengoechea, City Attorney)* **(Roll Call Vote Required)**

3. Consider, and act upon, awarding Charlie Lee Solar, LLC a land lease at 501 Lavelle Rd, Alamogordo, NM 88310 for purposes of a solar field. *(Petria Bengoechea, City Attorney)*

4. Consider, and act upon, the award of IFB 2021-01 1" Base Course to Aggregate Technologies, LLC in the estimated amount of \$84,183.00. *(David Nunnelley, Utilities Director)*

5. Consider, and act upon, accepting the NM State Library American Rescue Plan Act (ARPA) grant agreement in the amount of \$17,828.00 for the Alamogordo Public Library for FY2022. *(Kim Underwood, Library Manager & Veronica Ortega, Director of Community Services)*

6. Consider, and act upon, approving the award of RFP 2022-001 On-Call Utility Services to General Hydronics Utilities LLC. *(David Nunnelley, Utilities Director)*

7. Consider, and act upon, Resolution 2022-09 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 February 8, 2022. *(Evelyn Huff, Finance Director)* **(Roll Call Vote Required)**

ITEMS REMOVED FROM CONSENT AGENDA

EXECUTIVE SESSION (Roll Call Vote Required)

8. Adjourn into Executive Closed Session in compliance with 10-15-1(H)(2) NMSA (as amended) to discuss limited personnel matters: City Manager Evaluation follow-up and contract extension negotiations. **(Roll Call Required)**

ADJOURNMENT

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 2/8/2022

Report Date: 02/02/2022

Report No: 1.

Submitted By: Rachel Hughs

Subject: Approve the minutes for the January 25, 2022 Regular meeting. *(Rachel Hughs, City Clerk)*

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation: Approve the minutes.

Background: This is required by the Open Meetings Act.

**CITY OF ALAMOGORDO, NEW MEXICO
CITY COMMISSION REGULAR MEETING MINUTES
6:30 P.M., COMMISSION CHAMBERS
January 25, 2022**

**SUSAN PAYNE, MAYOR
SHARON McDONALD, COMMISSIONER
JOSH RARDIN, COMMISSIONER
STEPHEN BURNETT, COMMISSIONER
NICHOLAS PAUL, COMMISSIONER**

**DUSTY WRIGHT, MAYOR PRO-TEM
VACANT, COMMISSIONER
BRIAN CESAR, CITY MANAGER
PETRIA BENGOCHEA, CITY ATTORNEY
RACHEL HUGHS, CITY CLERK**

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

Mayor Payne called the meeting to order at 6:30 p.m. Roll Call was taken by the City Clerk. City Clerk Hughs announced there was a quorum present. Invocation was given by Reverend Warren Robinson and the Pledge of Allegiance was led by Commissioner Rardin.

APPROVAL OF AGENDA

**Commissioner Rardin moved to approve the agenda.
Commissioner McDonald seconded the motion.
Motion carried with a vote of 6-0-0.**

PUBLIC COMMENT

None.

CITY MANAGER'S REPORT

City Manager Cesar made the following remarks:

1. The Scenic Extension project is now in full swing; the contractor is working on a street to get that segment closed. A lot of work is going on from the bypass back towards the tracks. They have completed an issue under the railroad tracks and can now extend utilities across the railroad tracks and into the relief route.
2. On the 14th, he will begin the first review of the proposed budgets from various departments. Some of staff will be unavailable during that time.
3. The city had previously started to make progress in filling positions, but there are now 65 open positions. With an item at the end of this agenda, plus some other ideas that are still being worked on, we can fill the vacant positions.

REMARKS AND INQUIRIES BY THE CITY COMMISSION

Commissioner Rardin made the following comments:

1. Former Commissioner John Robertson passed away. He sat in District 4 and was the Commissioner prior to Steve Brockett.
2. Clay Anderson passed away; he was a well-known businessman.

CONSENT AGENDA

1. Approve the minutes for the January 11, 2022, Regular meeting. *(Rachel Hughs, City Clerk)*

2. Consider, and act upon, Resolution No. 2022-06 to adopt the Community Development Block Grant (CDBG) Annual Certifications and Commitments. (Debbie Osborne, Grant Coordinator) (Roll Call Vote Required)

Commissioner McDonald moved to approve the Consent Agenda.

Commissioner Paul seconded the motion.

Roll Call Vote was taken.

Motion carried with a vote of 6-0-0.

NEW BUSINESS

3. Consider, and act upon, Ordinance 1646 Case Z-2021-0006(A) for first publication of a map amendment to change the zoning of the property located at 1215 Michigan Ave. from R-3 Two-Family Dwelling District to C-1 Neighborhood Business. (Stella Rael, City Planner) (Roll Call Vote Required)

City Planner Rael presented a zoning map of the area that showed 1215 Michigan Avenue within the R-3 Zoning District, including two locations next to it at 1213 and 1209 that are C-1 Business District. The property owner is requesting this map amendment because they would like to open a small business at the rear of the property. City Planner Rael indicated where the main house is; towards the rear of the house another apartment could be seen where the business would be located. She showed site photos of that location and said that it would not impede with any traffic along Michigan Avenue, and they will have ample parking. The small business is going to be a barber shop.

She continued that under Findings of Fact, the application was filed on November 15, 2021. The legal notice was published on December 19, 2021. Twenty-one letters were mailed by certified/returned receipt mail to all property owners of record within two hundred feet from the property excluding public right-of-way, of that property. As of January 13, 2022, there has been one letter returned undeliverable, two letters returned unclaimed, and she has not received any letters or phone calls of opposition. Item was presented to the Planning and Zoning Board on January 6, 2022. Planning and Zoning Board recommended approval by a vote of 4-0-0. Staff recommends approval on this item.

Commissioner Rardin asked that if the property was rezoned and the business was at the back, what would the front be. City Planner Rael responded that the front was going to be their residence and that they were living at the front at this time.

Commissioner Wright moved to approve.

Commissioner Rardin seconded the motion.

Roll Call Vote was taken.

Motion carried with a vote of 6-0-0.

4. Consider, and act upon, Ordinance 1647 Case Z-2021-0005(A) for first publication of a map amendment to change the current zoning designation of the property located at 1005 E. Ninth Street from C-3 Business District to MH-2 Manufactured Housing Park District to bring into zoning compliance and continue operating as a Manufactured Housing Park. (Stella Rael, City Planner) (Roll Call Vote Required)

City Planner Rael stated the owners were Alamo Estates LLC. She showed a Google Map of the property as it has looked for many years and stated that it has looked like this since the late 1950s. It has been handled as a mobile home park with 15 manufactured homes on there. She showed a zoning

map of the location with the color brown showing Business District, with the other color being R-3 to Family Dwelling district.

City Planner Rael continued to show a proposed park plan, and said anytime we are putting together a manufactured housing park, per ordinance it is required that they supply her with a park plan. She with Assistant City Manager Hernandez, Chief Adler, and the property owner to come up with a plan that worked, made it safe, and made it presentable. She continued that the property had not looked the greatest for many years and they worked hard on preparing this. There is going to be fifteen 12ft x 35ft park model homes. Park model homes are like what Mr. Harold put out on north Florida at Centennial Village. There is ample room for 14ft spacing in between, there is room for parking in front of each parked model homes, and a 24ft wide road gravel road that does not need to meet city standards. Highlighted in yellow at the left will be a placement for a standpipe; a standpipe will keep the fire trucks off that road. If need be, there is a fire hydrant at the left bottom corner. She continued that she had more information to go over if this item is approved, and that she would have to discuss more regarding the variance part of it.

City Planner Rael said that under Findings of Fact, the application was filed on November 23, 2021. The legal notice was published on December 19, 2021. Sixteen letters were mailed by certified/returned receipt mail to tall property owners of record within two hundred feet from the property excluding public right-of-way, of the property. As of January 13, 2022, there has been one letter returned undeliverable, two letters returned unclaimed, and I have not received an letters or phone calls of opposition. She has received some phone calls saying thank you, it's about time. Item was presented to the Planning and Zoning Board on January 6, 2022. Planning and zoning Board recommended approval by a vote of 4-0-0.

Commissioner Wright asked City Manager Cesar that if this passes and goes through, do they have to submit an infrastructure utility plan, and how is it going to be metered, or is that something that will be figured out down the road if this passes. City Manager Cesar referred to City Planner Rael. She stated that utilities were on there already, so when it gets to that point, if it needs to change, then they are all going to have to be upgraded in order to get those utilities turned on. When the property owner starts submitting blocking permits to place these homes, we will look at that. It doesn't have to be a full infrastructure; we would just need to make sure they comply with all the proper state permits to bring them up to current use.

Mayor Payne asked if these were going to be rentals or were people going to buy them. City Planner Rael responded that the property owner is present and would prefer if he answered that question. Mayor Payne replied that it wasn't necessary for the owner to come up to the microphone, she was curious as City Planner Rael has said that these were similar to Tony Harold's, and with those they buy and sell. City Planner Rael clarified that those were intended for sale and to rent the space, but he actually has a lot of those rented out. City Planner Rael introduced Adam Hoydysh as the owner.

Adam Hoydysh said that to answer the Mayor's question, as City Planner Rael alluded to, he thought that people recognized that it had been a less than desirable look and feel, perhaps a blight, to the community. He continued that the bigger picture for us is that we only invest in New Mexico across several different cities, and we realized that New Mexico is 30,000 homes short in the affordable and available category. The intention is to replicate the centennial look and feel; a clean, safe, secure, and affordable housing that people could buy whether first time homeowners or not. He said that this footprint, size, and price point gave people that pathway; that's the intention and idea behind it.

Mayor Payne asked if the plan was to buy it, Adam Hoydysh said that we would buy the homes and then provide financing to first time homeowners, or they could go get a loan. The idea is for

homeowners to be able to own their own house in Alamogordo and that area, and he hoped that answered her question. Mayor Payne said that yes it did, and she was so happy to see that lot cleaned up. As a Commissioner, she had gotten many calls about that area.

Adam Hoydysh said that it had enormous potential, and that he owed a huge debt of gratitude to City Manager Cesar, City Attorney Bengoechea, City Planner Rael, and Chief Adler for all the support and guidance in working with him to put something in front of the city that would be amenable to the people of Alamogordo.

Commissioner McDonald moved to approve.

Commissioner Rardin seconded the motion.

Roll Call Vote was taken.

Motion carried with a vote of 6-0-0.

5. Consider and act upon Case V-2021-0004(A), property owner Alamo Estates, LLC is requesting a variance to allow the placement of fifteen (15) 12x35 Park Model Homes at 1005 E. Ninth Street. (Stella Rael, City Planner) (Roll Call Vote Required)

City Planner Rael explained that this portion is a variance. Per our current ordinance, all mobile home parks shall be a minimum of two acres in size and shall not contain more than eight manufactured homes per acre. This site is 0.80 acres, not even half of the required size that is mandated by our ordinance. Therefore, the variance is to allow these 15 park model homes to be within this smaller area. She recommended approval as staff because they worked hard to make sure that it was a place that looked really nice and kept safe for everybody. The variance would take care of that fact that there could be 15 of these homes there within that 0.80-acre parcel; that is all that is needed regarding the approval of the variance.

She continued that under Findings of Fact, the application was filed on November 23, 2021. The legal notice was published on December 19, 2021. 16 letters were mailed by certified/returned receipt mail to all property owners of record within 200ft from the property excluding public right-of-way, of the property. As of December 30, 2021, there has been one letter returned undeliverable, and she has not received any letters or phone calls of opposition.

Commissioner Rardin asked how many houses are currently on there, it looks like there is about 16 spaces currently. City Planner Rael replied that there was nothing there right now, they all have been removed, there was a total of 15 larger homes. Commissioner Rardin clarified that we were actually putting smaller homes, and City Planner Rael replied yes. She said we were putting smaller homes, and that because they are smaller homes, we have more space in between them than what was there currently, and it won't look as crowded. In fact, there wasn't room for a road before, they were entering from 9th Street or the alley to get to these homes.

Mayor Payne asked Adam Hoydysh if there would be a restrictive covenant or something that they says they have to maintain their space. Adam Hoydysh said that what they wanted to do was safeguard against what happened to the park over time, and that everyone mutually benefits if they can put in some guard rails or covenants that require people to take care of the asset and aspire to a certain look and feel that everyone, whether owners, passerby, local residents, or visitors can be proud of. He continued that they would be adamant and very in favor of making sure that there was a certain aesthetic that was a positive or value add to the community. In his opinion, it doesn't make sense to do it any other way. He understood what they have today and wants to transform the neighborhood. He said he was glad that Mayor Payne's memory was correct, there were 12 derelict homes out there, and they've worked very hard to donate those homes over the last couple of months to make them

free and clear to have this blank slate. He wanted something that would make people go wow, that's a valuable item, I wish I could live there.

Mayor Payne stated that the corner from that was the Friendship Teahouse, and that Kathy called Mayor Payne trying to sell it. Kathy would say that she can't sell this, they've lost two deals that they've backed out of twice, can't you do something about this. Mayor Payne wished to tell Kathy look; they did something. She continued that's something to consider 5-10 years down the road.

Adam Hoydysh said they wanted to make a positive impact, both on the community and financially, and wanted people that saw it every day to be proud of it, and have it be a lesson to other people that there is opportunity to turn things around and do the right thing for the community and for the people. He said he knew the housing is needed, and in its current state it can't deliver that. He was prepared to spend the money and put on the guard rails so that it's a place where people can be proud of and aspire to live there. Mayor Payne thanked Adam Hoydysh.

Commissioner Paul asked if there would ever be an opportunity for it to exceed 15 homes on that site, or would it be limited just because there is a variance. Adam Hoydysh replied that he deferred to Chief Adler and City Planner Rael from a safety and security standpoint. They wanted to maximize the plot, but they had to strike that balance and can't put 18, 25, or 30 homes out there. He repeated that he deferred to Chief Adler and City Planner Rael for their expertise and experience on how to make it safe but also create a density where you can create a fabric within it. He continued that the park plan seen is what they were committed to, and there would be no deviation from that without Chief Adler, City Planner Rael, and the Commission. They have already taken steps behind the scenes, provided this goes through, to work with local engineers to start thinking about the infrastructure. We're prepared to stick to that footprint and commit to it, because that is what he thinks makes sense, given the parcel size and what had been owned and operated for the last 50 years. There is no plan to go beyond it.

Commissioner Paul asked if there would ever be an opportunity, if the park was sold, for somebody else to. City Planner Rael replied no, the plan seen in front of you is what was worked hard on to make it safe. If they moved from that park plan, it wouldn't meet the requirements. As it is, it is already pretty tight, so if the park plan was approved with variance and rezoning, that is what is going in there, and that is going to continue to be there. City Planner Rael said she would never recommend approval of any more homes there because it would get too tight.

Commissioner McDonald stated that she had walked that area because she was the Commissioner for that district, and she had watched them move the mobile homes out of there, and that she wanted to say thank you because each day they would go and count the mobile homes sitting there. She continued that they have had a lot of comments and that she knew some were directed to other Commissioners. She thanked Adam Hoydysh for committing to the area and making it a better place to look at and live. Adam Hoydysh said that he can't take all the credit and owed a tremendous debt of gratitude to Chief Adler, City Planner Rael, and City Manager Cesar for working with him hand-in-hand every step of the way. He deferred 100% to their recommendations and guidance because he wanted to make this a place that works for the people of Alamogordo. He thanked the Commission for their patience and understanding of the opportunity and he appreciated it. Commissioner McDonald thanked City Staff also.

**Commissioner McDonald moved to approve.
Commissioner Rardin seconded the motion.
Motion carried with a vote of 6-0-0.**

6. Consider, and act, upon Resolution 2022-07, declaring 307 New York Ave. to be so ruined, damaged, and dilapidated that it is a menace to the public comfort, health, peace or safety and ordering its abatement. (Jim Baker, Code Enforcement Supervisor and Richard Adler, Fire Chief) (Roll Call Vote Required)

Code Enforcement Manager Baker stated that he would go over the history. Since 2006 we have sent 10 letters for weed violations. In 2021 we sent a certified letter for structure issues with an IPMC letter. On 01/25/22, we served an Administrative Search Warrant on that and inspected both the exterior and interior. He presented photos that showed the back side and south side, and said the door was on the south side. The back side showed the roof was collapsed and ruined with fallen beams, plus the adobe walls disintegrating. On the picture on the right, the flooring there has weakened, and you can see the fireman stepping over the area that is a hazard. Next were pictures of more flooring where you can see a gap at the front door. The interior ceiling was missing ceiling panels, had loose panels, and water damage. The wall above the window had cracks forming. Closeup photos of the cracks were shown above a door and window. More photos of the ceiling were shown with loose hanging material that went up to the metal roof, with water damage to materials up there. The rear door was shown boarded up but was not fully sealed off. The front of the interior that previously led out to New York was show bricked off; you can see cracking on the windowsill near it. The building is obviously dilapidated with the roof, ceiling, and walls disintegrating. It would be his recommendation to that the Commission approve the resolution.

Mayor Payne asked if the building was closer to 1st Street, Code Enforcement Manager Baker responded that this is at 3rd and New York, so it would be the second one from 3rd Street.

Commissioner Rardin asked if the homeowner expressed any interest in removing the structure on their own. Code Enforcement Manager Baker said that they had sent a letter to the owner in El Paso and received no response. Commissioner Rardin asked if we could only send it to where the registered owner was, and Code Enforcement Manager Baker responded that we sent it to where the County Assessor's office showed the address. Commissioner Rardin said that he felt that the structure needed to be cleaned up, but we also need to respect private property rights. He asked if we have had no responses to weed abatements. Code Enforcement Manager Baker responded that there had been no response on the most current weed abatements, then clarified that they had not done weed abatements but had sent letters for the weeds. In the older cases the weed issues were corrected but nothing recently. Commissioner Rardin said that made him wonder if the current owner had passed away. Code Enforcement Manager Baker said that he did not know.

Commissioner McDonald made a comment on the property that in the summertime, the weeds were so thick that if you looked at the Google Map it looks like a little forest inside the city. There have been a number of complaints about that property, and she'll lead the trail with approving the demolition of this property.

Commissioner McDonald moved to approve.

Commissioner Burnett seconded the motion.

Roll Call Vote was taken.

Motion carried with a vote of 6-0-0.

7. Consider, and act, upon Resolution 2022-08, declaring 322 Texas Ave. to be so ruined, damaged, and dilapidated that it is a menace to the public comfort, health, peace or safety and ordering its abatement. (Jim Baker, Code Enforcement Supervisor and Richard Adler, Fire Chief) (Roll Call Vote Required)

Code Enforcement Manager Baker said that this was another dilapidated structure that we have served a search warrant on. For this particular property they had sent 11 letters for weed violations since 2010. They have abated the property for weeds twice, in 2018 and 2020. We have sent three letters for IPMC violations, one in 2019 and two in 2020, and received no response of any of those. They served the search warrant this month and did an inspection on the exterior and interior. He showed photos of the backside of the structure with significant cracking, significant cracking around the south side window, the interior with missing or loose ceiling materials, gaps in the roof that showed light shining through, the floor and walls were trashed, and recent food items that showed the building had been entered and people were eating in there. He continued that something the pictures don't show but was noticeable for someone his size was that the floor tends to give. Another interior shot of the wall facing the south side was shown where you could see light coming through the cracks, plus the roof with gaps where you could see the roof shining through. He concluded his presentation and stated that this was a dilapidated structure that he felt needed to be abated.

Commissioner Paul asked if the property owner on 4th Street was the same owner, or appears to be, the same property of 322 Texas Avenue. Code Enforcement Manager Baker answered that owner of 322 Texas was Norman Antonio. Commissioner Paul stated that the property just to this east of this one is the same owner from his understanding. He knew Mr. Norman and that he was an investor, but he hadn't spoken to him in a matter of years. It was odd to him that Mr. Norman would let it get to this point when he owns a duplex right next door that appears to be occupied by tenants while this one is going by the wayside. Code Enforcement Manager Baker replied that they had sent three letters and they've all gone unanswered. Commissioner Paul stated that he was just curious and would send Mr. Norman a text that if he wanted to do something or just knock it down. Mayor Payne said that it was late for that, and Commissioner Paul agreed it was at this point.

City Attorney Bengoechea said that was still a viable option. If this resolution was approved this evening he has 10 days, but in those 10 days, he must correct it. He has 10 days to fix it at this point. Just so the Commission knows, both properties also were sent into her office via theblight@ci.alamogordo.nm.us email, and they've had multiple complaints on this one and the previous one. We are hearing from citizens via that email address, and this is one of the properties they hear about.

Commissioner Rardin, like Commissioner Paul, wondered if they were not getting in contact with the owners. Commissioner Rardin addressed Commissioner Paul stating that he at least knew the gentlemen that owned this one and could reach out to see if he has received any of the letters from Code Enforcement Manager Baker. Code Enforcement Manager Baker stated that they would letters to the addresses on the County Assessor website. Commissioner Rardin said that he knew the Assessor's office, but if we looked to see if these people might have water counts where we could get a different address or contact information. We know who owns the property, not that this one does not need to come down, but just to see if they will rectify the problem before we have to go and do it. Code Enforcement Manager Baker said that they checked for water billing on all the structures they deal with, he couldn't recall exactly, but was 99.9% sure that there is no water service to this structure. Commissioner Rardin asked that when Code Enforcement Manager Baker checked the Assessor's website, doesn't it pull up all the properties that this gentleman may own. He continued that Commissioner Paul mentioned this gentleman owns the property right next door, so he just wanted exhaust all avenues of contacting these guys before we go in and just tear down their properties. If they are willing to do it for us, that is better for everyone involved. Code Enforcement Manager Baker said that he wasn't sure what the owner information is for the property next door, but he knew what the owner information was for this structure. Commissioner Rardin said that he knew from something the last couple of weeks that on their GIS, you can click on various properties, and it will tell you who owns all those. It is based off the Assessor's stuff but it is right on the City of Alamogordo's website.

He just wanted to make sure that we were doing our homework and trying to get in touch with them as best we can.

City Attorney Bengoechea addressed Commissioner Rardin, stating that legally we do have to send it to the legal mailing address which is the County Assessor's address. She thought it was worth noting that this property has been abated twice in the past three years; we've actually had to go out and take care of the weeds and have filed liens against this property, that triggers several certified mailings being sent out to the address and all the addresses we can find. We have had no contact from this owner at all, even her office that has filed liens against the property. Commissioner Rardin said that it sounded like all options have been exhausted.

Commissioner McDonald said around two or three weeks ago someone had built a fire inside the house. She didn't know if the owners were talking about it, but their house could burn down. The resident living at 314 has a very nice property and anytime something happens there, he is at risk of losing his home. When we look at some of things that are happening there, she always asked if the taxes were being paid every year; if the taxes are being paid then we know that something is getting through to the people. This property has been sitting there for 10 years or maybe longer with things getting worse. We are getting squatters in that area and the owners or residents in that area are complaining in fear of losing their homes through a fire or something happening arbitrarily from the people coming in there because it's vacant. She knew it was hard to ask the owners, but the owners are not giving attention to the area, and it wasn't fair for the people who are keeping their property. The house at 314 is immaculate and just because these houses have been on either side of them, they have not failed to do with they do at their home. If the taxes are being paid, they you know something is getting through to the owner.

Commissioner Rardin moved to approve.

Commissioner McDonald seconded the motion.

Roll Call Vote was taken.

Motion carried with a vote of 6-0-0.

8. Consider, and act upon, first publication of Ordinance 1645, revising the City of Alamogordo Employee Manual. (*Kim Torres, Human Resources Director*) (Roll Call Vote Required)

Human Resources Director Torres said that they had the Employee Manual draft before them which has not been updated since June 2019, about two and a half years. In the packet there was a brief explanation of some of the major changes that were in the manual and was here for any questions that they may have.

Commissioner Wright asked Human Resources Director Torres to highlight the main changes that have come forward in the last two years. Human Resources Director Torres said that they put in certification pay for employees who get certifications that benefit the city outside of their job descriptions. They had been practicing it with the non-represented employees but it was never reduced to paper. Bilingual pay has not been increased in almost 17 years and has been increased. Included is a PTO conversation; when employees cash in PTO it was on a 2/3, so they earn a benefit and lose a portion of it when they cash in, it is now a 1/1 and increased the amount they can cash out per year. That will hopefully help us retain some people, be a good incentive for people they are recruiting, and keep the PTO balances down. Many employees have a lot of PTO on the books.

Commissioner Rardin asked Human Resources Director Torres about the recording devices and cameras in the workplace, is that something that changed as well. Human Resources Director Torres explained that was a new policy that was added and it is strictly just a sign of the times. We have

cameras that are going up throughout the city and it basically tells people that we have cameras and there is no right to privacy.

Commissioner Rardin asked Human Resources Director Torres about service animals. She explained that service animals are starting to come up as well. There haven't been any requests for service animals, but we have for emotional support animals. In the past, employees would bring animals to work with them, but that policy stopped that from happening. These were animals that were not emotional support or service animals.

Commissioner Rardin asked Human Resources Director Torres about community services, it looks like we took out use of city facilities for city employees. Human Resources Director Torres explained that it was still there, but she cleaned it up because it was one big paragraph. They separated it out so it would be easier to read; the changes to it were related to the golf course fees, retirees, and use of equipment at the REC center. These were minor changes other than the fees for the golf course. It was just cleaning it up and making it easier to read.

Commissioner Rardin asked about the Receipt of Workplace Violence Policy, assuming it was just another change of times. Human Resources Director Torres explained that they had the Harassment Policy, the Sexual Harassment Policy, the Anti-Bullying Policy, but we didn't have an acknowledgement for that one, so we added it. She continued that would be given to every new hire to sign when they go through their orientation.

Mayor Payne asked if anyone else had further questions, Commissioner Rardin commented that it was a lot to read.

Commissioner Rardin moved to approve.

Commissioner Paul seconded the motion.

Roll Call Vote was taken.

Motion carried with a vote of 6-0-0.

ADJOURNMENT

Commissioner Rardin moved to adjourn at 7:25 p.m.

Commissioner McDonald seconded the motion.

Motion carried with a vote of 6-0-0.

Mayor Susan L. Payne

ATTEST:

City Clerk Rachel Hughs

(Prepared by Dylan Aleshire)

Approved at the Regular Meeting held on February 8, 2022.

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 2/8/2022

Report Date: 02/01/2022

Report No: 2.

Submitted By: Petria Bengoechea

Subject: Consider, and act upon, adoption and final publication of Ordinance 1644 amending Chapter 29, Section 01-090 of the Alamogordo Code of Ordinances regarding the regulation of special events. (*Petria Bengoechea, City Attorney*) **(Roll Call Vote Required)**

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation:

Background: This Ordinance came before the City Commission at the Regular Meeting of January 11, 2022 for approval of first publication. Commission approved with a vote of 6-0-0.

The ordinance currently only allows the City to administratively issue a special events permit if the event occurs no more than 12 times per year, and imposes the requirement that the applicant seek City Commission approval if they wish to hold the event more often. This update removes the restriction in order to be more business friendly.

**ORDINANCE 1644 AMENDING CHAPTER 29 SECTION 01-090 OF THE
ALAMOGORDO CODE OF ORDINANCES REGARDING THE
REGULATION OF SPECIAL EVENTS**

WHEREAS, the City of Alamogordo, New Mexico and its commissioners recognize that special events are economic drivers for the local community;

WHEREAS, the City Commission wishes to strengthen events that are able to take place in the community to help small business and to bring citizens together;

BE IT ORDAINED by the City Commission of the City of Alamogordo, New Mexico that Chapter 29 of the *Code of Ordinances* be amended as follows:

29-01-090. Regulation of special events.

- (a) *Purpose and intent.* It is the purpose and intent of these temporary use regulations to establish procedures for permitting certain types of temporary activities. The intent is to prevent the creation of any nuisance or annoyance to the occupants of or visitors to adjacent buildings or premises while avoiding lengthy or costly approval procedures.
- (b) *Special event definition.* A special event includes but is not limited to carnivals, circuses, fairs, festivals, animal displays, amusement rides, flea markets (not inside a permanent structure), special events promoting local agricultural products, arts and crafts markets, promotions, Christmas tree sales, retail sale of fireworks, special sales events, auto sales events, neighborhood parties, and similar public assemblies on public or private property.
- (c) *Temporary activity structure definition.* Temporary activity structures are those structures, facilities, or uses that occur on a seasonal or sporadic basis and involve the processing and/or sale of commodities, or are needed in conjunction with a special event.
- (d) *Issuance.* A special event permit may be issued to authorize a special event within all zoning districts of the city.
 - (1) *Eligibility.* A special event permit may be administratively issued if:
 - a. The requested special event does not exceed a total of ten (10) days (to include set-up and dismantling);
 - ~~b. The event occurs no more than twelve (12) times in a twelve-month period;~~
 - ~~c. If an event will be held more than twelve (12) times in a one (1) year period, the applicant must seek city commission approval.~~
 - (2) *Submission requirements:* Thirty (30) days prior to the event, the applicant shall submit:
 - a. An application.
 - b. Applicable fees.

- (3) *Street closure.* Any event that requires street closures must apply for a separate permit and pay applicable fees. Permits shall be granted by the city manager when deemed to be in the interest of public safety.
- (4) *Procedure:*
- a. At least seven (7) days after approval of the permit, the permit shall be publicly posted by the city.
 - b. If the city manager approves the administrative special event permit, s/he shall sign the application for the city. The city manager may require such additional conditions as well, in his/her judgment, secure substantially the objectives of the district regulations.
- (e) *Permit for a temporary activity structure.* A permit for a temporary activity structure may be issued to authorize a temporary activity structure, such as stands, tents, canopies and other similar structures, to be located within all zoning districts of the city.
- (1) *Exemptions.* The following do not require a permit for a temporary activity structure:
- a. Any trailer, mobile housing unit or recreational vehicle as defined in Section 25-01-010 of this Code;
 - b. An accessory structure used solely for storage which lacks indoor plumbing but which otherwise complies with the New Mexico Building Code;
 - c. A structure erected on property owned by the city, including the county fairgrounds;
 - d. A structure used as a construction office at a site where construction work is being carried on;
 - e. A structure which complies with the New Mexico Commercial Building Code, except for attachment to a foundation, used for instruction at a school.
- (2) *Submission requirements.* The applicant is required to submit to the city the following:
- a. Completed application form together with support documentation; and
 - b. Applicable fees in accordance with section 2-01-030(i) of this Code.
- (3) *Prior determinations for temporary activity structure permit approval.* The city manager shall only approve an application for a temporary activity structure permit, if all of the following findings can be made:
- a. The proposed temporary use will be compatible with adjacent uses and will not adversely affect the surrounding neighborhood by means of odor, noise, dust, or other nuisance.
 - b. Increased traffic caused by the temporary activity structure will not adversely affect the surrounding neighborhood or city at large.
 - c. The proposed temporary activity structure is consistent with all city regulations and codes.

- d. The city manager may impose such conditions on a temporary activity structure as are necessary to meet the purposes of this chapter and protect the public health, safety and welfare.
- (f) *Appeal of administrative review decision.* Any person who is dissatisfied with the decision of the city manager may appeal that decision to the city commission.

If the applicant disagrees with the conditions set by the city manager, the applicant may appeal to the city commission.

DONE this ____ day of _____, 2022.

CITY OF ALAMOGORDO, NEW MEXICO
a New Mexico municipal corporation

By: _____
Susan L Payne, Mayor

ATTEST:

Rachel Hughs, City Clerk

APPROVED AS TO FORM:

Petria Bengoechea, City Attorney

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 2/8/2022

Report Date: 01/24/2022

Report No: 3.

Submitted By: Petria Bengoechea

Subject: Consider, and act upon, awarding Charlie Lee Solar, LLC a land lease at 501 Lavelle Rd, Alamogordo, NM 88310 for purposes of a solar field. *(Petria Bengoechea, City Attorney)*

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation:

Background: This lease is a land lease for 35.62 acres of City property at 501 Lavelle Rd, which is part of the City's old landfill for purposes of a solar field. The lease term is 25 years, and rent is calculated at the fair market value rate of \$5000 per year during the development period, \$250 per acre per year during the construction period, and \$500 per acre per year during the operational period. This will increase by 2% every year on the lease anniversary.

Land Lease

between

City of Alamogordo

and

Charlie Lee Solar, LLC

Dated as of _____, 2022

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Exhibit A-1: Description of Land

Exhibit A-2: Description of Leased Premises

Exhibit B: Memorandum of Lease

Exhibit C: Form of Consent and Agreement

Exhibit D: Insurance

LAND LEASE

This Solar Site Lease (this “Lease”), made this ____ day of _____, 2022, (the “Effective Date”), between the City of Alamogordo (“Landlord”), a municipality incorporated in Otero County in the State of New Mexico, and Charlie Lee Solar, LLC, a Maryland limited liability company (“Tenant”). The Landlord and Tenant are known each individually hereunder as a “Party” and collectively as the “Parties.”

Recitals

A. Landlord owns the real property located at 501 Lavelle Road, Alamogordo, NM 88310 more particularly described in Exhibit A-1 attached hereto (the “Land”).

B. Tenant desires to lease a portion of the Land described in Exhibit A-2 attached hereto together with Landlord’s rights under and pursuant to any easements, rights-of-way, and other rights and benefits relating or appurtenant to such Land, including, without limitation, the radiant energy emitted from the sun upon, over and across such Land (“Solar Energy”), together with any mineral and water rights not severed from the Land prior to the Effective Date (such Land, Solar Energy and unsevered rights, collectively, the “Leased Premises”) in order to develop, construct and operate a solar photovoltaic system with a total generating capacity expected to be rated at approximately five (5) megawatts (AC).

Lease and Easement

NOW, THEREFORE, in consideration of the agreements and mutual covenants contained herein, the receipt and sufficiency of which are hereby acknowledged and other good and valuable consideration, Landlord and Tenant, intending to be legally bound, mutually agree to the following terms and conditions:

ARTICLE I Definitions

The following terms shall have the indicated meaning when used in this Lease.

Access Easement is defined in Section 2.3

Access Easement Land is defined in Section 2.3

Additional Rights is defined in Section 8.1(b)

Applicable Law means any and all federal, state, and local laws (including common law), statutes, ordinances, rules, regulations, judgments and other valid orders of any Governmental Authority with jurisdiction over the Leased Premises.

Collection Point shall mean any point on the surface of the Leased Premises upon which the components of the Project comprising solar panels are located.

Commercial Operation Date means the date on which the Project has been completed on the Leased Premises, interconnected with the grid and has commenced commercial operation.

Construction Period means the period beginning on the Construction Date and ending the first day of the calendar month first succeeding the Commercial Operation Date.

Construction Date means the first day of the calendar month first succeeding the date upon which Tenant begins fencing off areas of the Leased Premises in expectation of construction of the Project or pouring the first foundation for any support structure of the Project.

Decommissioning Period is defined in Section 5.3.

Development Period means the period beginning on the Effective Date and ending on the day before the Construction Date.

Easements is defined in Section 2.4.

Effective Date is defined in Preamble.

Environmental Condition is defined in Section 6.6(a).

Environmental Laws means any and all present and future Applicable Laws and any amendments thereto (whether common law, public law, rule, order, regulation, or otherwise), directives, judgments, and other requirements promulgated or entered into by any Governmental Authority relating to the environment, human health, air space, wildlife, wildlife habitat, preservation or reclamation of natural, cultural or archaeological resources, ownership or operation of a landfill, or to the management, handling, use, generation, treatment, storage, transportation, disposal, manufacture, distribution, formulation, packaging, labeling, Release or threatened Release of or exposure to Hazardous Materials, whether now existing or subsequently amended or enacted and in effect as of the date of the closing hereunder, including but not limited to: the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq.; the Clean Air Act, 42 U.S.C. § 7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; the Emergency Planning and Community Right to Know Act of 1986, 42 U.S.C. § 11001 et seq.; the Safe Drinking Water Act, 42 U.S.C. § 300(f) et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 5101 et seq.; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 136 et seq.; the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq.; the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq.; the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq. (to the extent any provisions thereof relate to environmental matters); the National Environmental Policy Act, 42 U.S.C. § 4321 et seq.; the Endangered Species Act, 16 U.S.C. § 1531 et seq.; the Bald and Golden Eagle Protection Act, 16 U.S.C. § 668 et seq.; the Migratory Bird Treaty Act, 16 U.S.C. § 703 et seq.; National Historic Preservation Act of 1966, 16 U.S.C. 470 et seq.; and any similar, analogous, or implementing state or local Applicable Laws, all amendments or regulations promulgated thereunder; and any applicable standard of conduct under any common law doctrine, including but not limited to, negligence, nuisance, or trespass, personal injury, or property damage related to protection of the environment or related to or arising out of the presence, Release, or exposure to Hazardous Materials.

Environmental Liabilities and Obligations shall mean any known or unknown liability, obligation (including, without limitation, any obligation to monitor, test, report to governmental authorities, remediate or clean up, or any obligation under a permit), expense, cost or any other personal injury or property damage or loss (including, without limitation, reasonable attorneys' fees and consultants' fees), fine or penalty, whether incurred by a Party or claimed by any third party (including, without limitation, any governmental entity), arising out of or relating to any actual, alleged or threatened discharge, release, emission, spill or migration of any Hazardous Materials on, under or from the Leased Premises into the environment or onto any other property (including the Land), or any such discharge, release, emission, spill or migration onto the Leased Premises from a source other than the Leased Premises.

Fee Mortgage is defined in Section 8.3(b).

Force Majeure Event is defined in Section 9.6.

Governmental Authority means any federal, state or local political subdivision or any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government and any other governmental entity, instrumentality, agency, authority, commission or self-regulatory organization.

Grantee is defined in 8.1(b).

Hazardous Materials means any chemical, waste or other substance (a) which now or hereafter becomes defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “extremely hazardous wastes,” “restricted hazardous wastes,” “toxic substances,” “toxic pollutants,” “pollution,” “pollutants,” “regulated substances,” or words of similar import under any laws pertaining to the environment, health, safety or welfare, (b) which is declared to be hazardous, toxic, or polluting by any Governmental Authority, (c) exposure to which is now or hereafter prohibited, limited or regulated by any Governmental Authority, (d) the storage, use, handling, disposal or release of which is restricted or regulated by any Governmental Authority, or (e) for which remediation or cleanup is required by any Governmental Authority.

Interconnection Easement is defined in Section 2.4

Interconnection Easement Land is defined in Section 2.4

Interconnection Facilities means electric transmission and distribution lines, wires, poles, towers, electrical transformers, substations, interconnection and switching equipment and facilities, electricity converters, related foundations, and pads and footings, and other related facilities and equipment, for the collection, transmission, and distribution of electric power generated on the Leased Premises.

Land is defined in the Recitals.

Landlord is defined in the first paragraph.

Landlord Indemnified Parties is defined in Section 7.1

Leased Premises is defined in the Recitals.

Lender is defined in Section 8.1(a).

Operational Period means the period beginning on the first day after the end of the Construction Period and ending on the day before the Decommissioning Period.

Party or Parties is defined in the first paragraph.

Person means an individual, natural person, corporation, joint venture, partnership, limited partnership, limited liability partnership, limited liability company, trust, estate, business trust, association, Governmental Authority or any other entity.

Project means one or more photovoltaic power systems, including, without limitation, solar panels, mounting substrates or supports, wiring and connections, power inverters, service equipment, metering equipment, utility interconnections, battery storage and any and all related equipment, Interconnection Facilities, solar resource and weather measurement equipment, supporting structures, operation and maintenance facilities, foundations and pads, footings, access roads, operation and maintenance facilities,

security facilities, and all other related facilities and equipment (including but not limited to energy storage equipment and facilities).

Release means any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing, or dumping into soil, surface water, ground water, land surface, subsurface strata, ambient air, wildlife, plants or other natural resources of Hazardous Materials.

Renewal Term is defined in Section 3.1(b).

Rent is defined in Section 4.1.

Representatives is defined in Section 11.8.

Solar Easement is defined in Section 2.2.

SNDA means a subordination, non-disturbance and attornment agreement in a form and substance reasonably acceptable to Tenant, which shall provide that Tenant's rights and privileges pursuant to this Lease, including, without limitation, the right to peaceful occupation and possession of the Leased Premises, shall not be disturbed during the Term.

Tenant is defined in the first paragraph.

Tenant Indemnified Parties is defined in Section 7.2

Term is defined in Section 3.1.

ARTICLE II

Lease

Section 2.1 General

- (a) Landlord hereby leases, lets and demises exclusively to Tenant, and Tenant leases, lets and demises from Landlord, the Leased Premises for the purpose of developing, constructing, installing, replacing, relocating, improving, operating, repairing, maintaining, repowering, decommissioning, expanding and removing from time to time the Project on the Leased Premises and all activities necessary, incidental or convenient to that use or any other lawful uses consistent with the operation of the Project subject to the terms and conditions of this Lease. Without limiting the generality of the foregoing, Tenant shall (i) have the sole and exclusive right to convert all of the Solar Energy and to conduct the operations permitted hereunder (including without limitation, the installation and placement of the Project and any improvements related to the same) on, about or at the Leased Premises; and (ii) be permitted to permit, develop, test, own, erect, construct, install, relocate, repair, replace, manage, maintain, operate, remove, protect, upgrade, expand, contract and use, from time to time, Solar Energy measurement, collection, storage, conversion, generation, transmission and distribution systems of any type and in such quantity as Tenant may determine, in its sole discretion, including, without limitation, all equipment and improvements necessary or useful for the conversion of the Solar Energy into electricity.
- (b) Tenant shall use the Leased Premises only for the uses and activities described in Section 2.1(a).

- (c) Tenant may, at no expense to Landlord, construct and maintain security devices on the Leased Premises which Tenant, in its sole discretion, determines are appropriate and necessary for the protection of the Project, including fencing or other security safeguards.
- (d) Landlord recognizes and acknowledges that Tenant shall have exclusive occupancy of the Leased Premises and that Tenant may, in addition: (i) clear, grade and maintain all of the ground; and to excavate and use sand, gravel, caliche or other materials suitable for the Project, including, without limitation, for road cover to construct access roads on the Property; (ii) put safety guidelines in place covering the Leased Premises during any periods of construction, operation or maintenance work taking place on the Leased Premises; (iii) erect, test, relocate, repair, replace, maintain, operate and remove such power transmission lines, poles, anchors, support structures, underground and/or overhead cables, substations, distribution, collection, switching and Interconnection Facilities and associated equipment and appurtenances, meters, signage, fencing and roads for access and for installation and maintenance and any buildings as Tenant in its sole discretion deems to be necessary or appropriate to further the other uses provided in this Lease and to monitor, operate, produce, transmit power and transport workers, tools, material, equipment and other necessary items to and from or across the Leased Premises and other facilities for the generation, collection, storage, distribution, step-up, step-down, wheeling, transportation and sale of energy and for communications in connection with the Project; (iv) occupy, use, renovate, rebuild, demolish, and/or remove any existing structures for any and all purposes related to the Project; (v) undertake any other activities, whether accomplished by Tenant or a third party authorized by Tenant, that are reasonably necessary, useful or appropriate to accomplish any of the purposes or uses of this Lease as determined by Tenant in its sole and absolute discretion; and (vi) control and restrict access onto and over the Leased Premises and exclude others, in each case within the Leased Premises.
- (e) Landlord consents to Tenant's location of the Project at any location upon the Leased Premises, including at or near the property lines. Furthermore, in the event that any private agreements or restrictions or any Applicable Laws impose setback requirements or otherwise restrict the location of any improvement to be placed upon the Property or upon any adjacent properties along or near property lines owned by Landlord, Landlord shall reasonably cooperate with Tenant, in connection with such requirements and/or restrictions, including, without limitation, to obtain all waivers or variances from such requirements and/or restrictions as Tenant reasonably may deem necessary for the operation of the Project. Landlord shall reasonably and promptly execute such further documents evidencing Landlord's agreement to the elimination of such setback requirements as Tenant may reasonably request.
- (f) During the construction, maintenance, repair, replacement, improvement or removal of the components of the Project on the Leased Premises, or Interconnection Facilities on the Interconnection Easement, Tenant shall have the right to utilize so much of the adjoining property of Landlord as is reasonably necessary for a construction staging and storage area; *provided, however*, Tenant shall first obtain Landlord's prior written permission to use specifically described working space, such consent not to be unreasonably withheld, conditioned or delayed, *and further provided*, that such use does not materially and adversely interfere with the operations of Landlord or its other lessees, tenants or permittees or conflict with any easements, leases, rights of way or other encumbrances on the applicable portion of Landlord's property.

- (g) Tenant acknowledges that Land contains a capped sanitary landfill, subject to regulation and oversight by one or more Governmental Authorities, including but not limited to the New Mexico Environment Department. Notwithstanding anything else herein to the contrary, Landlord shall at all times be responsible for all obligations relating to the landfill, and Tenant shall have no maintenance, monitoring, or other obligations with respect to the landfill except as otherwise expressly set forth in this Lease. In the course of installation and operation of the Project, Tenant shall not knowingly take any actions that will materially damage the landfill located on the Leased Premises by penetrating or breaching the liner of the landfill or changing the slope of the landfill. Notwithstanding the foregoing, unless such penetration or breach of the liner, or change in the slope of the landfill, is due to the negligent or willful misconduct of Tenant, Tenant shall have no liability for same hereunder. Landlord shall not damage the landfill, or permit any damage or disturbance of the landfill in any manner which could have a detrimental impact on the Project or Tenant's rights hereunder.

Section 2.2 Solar Easement

In addition to the lease granted Tenant under Section 2.1, Landlord hereby grants to Tenant during the Term an exclusive easement (the "Solar Easement") on, over and across Landlord's Land and any other adjacent areas owned by Landlord for access to the Solar Energy at the Collection Point. In furtherance of the foregoing, Landlord shall not construct or permit to exist within the areas adjacent to the Leased Premises which are owned by Landlord (including the Land) any structure or improvement that blocks, shades or obstructs the direct line of sight from any Collection Point to the sun on any day of the year at any time of day from sunup to sundown. Structures and improvements located on the Land or other areas adjacent to the Leased Premises as of the Effective Date of this Lease shall be allowed to remain and Tenant may not require their removal. The Landlord shall not be obligated by reason of the grant of the Solar Easement or otherwise pursuant to this Section 2.2 to remove, trim or maintain any naturally occurring vegetation on the Leased Premises, the Land or any adjacent areas, but Tenant shall have the right at its sole cost to trim any vegetation on the Land or any adjacent areas owned by Landlord that is obstructing access to sunlight at the Collection Point, and the right to access the Land for such purpose.

Section 2.3 Access Easement

Landlord hereby grants to Tenant during the Term a non-exclusive easement for and right of ingress to and egress from the Leased Premises (the "Access Easement") upon, over, under, and across Landlord's Land and any other adjacent areas owned by Landlord (the "Access Easement Land"). Upon Tenant's request, Landlord shall promptly execute and deliver such documents and instruments, including, without limitation, an amendment to this Lease evidencing the grant of the Access Easement over portions of the Land, which such locations shall be determined in the sole discretion of the Tenant.

Section 2.4 Interconnection Easement

Landlord hereby grants to Tenant during the Term a non-exclusive easement for the construction, installation, operation, maintenance, repair and replacement of Interconnection Facilities ("Interconnection Easement", together with the Solar Easement and Access Easement, collectively the "Easements") in connection with the Project, in gross, upon, over, under, and across Landlord's Land and any other adjacent areas owned by Landlord (the "Interconnection Easement Land"). Upon Tenant's request, Landlord shall promptly execute and deliver such documents and instruments, including, without limitation, an amendment to this Lease evidencing

the grant of the Interconnection Easement over portions of the Land, which such locations shall be determined in the sole discretion of the Tenant.

Section 2.5 Covenants Running With the Land

- (a) The Easements and related rights granted by Landlord in this Lease to Tenant are easements in gross for the benefit of Tenant, its successors and assigns, as owner of the rights created by the Easements.
- (b) The burdens of the Easements, shall run with and against the land burdened thereby during the Term of this Lease and shall be a charge and burden on such land and shall be binding upon and against Landlord and its successors, assigns, permittees, licensees, and lessees. This Lease and the Easements shall inure to the benefit of Tenant and its successors and assigns.

ARTICLE III
Lease Term

Section 3.1 Lease Term

- (a) The initial term of this Lease shall commence on the Effective Date and shall remain in effect for twenty-five (25) years after the Commercial Operation Date (the “Initial Term”), unless sooner terminated as hereinafter provided. For the purposes of this Lease, the Initial Term as the same may be extended with any Renewal Term(s) pursuant to Section 3.1(b) shall be collectively referred to as the “Term.”
- (b) Tenant shall have the right, subject to the provisions hereinafter provided, to extend the Initial Term for four (4) additional renewal terms of five (5) consecutive years (each such five (5) year period, a “Renewal Term,”) on the same terms and conditions herein, provided that Tenant notifies Landlord in writing of its election to exercise the right to renew this Lease for such Renewal Term(s) (i) if it is the first election to exercise a Renewal Term, any time during the Initial Lease Term, but no later than ninety (90) days prior to the expiration of the Initial Lease Term, and (ii) if it is the second election to exercise a Renewal Term, any time during the first Renewal Term, but no later than ninety (90) days prior to the expiration of the first Renewal Term.

Section 3.2 Termination of Lease

This Lease shall terminate upon the first to occur of any of the following:

- (a) Upon thirty (30) days’ prior written notice by Tenant at any time prior to the Operational Period;
- (b) Pursuant to Section 9.1
- (c) Pursuant to Article X; or
- (d) Upon the expiration of the Term of this Lease as set forth in Section 3.1.

ARTICLE IV

Rent and Taxes

Section 4.1 Rent

Tenant shall pay to Landlord as rent (A) during the Development Period, \$5,000 annually, payable in equal semiannual installments, and (B) during the Construction Period, \$250 per acre per year, payable in equal quarterly installments, and (C) during the Operational Period, an amount equal to \$500 per acre per year, payable in equal quarterly installments (such amounts payable pursuant to the foregoing clauses (A) (B) and (C) collectively, the “Rent”). Commencing on the first (1st) anniversary of the Commercial Operation Date, and on each successive anniversary thereafter, the Rent shall be increased by two percent (2%).

Section 4.2 Taxes, Assessments, and Utilities

For the Term, Landlord shall be obligated for and shall pay all personal property or real property taxes levied against the Leased Premises and the Land, except that Tenant shall be obligated to pay any personal property taxes levied against the Project for the portion of the first calendar year beginning after the Commercial Operations Date and for all calendar years thereafter during the Term. If Landlord is assessed any taxes related to the existence of the Project on the Leased Premises, Landlord shall immediately notify Tenant. Landlord and Tenant shall cooperate in contesting any such assessment at Landlord’s sole cost and expense; provided that Landlord shall pay such taxes to avoid any penalties or interest on such taxes, subject to reimbursement by Tenant. If after the resolution of the matter, such tax is found to be properly imposed upon Tenant, Tenant shall reimburse Landlord for such tax upon written notice by Landlord. For the avoidance of all doubt, in no event shall Tenant be required to pay, directly or indirectly, any inheritance, estate, or profit taxes that are or may be imposed upon Landlord, its successors or assigns, and in all events Landlord shall be responsible to pay that portion of the real property taxes, if any, assessed with respect to the value of any improvements on the Land located outside the Leased Premises and not constructed by or on behalf of Tenant. . Further, notwithstanding any other provision of this Section 4.2, Tenant shall not be obligated to pay for (i) any income taxes attributable to Landlord; or (ii) any increase in the assessed value of the Leased Premises for tax purposes.

- (a) All (i) tax credits, tax incentives or tax related grants or benefits and any and all property tax abatement pursuant to Applicable Law (“Property Tax Provisions”) and (ii) renewable energy credits or other environmental attributes, credits or incentives, in each case, relating to the Project are, and shall remain, the sole property of Tenant.
- (b) Landlord shall reasonably cooperate with Tenant, to minimize any taxes related to the Project that are due from Tenant, including without limitation, taking any steps necessary to reasonably assist in the securing of property tax exemptions pursuant to the Property Tax Provisions. Further Landlord represents that it has not claimed, and shall not claim, any exemptions under Property Tax Provisions without the express written consent of the Tenant.

ARTICLE V

Tenant’s Representations, Warranties and Covenants

Tenant covenants, represents and warrants to Landlord as follows:

Section 5.1 Liens

Tenant shall keep the Leased Premises free and clear of all liens and claims of liens for labor, materials, services, supplies, and equipment performed on or furnished to Tenant or the Project in connection with Tenant's use of the Leased Premises. Tenant may contest any such lien, but shall post a bond or utilize other available means to remove any lien, which is created during the contested proceeding. Tenant agrees to otherwise remove any lien or encumbrance for which it is responsible pursuant to this paragraph within ninety (90) days after Tenant's receipt of notice of any such lien or encumbrance.

Section 5.2 Permits and Laws

Tenant and its designees shall at all times comply, and cause their employees, contractors and agents to comply, in all material respects with all Applicable Law with respect to Tenant's activities pursuant to this Lease.

Section 5.3 Tenant's Improvements

- (a) All components of the Project constructed, installed, or placed on the Leased Premises by Tenant pursuant to this Lease shall be the sole personal property of Tenant, shall not be or become fixtures, and Landlord shall have no ownership interest in the Project or any components thereof. Landlord hereby expressly waives all statutory and common law liens or claims that it might otherwise have in or to the Project or any portion thereof and agrees not to restrain or levy upon such property or assert any lien, right of restraint or other claim against the same. Without mitigation of the foregoing, Tenant, in its sole discretion, shall be entitled to file one or more precautionary financing statements, including fixture filings in such jurisdictions as it deems appropriate with respect to the Project.
- (b) All components of the Project constructed, installed, or placed on the Leased Premises by Tenant pursuant to this Lease may, subject to compliance with any other applicable limitations provided herein, be moved, replaced, repaired, or refurbished by Tenant on the Leased Premises at any time without Landlord's consent. Unless otherwise agreed to in writing by Landlord, upon the termination of this Lease, Tenant shall remove all of the components of the Project (except for mounting pads and support structures) and shall reclaim and restore to the extent practicable the Leased Premises to its condition prior to installation of the Project, reasonable wear and tear excepted within one hundred and eighty (180) days after this Lease terminates ("Decommissioning Period"). During the Decommissioning Period, Landlord grants Tenant a license to access the Leased Premises solely for the purpose of performing its obligations to decommission the Project and restore the Leased Premises in accordance with this section. If Tenant fails to remove any component of the Project required to be removed in accordance with this Section 5.3 within the Decommissioning Period, or if Landlord agrees to waive the requirement for Tenant to remove one or more components of the Project, such components of the Project may be considered, at Landlord's option, as abandoned by Tenant and Tenant hereby relinquishes any and all right, title and interest in and to any such property in such event. Landlord may retain or remove any components of the Project deemed abandoned by Tenant from the Leased Premises and use or dispose of them in its sole discretion without notice or liability to Tenant. If Landlord incurs costs to decommission and remove any of the components of the Project due to Tenant's failure to do so within the Decommissioning Period, Tenant

hereby agrees to indemnify Landlord for such costs and agrees to reimburse Landlord for those amounts reasonably incurred.

Section 5.4 Hazardous Materials

- (a) Tenant shall not use, dispose of, or release on the Leased Premises any Hazardous Material, except in such quantities as may be required in its normal business operations and in full compliance with all applicable Environmental Laws. Tenant shall, and shall cause its agents and contractors to, comply in all respects with applicable Environmental Laws and regulations. Tenant agrees to indemnify, defend, and hold harmless Landlord and its members, officers, directors, employees, and agents from any Environmental Liabilities and Obligations or other claims, costs, penalties or liabilities incurred or arising as a result of its failure to abide by and/or perform its obligations hereunder.
- (b) Landlord and Tenant acknowledge and agree that Tenant shall not be liable for any conditions on the Land or any Environmental Liabilities and Obligations (i) arising from or related to acts or omissions occurring prior to the Effective Date (and including, without limitation, any matters related to the landfill situated on the Land), or (ii) Hazardous Materials which are present prior to the Effective Date, or which are brought onto the Land by Landlord or its employees, agents or contractors during the Term, and no costs incurred in connection with the clean-up, removal, or treatment of such excluded Hazardous Materials shall be allocated to Tenant

Section 5.5 Insurance

Tenant shall procure and maintain, at its cost and expense, in full force and effect throughout the Construction Period and Operational Period, policies of insurance described in Exhibit D – Insurance Requirements attached hereto and incorporated herein by reference. Such insurance coverage for the Project and the Leased Premises may be provided as part of a blanket policy provided the limits required herein apply separately to occurrences related to the Project and Tenant’s activities on the Leased Premises. Any such policies providing for liability coverage shall name Landlord as an additional insured. All policies shall provide for thirty (30) days’ prior written notice to Landlord of any cancellation, contain a waiver of subrogation clause, and be issued by an insurance company with an A.M. Best rating of at least A-. Tenant shall provide Landlord with certificates of insurance, as well as additional insured endorsements, evidencing this coverage prior to the Construction Date and annually during the Term; provided, however, that upon Landlord’s request, Tenant shall provide Landlord with copies of all applicable policies and endorsements.

ARTICLE VI Landlord’s Representations, Warranties and Covenants

Landlord covenants, represents, and warrants to Tenant as follows:

Section 6.1 Title and Authority

Landlord is the sole owner of the Leased Premises in fee simple subject only to permitted exceptions listed on Exhibit E attached hereto and made a part hereof (collectively, the “Permitted Exceptions”). Each person or entity signing the Lease on behalf of Landlord has the full and unrestricted authority to execute and deliver this Lease and to grant the easement and rights granted herein. The execution, delivery and performance of the Lease have been duly and validly authorized by all necessary action by the Landlord. When signed by Landlord, this Lease constitutes a valid and binding agreement enforceable against

Landlord in accordance with its terms. There are no leases, options to purchase, license agreements, third party rights to use or possess the Leased Premises, or, any encumbrances or liens against the Leased Premises except the Permitted Exceptions.

Section 6.2 Quiet Enjoyment

Tenant shall have the quiet use, possession and enjoyment of the Leased Premises in accordance with the terms of this Lease without disturbance. Landlord shall not, nor shall Landlord authorize or permit any other party to, take any action on the Leased Premises that would interfere with the use of the Leased Premises by Tenant for the purposes set forth herein.

Section 6.3 Cooperation

Landlord agrees, at Tenant's request, cost and expense, to cooperate and to execute all documents, permits, petitions and statements reasonably necessary in connection with Tenant's efforts to obtain all necessary zoning, land use and other approvals for the development, construction and operation of the Project on the Leased Premises, including Tenant's efforts to interconnect the Project with the local electric utility.

Section 6.4 [Reserved]

Section 6.5 No Brokers

Neither Landlord nor any affiliate of Landlord nor any of their respective officers, directors, or employees has employed any broker or finder or incurred any liability for any brokers' fees, commissions or finders' fees as a result of the execution of this Lease.

Section 6.6 Condition of Property.

- (a) Landlord has no actual or constructive knowledge that the Leased Premises is not suitable for the installation, construction and operation of the Project or that there are any site conditions or construction requirements, including, without limitation, any Environmental Condition that would increase the cost of installing the Project on or at the Leased Premises or create any potential additional liabilities for Tenant. For the purposes of this Lease, the term "Environmental Condition" shall mean any of the following; (a) the violation or alleged violation of any Environmental Laws at or on the Leased Premises; (b) the Release (past or present) or potential Release of any Hazardous Material at, on or from the Leased Premises; and/or (c) any other environmental matter adversely affecting the Leased Premises (and including, without limitations, any matters related to the landfill located on the Land), in each case, except as directly caused by Hazardous Materials brought onto the Property by or on behalf of Tenant. Landlord further represents and warrants to Tenant that it has no knowledge of any claim having been made by any Governmental Authority that a violation of Applicable Laws (including Environmental Laws) exists with regard to the Land, or any part thereof, as of the Effective Date.
- (b) Landlord acknowledges and agrees that upon execution of this Lease it retains ownership and control of the landfill and all operations, maintenance, monitoring, permitting and compliance matters related thereto, and that this Lease does not in any way transfer ownership or control of the landfill to Tenant, implicate Tenant as an "operator", "responsible party" or "potentially responsible party" (as such terms are defined by

applicable Environmental Laws) of the landfill, delegate to Tenant any obligations or liabilities of an “operator”, “responsible party” or “potentially responsible party” of the landfill, or otherwise subject Tenant to any Environmental Liabilities and Obligations with respect to the landfill. Landlord shall at all times, and at its sole cost and expense and obligation, keep and maintain the landfill in strict compliance with all Applicable Laws and all applicable permits, licenses and other authorizations and approvals related thereto. Landlord further acknowledges and agrees that notwithstanding anything herein to the contrary, Tenant shall have no obligation to reimburse or fund any costs of Landlord to the extent that they are incurred defending against claims relating to the landfill area of the Leased Premises and/or the actions or inactions of Landlord.

- (c) There has been no Release and no Hazardous Materials have been manufactured or are present on the Land except in accordance with Environmental Laws.
- (d) Landlord agrees to defend, indemnify, and hold Tenant, and its members, officers, directors, employees, contractors and agents harmless from and against all Environmental Liabilities and Obligations, except to the extent such Environmental Liabilities and Obligations arise out of Hazardous Materials brought onto the Leased Premises by Tenant or its agents, employees or contractors after the Effective Date.

Section 6.7 Legal Proceedings.

- (a) Neither Landlord nor any affiliate of Landlord is a party to any, and to Landlord’s actual or constructive knowledge, there are no pending or threatened legal, administrative, arbitral or other proceedings, claims, actions or governmental or regulatory investigations of any kind or nature whatsoever pertaining to the Land or challenging the validity or propriety of this Lease and/or transactions contemplated in this Lease.
- (b) There is no injunction, writ or governmental order, judgment or similar decree applicable to Landlord or any of its affiliates which imposes any restrictions on Landlord or any of its affiliates with respect to the Lease, the Leased Premises or the rights provided to Tenant hereunder.
- (c) There are no bankruptcy, insolvency, reorganization, receivership or other comparable proceedings pending or being contemplated by or against Landlord or any of Landlord’s assets nor are any being contemplated by Landlord or threatened against Landlord or any of Landlord’s assets.

Section 6.8 Restrictive Covenants.

Landlord has not received any written notice that the Land is not in compliance with any restrictive covenants or deed restrictions affecting the Leased Premises or any governmental requirements regarding zoning, building, health, traffic, flood control, fire safety or handicap access.

Section 6.9 Insurance

Landlord shall maintain throughout the Term, policies of insurance customary to the property and by virtue of the Landlord being a governmental entity in the State of New Mexico.

ARTICLE VII
Indemnification

Section 7.1 Indemnification by Tenant

In addition to the environmental related indemnification provided in Section 5.4(a), Tenant agrees to defend, indemnify, save and hold harmless the Landlord and Landlord's officers, directors, shareholders, members, managers, employees, attorneys, representatives, mortgagees, and agents (collectively the "Landlord Indemnified Parties") from and against any and all claims, actions, demands, and liabilities for physical damage to property or injury to any person, including but not limited to any employees of Tenant, or any other losses, damages or expenses (including without limitation reasonable attorneys' fees) of the Landlord Indemnified Parties, in each case to the extent resulting from or arising out of (i) any negligent or intentional act or omission on the part of the Tenant, its employees, contractors or agents or (ii) any breach of this Lease by the Tenant. This indemnification shall not apply to losses, damages, claims, expenses, and liabilities to the extent caused by any negligent or intentional act or omission on the part of any Landlord Indemnified Party. This indemnification shall survive the termination of this Lease.

Section 7.2 Indemnification by Landlord

In addition to the environmental related indemnification provided in Section 6.6(c), Landlord agrees to defend, indemnify, save and hold harmless the Tenant and Tenant's officers, directors, shareholders, members, managers, employees, attorneys, representatives, mortgagees and agents (collectively, the "Tenant Indemnified Parties") from and against any and all claims, actions, demands, and liabilities for physical damage to property or injury to any person, including but not limited to any employees of Landlord, or any other losses, damages or expenses (including without limitation reasonable attorneys' fees) of the Tenant Indemnified Parties, in each case to the extent resulting from or arising out of (i) any negligent or intentional act or omission on the part of Landlord, its employees, contractors or agents; or (ii) any breach of this Lease by the Landlord. This indemnification shall not apply to losses, damages, claims, expenses and liabilities to the extent caused by any negligent or intentional act or omission on the part of any Tenant Indemnified Party. This indemnification shall survive the termination of this Lease.

Section 7.3 Limitation on Damages

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS LEASE, NEITHER PARTY SHALL BE ENTITLED TO, AND EACH OF LANDLORD AND TENANT HEREBY WAIVES ANY AND ALL RIGHTS TO RECOVER, CONSEQUENTIAL, INCIDENTAL, AND PUNITIVE OR EXEMPLARY DAMAGES, HOWEVER ARISING, WHETHER IN CONTRACT, IN TORT, OR OTHERWISE, IN CONNECTION WITH THIS LEASE. THE FOREGOING LIMITATION WILL NOT BE CONSTRUED AS LIMITING THE INDEMNIFICATION OBLIGATIONS OF EITHER PARTY WITH RESPECT TO THIRD PARTY CLAIMS PROVIDED IN THIS SECTION 7 OR ANY LOSSES ARISING OUT OF THE FRAUD OR WILLFUL MISCONDUCT OF THE INDEMNIFYING PARTY. LANDLORD HEREBY AGREES THAT THE VALUE OF ANY LOST ELECTRIC REVENUES, ENVIRONMENTAL ATTRIBUTES AND INCENTIVES AND TAX INCENTIVES AND BENEFITS ARE DIRECT DAMAGES TO TENANT AND SPECIFICALLY RECOVERABLE UNDER THIS ARTICLE VII.

Section 7.4 Waiver of Jury Trial

EACH OF THE PARTIES KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON THIS LEASE, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS LEASE AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HERewith, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER

VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO. EACH OF THE PARTIES TO THIS LEASE WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT OR HAS NOT BEEN WAIVED. THIS PROVISION IS A MATERIAL INDUCEMENT TO EACH OF THE PARTIES FOR ENTERING INTO THIS LEASE.

ARTICLE VIII Assignment; Encumbrance

Section 8.1 Right of Tenant to Encumber

- (a) Tenant may at any time mortgage all or any part of its interest in the Lease and rights under this Lease or enter into a collateral assignment of all or any part of its interest in the Lease or rights under this Lease to any entity providing financing for the Project (each such entity, a “Lender”) without the consent of Landlord. If requested by Tenant in connection with such collateral assignment, Landlord will deliver to Lender a consent to assignment containing the provisions in Exhibit C, or such other provisions as may be mutually agreed. Tenant will provide prompt notice to Landlord of any mortgage or collateral assignment made pursuant to this Section 8.1(a).
- (b) Notwithstanding any provision of Section 8.2 to the contrary, in connection with the exercise of the rights of Tenant’s rights hereunder, Tenant, shall also have the right, with Landlord’s prior written consent, which shall not be unreasonably withheld, conditioned, or delayed: (a) to grant directly to, or (b) cause Landlord to promptly grant to, any party (each such party a “Grantee”) Additional Rights, which rights may be permanent rights that extend beyond the Term. “Additional Rights” mean any right or interest to be granted in or to the Leased Premises that is reasonably necessary for the exercise of Tenant’s use of the Leased Premises with respect to and serving the Project, including, without limitation, easements and similar associated rights to construct, operate, and maintain transmission, collection, distribution, interconnection or switching lines or facilities with respect to and servicing the Project pursuant to a standard form of easement or other similar agreement, lot line adjustments, lot line mergers, right-of-way dedications, or rights of abandonment. It is agreed that it would be unreasonable for Landlord to withhold, condition, or delay its consent to any of the Additional Rights to the extent that the grant of the right or interest is necessary with respect to and serving the Project. At Tenant’s election and subject to the foregoing, Landlord agrees to (i) grant any approved Additional Rights directly to Grantee or (ii) convey title to such portion of the Leased Premises to the Grantee by deed or other conveyance. Landlord also agrees to promptly take actions and deliver all documents reasonably required to effectuate the Tenant’s use of the Property, including any documents required by a Governmental Authority.

Section 8.2 Assignment

- (a) Tenant shall not have the right to assign, sublease, transfer, or convey all or any part of its interests in or obligations under this Lease without Landlord’s prior written consent; *provided*, that without Landlord’s consent Tenant may (i) collaterally assign or mortgage its rights under this Lease to any Lender in accordance with Section 8.1, (ii) assign this Lease to any Tenant subsidiary or affiliate, to any purchaser of the Project, to any entity succeeding to all or substantially all of the assets of Tenant, or to any entity in connection

with a tax equity financing, provided the assignee or transferee shall be subject to all of the obligations, covenants, and conditions applicable to the Tenant.

- (b) Landlord may assign this Lease without consent in connection with any transfer or conveyance of Landlord's interests in the Leased Premises made in accordance with Section 8.3.
- (c) Any purported assignment of this Lease not permitted by this Section 8.2 shall be void.

Section 8.3 Landlord's Transfer or Encumbrance of Leased Premises

- (a) Landlord may transfer, sell or convey the Leased Premises to any person or entity, with the prior written consent of Tenant, which shall not be unreasonably withheld, conditioned or delayed; provided, however, that Landlord may, without Tenant's prior written consent sell a fee interest in the Leased Premises to an affiliate of Landlord, and in any such event of transfer, sale or conveyance, this Lease and the leasehold interest, easements and other interests created herein shall survive such transfer, sale or conveyance and continue in effect with respect to the Leased Premises and the Land. Landlord will notify Tenant of any transfer, sale or conveyance of the Leased Premises permitted hereunder, and Tenant shall, if so requested, provide written acknowledgement of its attornment to the transferee thereof, provided such transferee agrees to assume all obligations of Landlord in the Lease. Upon transfer of the Leased Premises and assumption of this Lease by the transferee thereof in accordance with this Section 8.3(a), Landlord shall have no further obligations or liability under this Lease, other than liabilities accrued prior to such transfer.
- (b) Landlord may mortgage, pledge, grant a lien on, collaterally assign or grant a deed of trust on, in or over the Leased Premises (any such mortgage, pledge, lien, collateral assignment or deed of trust a "Fee Mortgage") to any Person that provides financing to Landlord without the prior written consent of Tenant only if (i) Landlord shall procure from any such mortgagee for the benefit of Tenant and Tenant's Lenders and financing parties an SNDA acknowledging (A) the Tenant's continuing right to occupy and use the Leased Premises in accordance with this Lease upon any foreclosure or exercise of rights by such mortgagee, and (B) such mortgagee has no interest in the equipment comprising the Project and shall not gain any such interest as a result of the grant of the mortgage or any exercise of remedies by such mortgagee; (ii) the grant of such Fee Mortgage shall be subordinate to and shall not be a lien prior to this Lease or any mortgage placed thereon; and (iii) any such Fee Mortgage shall be subject to the terms of this Lease. In any event, no Fee Mortgage shall (x) give any such assignee any greater rights than Landlord hereunder; or (y) or the right to cancel the Lease unless there is an Event of Default on the part of Tenant (which remains uncured by either Tenant or the Leasehold Mortgagee) which, under the terms of this Lease, gives Landlord a right to cancel this Lease. As used in this Lease, the term "Fee Mortgage" collectively includes any commercial bank, trust company or national banking association or other financial institution, the United States agency or branch of a foreign bank, any insurance company, employees' pension or retirement fund system, corporate profit-sharing or pension trust, any publicly traded real estate investment trust, a "hedge fund" or "private equity fund" or other person or entity that from time to time provides financing to or for the benefit of Tenant or its affiliate, and any agent, security agent, collateral agent, indenture trustee, loan trustee, loan participant or participating or syndicated lenders involved in whole or in part in such financing, and their respective representatives, successors and assigns.

ARTICLE IX

Condemnation; Force Majeure

Section 9.1 Condemnation

- (a) If all of the Leased Premises are taken by eminent domain, or any material portion of the Leased Premises is taken by eminent domain, and as a result of such taking, the continued construction, installation or operation of the Project on the Leased Premises would become impossible or impracticable, then Tenant shall have the option to terminate this Lease as of the effective date of such taking, and upon such termination neither Party shall have any further obligations other than with respect to the distribution of proceeds as set forth in Section 9.2 below, the obligation of Tenant to remove the Project as set forth in Section 5.3 below, or any payment or indemnification obligations of either Party accrued prior to termination. For purposes of this Section 9.1(a), a partial taking shall not be deemed to have rendered construction, installation or operation of the Project impossible or impracticable if, after giving effect to such taking, the Project's generating capacity has been reduced by less than 25%.
- (b) If any portion of the Leased Premises is taken by eminent domain but this Lease has not been terminated in accordance with subsection (a) or (b) above, then the Parties shall use commercially reasonable efforts to amend this Lease to reflect any necessary reduction or, at the mutual agreement of the Parties, relocation of the Project which will preserve the value and benefit of the Lease to Tenant to the extent possible following such taking.

Section 9.2 Proceeds

In the event any award or payment is made in connection with a taking by eminent domain, Tenant shall be entitled to that portion of such award, equal to (i) the reasonable costs of removing or relocating the Project or any components of the Project, (ii) the loss of the Project or any components of the Project, or (iii) the ability of Tenant to operate the Project on the Leased Premises pursuant to this Lease; and (iv) any loss of income from the and loss of goodwill. Tenant shall have the right to participate in any condemnation proceedings, including settlement and negotiations, to the extent affecting Tenant's portion of such award, and Landlord shall not enter into any binding settlement agreement without the prior written consent of Tenant in connection with such proceedings. All other awards or payments made in connection with a taking by eminent domain, including without limitation any award made in respect of the fee simple interest in the Leased Premises or the rent payable to Landlord pursuant to this Lease, shall be the exclusive property of Landlord.

Section 9.3 Waiver Relating to Condemnation

The Parties intend that the provisions of this Lease shall govern their respective rights and obligations in the event of a condemnation. Accordingly, but without limiting any right to terminate this Lease to the extent expressly provided in this Lease, Landlord and Tenant each hereby waive the provisions of any Applicable Law allowing either Party to petition for a termination of this Lease upon a partial taking of the Leased Premises or any improvements thereon.

Section 9.4 Casualty

If during the Term, all or part of the Leased Premises or the Tenant's improvements are damaged by fire, wind, flood, earthquake or other casualty, with the result that, in Tenant's sole and absolute

discretion, it would not be commercially or economically reasonable or desirable to repair and restore the Leased Premises and Tenant's improvements, then Tenant may terminate this Lease by providing Landlord with written notice of the same and vacating the Leased Premises in compliance with Section 5.3(b) hereof. Upon such termination, except for any obligations which have accrued prior to the termination of this Lease or any indemnity obligations which shall survive any termination of this Lease, Landlord and Tenant shall have no further rights, liabilities or obligations hereunder or otherwise with respect to this Lease. Tenant, or its successor in interest, shall be entitled to 100% of any proceeds from casualty insurance policies maintained by Tenant.

Section 9.5 Waiver Relating to Casualty

If there is any damage to or destruction of the Leased Premises or the Project, this Lease shall not terminate. The Parties hereto intend that this Lease fully govern all of their rights and obligations in the event of any damage or destruction of the Leased Premises and the Project, and, accordingly, the Landlord and Tenant each hereby waives the provisions of any Applicable Law permitting the termination of a lease agreement in the event of damage or destruction under any circumstances.

Section 9.6 Force Majeure

Neither Party will be required to perform its obligations under this Lease to the extent and for the time that performance thereof is prevented by reason of any occurrence beyond such Party's control that could not be avoided through the exercise of reasonable diligence (each such occurrence, a "Force Majeure Event"), including without limitation any act of God, pandemics or epidemics, strike national or regional in scope, delay in receiving any permit or other action of any Governmental Authority (except to the extent attributable to the acts or omissions of the affected Party), flood, earthquake, hurricane, or fire. The Party affected by any such occurrence will give prompt notice thereof to the other Party, keep the other Party notified of its efforts to remedy such occurrence, and resume performance of its obligations as soon as such performance is no longer prevented.

ARTICLE X **Default**

Section 10.1 Events of Default

Each of the following shall constitute an event of default (an "Event of Default") by a Party:

- (a) any failure by such Party to pay any amounts required to be paid pursuant to this Lease when due, if the failure to pay continues for sixty (60) days after written notice from the other Party;
- (b) such Party makes an assignment of this Lease other than as permitted by Section 8.1 or 8.2.
- (c) any representation or warranty made by such Party in this Lease is false or misleading in any material respect when made or when deemed made;
- (d) such Party fails to observe or perform any other material obligation of such Party in this Lease, which failure continues for a period of thirty (30) days after written notice of default from the other Party or, if the nature of such default is such that cure will take longer than thirty (30) days and such Party initiates such cure within thirty (30) days, then the period of time necessary to effect such cure (not to exceed ninety (90) days in total) as long as such Party is making continuous and diligent efforts to cure during that time and the

extension of such cure period would not result in damage to any person or property or result in the violation of any Applicable Law; and

- (e) such Party initiates any voluntary petition for bankruptcy, reorganization, insolvency, liquidation, or receivership, or any such petition is initiated against such Party by a third party and not dismissed within sixty (60) days;

Section 10.2 Remedies

Upon the occurrence and during the continuation of an Event of Default by a Party, the other Party may (i) cure such Event of Default, in which event the other Party shall reimburse the curing Party on demand for all sums so expended by the curing Party; (ii) enforce by all proper and legal suits and other means, its rights hereunder and pursue any other rights it may have in law or equity; and (iii) terminate this Lease by notice to the other Party, which notice will be effective upon receipt or such other date as may be specified therein.

Section 10.3 Surrender

Upon the termination or expiration of this Lease, Tenant shall peaceably surrender the Leased Premises to Landlord and, as and to the extent set forth in Section 5.3, remove all of the components of the Project from the Leased Premises and restore the Leased Premises at Tenant's expense (except where this Lease is terminated by Tenant for a Landlord Event of Default, in which case, Landlord shall be fully responsible for the costs and expenses of such removal and restoration).

Section 10.4 Specific Performance

Landlord acknowledges and agrees that should Landlord breach any of its obligations hereunder or otherwise fail to permit Tenant to exercise any of the rights and privileges granted herein, Tenant shall have the right to specific enforcement of this Lease, in addition to all of Tenant's remedies at law, in equity or under this Lease.

ARTICLE XI Miscellaneous

Section 11.1 Notice

Notices, consents, or other documents required or permitted by this Lease must be given by personal delivery, email, delivered by Federal Express or other reputable overnight courier, or sent by registered mail or certified mail, return receipt requested, and postage prepaid and shall be sent to the respective Parties as follows:

To Landlord: City of Alamogordo
1376 East Ninth Street
Alamogordo, NM 88310
Attention: City Manager
bcesar@ci.alamogordo.nm.us

With a Copy to: City of Alamogordo
1376 East Ninth Street
Alamogordo, NM 88310
Attention: City Attorney

To Tenant: Charlie Lee Solar, LLC
600 Reisterstown Road, Suite 310
Pikesville, MD 21208
Attention: Managing Member
Hillel.Halberstam@synergensolar.com

With a Copy to: Charlie Lee Solar, LLC
600 Reisterstown Road, Suite 310
Pikesville, MD 21208
Attention: Legal Department

All notices, communications and waivers to Landlord's lenders or other financiers under this Lease shall be to the name and address specified in a notice from Landlord to Tenant. All notices sent pursuant to the terms of this Section 11.1 shall be deemed received (i) if personally delivered, then on the date of delivery, (ii) if sent by reputable overnight, express courier, then on the next business day immediately following the day sent, (iii) if sent by registered or certified mail, then on the day when actually received, or (iv) if sent by email, then on the day when receipt is acknowledged.

Section 11.2 No Third-Party Beneficiaries

No provision of this Lease is intended to nor shall it in any way inure to the benefit of any third party so as to constitute any such person a third-party beneficiary under this Lease, or of any one or more of the terms of this Lease, or otherwise give rise to any cause of action in any person not a party to this Lease.

Section 11.3 Entire Agreement

It is mutually understood and agreed that this Lease and the Exhibits hereto constitute the entire agreement between Landlord and Tenant and supersede any and all prior oral or written understandings, representations or statements, and that no understandings, representations or statements, verbal or written, have been made which modify, amend, qualify, or affect the terms of this Lease. This Lease may not be amended except in a writing executed by both Parties. No purported modifications or amendments, including without limitation any oral agreement (even if supported by new consideration), course of conduct, or absence of a response to a unilateral communication, other than a written amendment shall be binding on either Party.

Section 11.4 Governing Law; Jurisdiction

This Lease is made in and shall be governed by the laws of the state of New Mexico (without regard to its conflict of laws principles). Each Party hereto expressly and irrevocably subjects itself to the jurisdiction of the courts of the State of New Mexico, and the United States courts located in the State of New Mexico, and agrees that suit may be brought only in such courts with respect to any matters arising from this Lease. The prevailing Party in any litigation arising under this Lease shall be entitled to its reasonable attorneys' fees, expert fees and expenses and costs.

Section 11.5 Further Assurances

Each of the Parties, without further consideration, agrees to execute and deliver such additional documents and take such action as may be reasonably necessary to carry out the purposes and intent of this Lease and to fulfill the obligations of the respective Parties.

Section 11.6 Waiver

Neither Party shall be deemed to have waived any provision of this Lease or any remedy available to it unless such waiver is in writing and signed by the Party against whom the waiver would operate. Any waiver at any time by either Party of its rights with respect to any rights arising in connection with this Lease shall not be deemed a waiver with respect to any subsequent or other matter.

Section 11.7 Relationship of Parties

The duties, obligations and liabilities of each of the Parties are intended to be several and not joint or collective. This Lease shall not be interpreted or construed to create an association, joint venture, fiduciary relationship or partnership between Landlord and Tenant or to impose any partnership obligation or liability or any trust or agency obligation or relationship upon either Party. Landlord and Tenant shall not have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act or be an agent or representative of, or to otherwise bind, the other Party.

Section 11.8 Confidentiality

The Parties acknowledge that during the course of the performance of their respective obligations under this Lease, either Party may need to provide information to the other Party, which the disclosing Party deems to be confidential, proprietary, or a trade secret. Any such information, which is marked confidential or otherwise indicated as confidential, shall be treated confidentially by the receiving Party and shall not be disclosed to any other person without the prior consent of the disclosing Party. The receiving Party agrees that it shall make disclosure of any such confidential information only to attorneys, consultants, or agents (each individually its “Representative” and collectively, its “Representatives”) to whom disclosure is reasonably necessary during the course of the performance of their respective obligations under this Lease. The receiving Party shall appropriately notify such Representatives that the disclosure is made in confidence and shall be kept in confidence in accordance with this Lease. The receiving Party shall be responsible for the failure of such Representatives to comply with the terms hereof. The terms and conditions of this Lease shall be deemed confidential and subject to the provisions of this Section 11.8.

Section 11.9 Counterparts

This Lease may be executed in two or more counterparts and by different Parties on separate counterparts, all of which shall constitute one and the same agreement and each of which shall be deemed an original, and may be delivered by electronic mail.

Section 11.10 Memorandum of Lease

Landlord and Tenant shall execute in recordable form, and Tenant shall then record, a “Memorandum of Lease” in the form attached as Exhibit B. Such Memorandum of Lease will be executed by the Parties during the Development Period and recorded in the real estate records of the county or counties where the Leased Premises is located. Upon the termination or expiration of this Lease, Tenant shall upon request deliver termination of lease documentation in appropriate form for recording. Tenant hereby grants Landlord a power of attorney, coupled with an interest, to sign such documentation on Tenant’s behalf as may be required to record the termination of this Lease in the event Tenant fails to deliver such documentation upon request.

Section 11.11 Survival

The provisions of Section 5.3, Section 5.4, Article VII, Section 10.1, Section 10.3, this Article XI, and any other indemnification or payment obligations accrued prior to termination, shall survive any termination of this Lease.

Section 11.12 Construction

The Parties agree that any rule of construction to the effect that ambiguities are to be resolved in favor of either Party shall not be employed in the interpretation of this Lease and is hereby waived.

Section 11.13 Partial Invalidity

Should any provision of this Lease be held, in a final and unappealable decision by a court of competent jurisdiction, to be either invalid, void, or unenforceable, the remaining provisions hereof shall remain in full force and effect, unimpaired by the holding. Notwithstanding any other provision of this Lease, the Parties agree that in no event shall the term of this Lease be longer than, respectively, the longest period permitted by applicable law.

Section 11.14 Time is of the Essence

The Parties agree and acknowledge that time is of the essence in the performance by each Party of its obligations herein.

Section 11.15 Estoppel Certificate

Each Party acknowledges that the other Party may from time to time request an estoppel certificate in connection with any financing, sale, or investment in connection with such Party's interest in this Lease and the Project. Each Party agrees that, if requested by the other Party on behalf of any third party with whom such requesting Party is undertaking any such transaction, the other Party agrees to address such matters in an estoppel to be provided, to the extent that the request is commercially reasonable.

[The remainder of this page intentionally left blank.]

Signature pages to follow.]

IN WITNESS WHEREOF, this Lease has been duly executed on the day and date set forth below; the respective signatures of Landlord and Tenant to be effective as of the last date executed by a party hereto.

Landlord

Tenant

CITY OF ALAMOGORDO

CHARLIE LEE SOLAR, LLC

By: _____
Name: Brian Cesar
Title: City Manager

By: _____
Name: Hillel Halberstam
Title: Managing Member

Acknowledgments

Acknowledgement of Landlord

STATE OF NEW MEXICO

County of _____, ss.

On the ____ day of _____ in the year 2022 before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence, to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that (he) (she) (they) executed the same in (his) (her) (their) capacity(y)(ies), and that by (his) (her) (their) signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

Acknowledgement of Tenant

STATE OF MARYLAND

County of _____, ss.

On the ____ day of _____ in the year 2022 before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence, to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that (he) (she) (they) executed the same in (his) (her) (their) capacity(y)(ies), and that by (his) (her) (their) signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

EXHIBIT A-1

DESCRIPTION OF LAND

The following described tract of land located in Section 36, Township 16 South, Range 9 East, N.M.P.M.:

Beginning at a point which is the Southeast Corner of Section 36, Township 16 South, Range 9 East, N.M.P.M., which is the place of beginning of this tract; thence North along the boundary line of said Section 36 a distance of 5,280 feet to a point, said point being the Northeast Corner of Section 36; thence at right angles along the North boundary line of said Section 36 a distance of 700 feet to a point; thence at right angles South a distance of 1,320 feet to a point on the southern boundary line of the NE1/4 NE1/4, Section 36, Township 16 South, Range 9 East; thence at right angles West along said line a distance of 4,580 feet to a point on the West boundary line of said Section 36; thence at right angle South a distance of 3,960 feet to a point, said point being the Southwest corner of said Section 36; thence at right angles a distance of 5,280 feet to the point or place of beginning of this tract.

EXCEPTING AND EXCLUDING THEREFROM a tract of land described as follows:

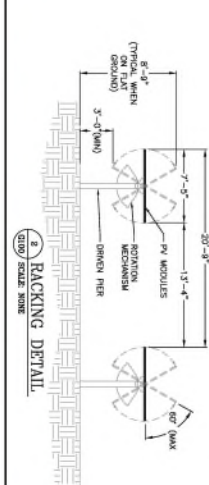
Beginning at the Southwest Corner of Section 36, Township 16 South, Range 9 East, N.M.P.M., thence N. $00^{\circ} 47' 22''$ West for a distance of 165 feet; thence N. $99^{\circ} 52' 55''$ East for a distance of 2,659.42 feet; thence N. $00^{\circ} 07' 05''$ West for a distance of 35 feet; thence N. $89^{\circ} 52' 55''$ East for a distance of 975 feet; thence N. $53^{\circ} 39' 04''$ East a distance of 1751 feet; thence S. $11^{\circ} 54' 39''$ West a distance of 1258 feet; thence S. $89^{\circ} 52' 55''$ West a distance of 4787 feet to the Southwest Corner of said Section 36, Township 16 South, Range 9 East, N.M.P.M. and true place of beginning, containing 34.12 acres, more or less.

Also, that portion of Lots 1 and 2, Section 30, Township 16 South, range 10 East, N.M.P.M. lying West of the Southern Pacific Railroad Right-of-Way, as shown on the plat thereof filed January 29, 1900 in the office of the Surveyor General, Santa Fe, New Mexico.

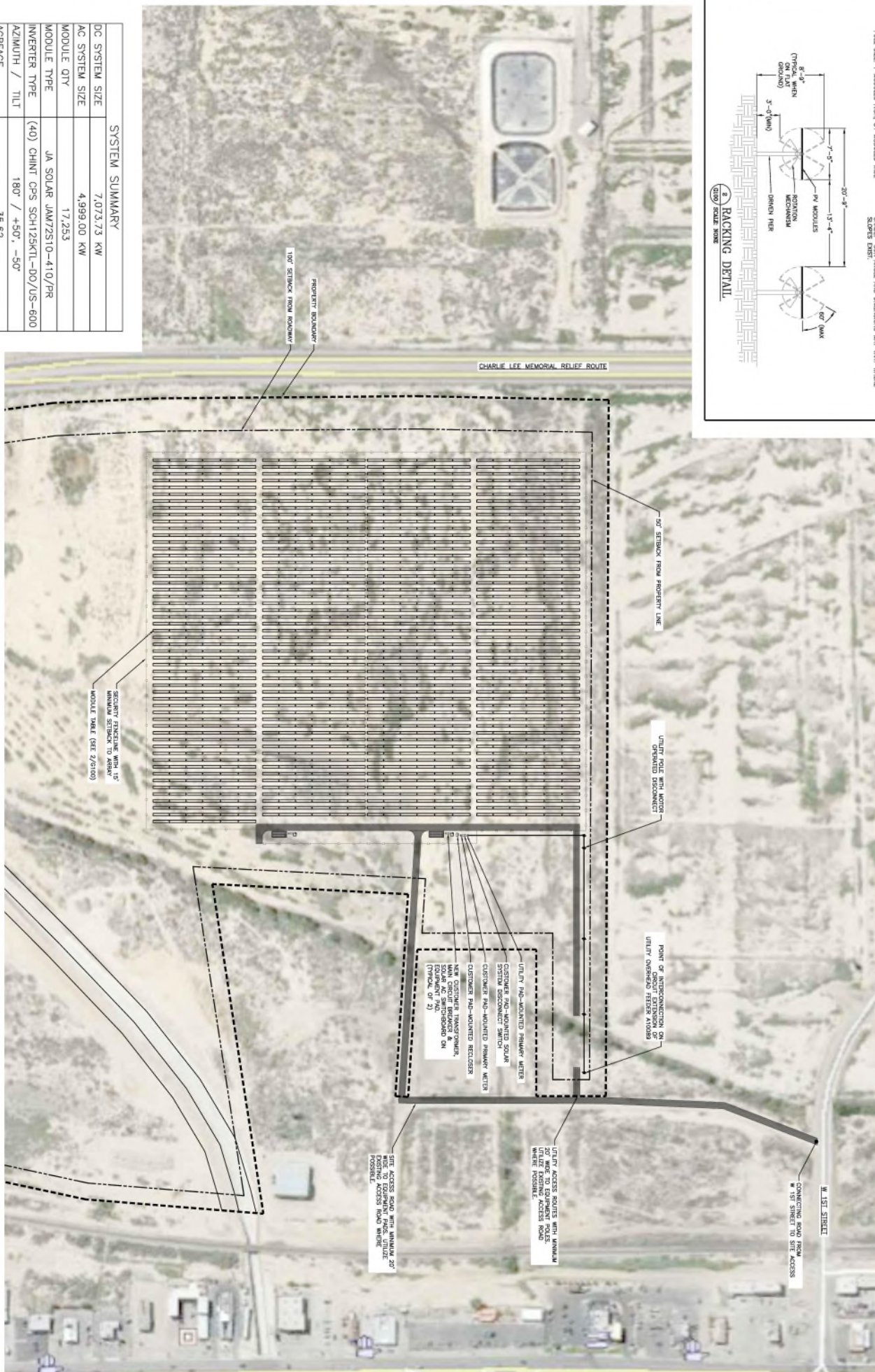
EXHIBIT A-2

DESCRIPTION OF LEASED PREMISES

RAISING DIMENSIONS SHOWN ARE TYPICAL FOR FLAT GRADE. SUN ANGLE AND DIMENSIONS MAY VARY WHERE SLOPES EXIST.



SYSTEM SUMMARY	
DC SYSTEM SIZE	7,073.73 KW
AC SYSTEM SIZE	4,999.00 KW
MODULE QTY	17,253
MODULE TYPE	JA SOLAR JMW25210-410/PR
INVERTER TYPE	(40) CHINT CPS SCH125KTL-00/US-600
AZIMUTH / TILT	180° / +50°, -50°
ACCREAGE	35.62



1
SITE PLAN
SCALE: 1" = 100'-0"



DRAWING TITLE

SITE PLAN

EXHIBIT B

“MEMORANDUM OF LEASE”

TO

LAND LEASE

BETWEEN

CITY OF ALAMOGORDO

AND

CHARLIE LEE SOLAR, LLC

Return after recorded to: Charlie Lee Solar, LLC
600 Reisterstown Road, Suite 310
Pikesville, MD 21208

MEMORANDUM OF LEASE

This Memorandum of Land Lease ("Memorandum") is made as of the _____ day of _____ 20__, by and between the City of Alamogordo ("Landlord") and Charlie Lee Solar, LLC ("Tenant").

WHEREAS:

(A) Landlord is the owner of the property described on attached Exhibit A-1 (the "Land")

(B) The Parties entered into a Land Lease (the "Lease") for a portion of the Land described on Exhibit A-2 (the "Leased Premises") as of the ____ day of _____, 2022 (the "Effective Date"), with a term of 25 years from the Commercial Operation Date described therein, unless otherwise terminated or extended.

(C) The Parties desire to enter into this Memorandum which is to be recorded in order that third parties may have notice of the interest of Tenant in the Leased Premises, the Solar Easement, the Access Easement and the Interconnection Easement as more particularly described on Exhibit B.

NOW, THEREFORE, in consideration of the rent and other payments and covenants provided in the Lease to be paid and performed by the Tenant, Landlord hereby leases, lets and demises the Leased Premises to Tenant, and hereby grants to Tenant those easements with respect to the Access Easement Land and Interconnection Easement Land as more particularly described in the Lease. All of the terms, conditions, provisions, and covenants of the Lease are hereby incorporated into this Memorandum by reference as though fully set forth herein, and the Lease and this Memorandum shall be deemed to constitute a single instrument or document. Should there be any inconsistency between the terms of this Memorandum and the Lease, the terms of the Lease shall prevail.

IN WITNESS HEREOF, the Parties have executed this Memorandum as of the date set forth above.

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

Acknowledgement of Landlord

STATE OF NEW MEXICO

County of _____, ss.

On the ____ day of _____ in the year 20__ before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence, to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that (he) (she) (they) executed the same in (his) (her) (their) capacity(y)(ies), and that by (his) (her) (their) signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

Acknowledgement of Tenant

STATE OF MARYLAND

County of _____, ss.

On the ____ day of _____ in the year 20__ before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence, to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that (he) (she) (they) executed the same in (his) (her) (their) capacity(y)(ies), and that by (his) (her) (their) signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

EXHIBIT C

FORM OF CONSENT AND AGREEMENT

LANDLORD CONSENT, AGREEMENT AND ESTOPPEL CERTIFICATE

THIS LANDLORD CONSENT, AGREEMENT AND ESTOPPEL CERTIFICATE (this “Consent and Agreement”), dated as of [] is by and among the City of Alamogordo, a municipality incorporated in Otero County in the State of New Mexico (the “Landlord”), Charlie Lee Solar, LLC, a Maryland limited liability company (the “Tenant”), and [], (“Lender”).

RECITALS

WHEREAS, Landlord and Tenant entered into that Land Lease dated as of [], (as amended, supplemented, modified and in effect from time to time, collectively the “Lease”) covering certain land owned by Landlord in the City of Alamogordo, Otero County, New Mexico;

WHEREAS, the Tenant and the Lender have entered into the [Credit Agreement] dated as of [], (as amended, modified, supplemented, and in effect from time to time, the “Credit Agreement”) pursuant to which the Lender has agreed to finance certain expenditures in connection with the Project that Tenant is developing;

WHEREAS, it is a condition precedent to the obligations of the Lender under the Credit Agreement that the Tenant execute and deliver (i) a [Mortgage, Deed of Trust, Security Agreement, Assignment and Financing Statement] dated as of [], pursuant to which the Tenant will mortgage, pledge, grant a lien on and security interest to Lender in Tenant’s interests in the Lease, (ii) a [Security Agreement] granting to the Lender a security interest in all of the improvements, fixtures, equipment and other personal property now or hereafter owned by the Tenant now or hereafter located on the Leased Premises or the Interconnection Easement Land (the “Personal Property”), (iii) and other related security documents and instruments (the agreements and instruments described in clauses (i), (ii) and (iii), as the same may be amended, modified, supplemented, and in effect from time to time, are collectively herein called the “Security Documents”), all as collateral security for the performance and observance of the obligations of the Tenant under the Credit Agreement;

WHEREAS, pursuant to the terms of the Lease, the Tenant is permitted to pledge, grant a lien on and assign the Lease to the Lender; and

WHEREAS, it is the condition precedent to the advancement of funds under the Credit Agreement that the Parties shall have executed this Consent and Agreement.

NOW, THEREFORE, Landlord, Tenant and Lender agree as follows:

1. Definitions. Unless otherwise defined, all terms used herein which are defined in the Lease (whether by reference to another agreement or otherwise) shall have their respective meanings as so defined.
2. Representations and Warranties. The Landlord hereby represents and warrants to the Lender that:
 - a. The Landlord is an incorporated municipality of Otero County in the State of New Mexico duly organized, validly existing and in good standing under the laws of the State of New Mexico, is qualified to do business and in good standing in the State of New Mexico, and has all requisite power and authority to conduct its business, to own its properties, and to execute and deliver, and to perform its obligations under, this Consent and Agreement and the Lease.
 - b. The execution, delivery and performance by the Landlord of this Consent and Agreement and the Lease have been duly authorized by all necessary corporate action, and do not and will not (i) require any consent or approval of Landlord's board of directors or any other Person which has not been obtained, (ii) violate any provisions of the Landlord's certificate of incorporation, or by-laws or any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award having applicability to the Landlord, or (iii) result in any breach of or constitute a default under any agreement relating to the management or affairs of the Landlord or any indenture or loan or credit agreement or other material agreement, lease or instrument to which the Landlord is a party or by which it or its properties may be bound or affected.
 - c. As of the date hereof, the Lease is in full force and effect and is a legal, valid, binding and enforceable obligation of the Landlord in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting the rights of creditors generally.
 - d. There is no pending or, to the best knowledge of the Landlord, threatened action or proceeding affecting the Landlord before any court, governmental agency, regulatory body or arbitrator, which could materially adversely affect the ability of the Landlord to perform its obligations under, or which purports to affect the legality, validity or enforceability of, the Lease.
 - e. To the best knowledge of the Landlord, the Tenant is not in default under any material covenant or obligation under the Lease and no such default has occurred prior to the date hereof. To the best knowledge of the Landlord after giving effect to the mortgage by the Tenant of the Lease to the Lender pursuant to the Security Documents, and after giving effect to the acknowledgement of and consent to such mortgage by the Landlord, there exists no event or condition which would constitute a default, or which would, with the giving of notice or lapse of time or both, constitute a default under the Lease.
 - f. The Tenant has duly performed and complied with all covenants, agreement(s) and conditions contained in the Lease required to be performed or complied with by it on or before the date hereof, and the Lease, as of the date hereof, is in full force and effect and has not been amended, and none of the Tenant's rights under the Lease have been waived.
 - g. All rent, fees and payments due under the Lease through and including the date hereof have been paid and, as of the date hereof, no other fees or other payments are presently due under the Lease.

h. To the knowledge of Landlord, there are no pending or contemplated condemnation or eminent domain proceedings with respect to the Land (including the Leased Premises), the Interconnection Easement Land or any portion thereof.

3. Consents and Agreement. The Landlord hereby agrees that, up to and until the date on which all of the Tenant's obligations under the Credit Agreement have been paid and satisfied (the "Termination Date"):

a. The Lender and any designee or assignee thereof shall be entitled to perform any and all obligations of the Tenant under the Lease in accordance with the terms of the Lease and the Landlord shall accept such performance on behalf of Tenant. Without limitation to the foregoing, the Lender and any designee or assignee thereof shall have the right, but not the obligation, to pay all sums due under the Lease and to perform any other act, duty or obligation required of the Tenant thereunder at any time. Nothing herein shall require the Lender or such designee or assignee to cure any default of the Tenant under the Lease or to perform any act, duty or obligation of the Tenant under the Lease, but shall only give them the option to do so.

b. Landlord acknowledges that the Personal Property is owned by and shall remain the personal property of Tenant (and not fixtures) notwithstanding the manner or mode of attachment to the Leased Premises, and Landlord consents and agrees to Lender's (or its assignee's, nominee's or designee's) removal of any Personal Property from the Leased Premises.

c. Landlord will deliver to Lender, simultaneously with delivery thereof to Tenant, any notice of default by Tenant. Lender will have a period equal to the later of (i) thirty (30) days from such notice, or (ii) the period provided for cure of such default in the Lease, to cure or cause to be cured such default on behalf of Tenant. Landlord will not terminate the Lease by reason of any Tenant default during the period provided for Lender to cure such default. With respect to any event of default that cannot be cured without possession by Lender of the Leased Premises, if Lender has initiated and is diligently prosecuting foreclosure proceedings in order to acquire Tenant's interest in the Leased Premises and the Project, and has cured all other Tenant defaults capable of cure, Landlord will not terminate the Lease during the pendency of such foreclosure proceedings provided Lender continues to diligently pursue such proceedings, and further provided that the period for completion of such foreclosure proceedings will not exceed six (6) months from notice to Lender of such Tenant default.

d. Landlord acknowledges that any amendment or modification to the Lease by Tenant after the date hereof requires the consent of Lender, and will not make or accept any such amendment or modification from Tenant without the consent of Lender.

e. A foreclosure or other exercise of remedies under the Security Documents or any sale thereunder by the Lender or its assignee or designee, whether by judicial proceedings or under any power of sale contained therein, or any conveyance from the Tenant to the Lender or such assignee or designee, in lieu thereof, shall not require the consent of the Landlord or constitute a default under the Lease.

f. In the event that the Lender or its designee or assignee succeeds to the Tenant's interest in the Lease, whether by foreclosure or otherwise, the Lender or its designee or assignee shall be entitled to exercise all rights of the Tenant in the Lease, and shall assume liability for all of the Tenant's obligations under the Lease; provided however, that such liability shall not include any liability for claims of the Landlord against the Tenant arising from the Tenant's failure to perform during that period prior to the Lender's or such designee's or assignee's succession to the Tenant's interest in and under the Lease, or to the date on which Lender received notice of default in accordance with subparagraph (c) above, whichever is earlier, so long as all monetary defaults are cured (regardless of whether such monetary defaults occurred

prior to or after the assumption of Tenant's Lease obligations by Lender). Except as otherwise set forth in the immediately preceding sentence, neither the Lender nor any designee or assignee of the Lender shall be liable for the performance or observance of any of the obligations or duties of the Tenant in the Lease and the assignment of the Lease by the Tenant to the Lender pursuant to the Security Documents shall not give rise to any duties or obligations whatsoever on the part of Lender or any designee or assignee of Lender owing to the Landlord.

g. Upon the exercise by the Lender of any of the remedies set forth in the Security Documents, the Lender may assign its rights and interests and the rights and interests of the Tenant under the Lease to any purchaser or transferee of the Project, if such purchaser or transferee shall assume all of the obligations of the Tenant under the Lease. Upon such assignment and assumption, the Lender shall be relieved of all obligations under the Lease arising after such assignment and assumption.

h. In the event that (i) the Lease is rejected by a trustee or debtor-in-possession in any bankruptcy or insolvency proceeding involving the Tenant or (ii) the Lease is terminated as a result of any bankruptcy or insolvency proceeding involving the Tenant, and if within thirty (30) days after such rejection or termination, the Lender or its designee or assignee shall so request and shall certify in writing to the Landlord that it intends to perform the obligations of the Tenant as and to the extent required under the Lease, the Landlord will execute and deliver to the Lender or such designee or assignee a new lease, pursuant to which the Landlord shall agree to perform the obligations contemplated to be performed by the Landlord under the original Lease and which shall be for the balance of the remaining term under the original Lease before giving effect to such rejection or termination and shall contain the same conditions, terms, provisions and limitations as the original Lease (except for any requirements which have been fulfilled by the Tenant prior to such rejection or termination). References in this Consent and Agreement to "Lease" shall be deemed also to refer to such new lease.

i. The Landlord shall deliver to the Lender at the address set forth on the signature pages hereof, or at such other address as the Lender may designate in writing from time to time to the Landlord, concurrently with the delivery thereof to the Tenant, a copy of each material notice, request or demand given by the Landlord pursuant to the Lease.

4. Miscellaneous.

a. This Consent and Agreement shall be binding upon the successors and assigns of the Landlord, Lender and the Tenant and shall inure, together with the rights and remedies of the Lender, Landlord and the Tenant hereunder, to the benefit of the Landlord, the Tenant, the Lenders and their respective permitted successors, transferees and assigns.

b. No amendment or waiver of any provisions of this Consent and Agreement or consent to any departure by the Landlord, Lender or the Tenant from any provisions of this Consent and Agreement shall in any event be effective unless the same shall be in writing and signed by the Lender and Landlord and, in the case of an amendment, waiver or consent sought prior to the occurrence of an event of default, the Tenant (provided that such right of the Tenant to consent to an amendment, waiver or consent shall be solely with respect to amendments, waivers or consents which could have a material adverse affect on the Tenant's rights under the Lease), and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given.

c. THIS CONSENT AND AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE OF NEW MEXICO. THE LANDLORD, THE LENDER AND THE TENANT HEREBY SUBMIT TO THE NONEXCLUSIVE JURISDICTION OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OTERO

COUNTY AND OF ANY NEW MEXICO STATE COURT FOR THE PURPOSES OF ALL LEGAL PROCEEDINGS ARISING OUT OF OR RELATING TO THIS CONSENT AND AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH OF THE LANDLORD, THE LENDER AND THE TENANT IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF THE VENUE OF ANY SUCH PROCEEDING BROUGHT IN SUCH A COURT AND ANY CLAIM THAT ANY SUCH PROCEEDING BROUGHT IN SUCH A COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

d. EACH OF THE PARTIES KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON THIS CONSENT AND AGREEMENT, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS CONSENT AND AGREEMENT AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HERewith, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO. EACH OF THE PARTIES TO THIS CONSENT AND AGREEMENT WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT OR HAS NOT BEEN WAIVED. THIS PROVISION IS A MATERIAL INDUCEMENT TO EACH OF THE PARTIES FOR ENTERING INTO THIS CONSENT AND AGREEMENT.

e. This Consent and Agreement may be executed in one or more counterparts with the same effect as if the signatures thereto and hereto were upon the same instrument.

f. No failure on the part of the Landlord or Lender to exercise, and no delay in exercising, any right under this Consent and Agreement shall operate as a waiver of such right nor shall any single or partial exercise of any right under this Consent and Agreement, preclude any further exercise of such right or the exercise of any other right. The rights, remedies, powers and privileges provided in this Consent and Agreement are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

g. All notices to be given under this Consent and Agreement shall be in writing and shall be delivered personally, sent by certified or registered first-class mail, postage prepaid, or dispatched by tested telex or telefacsimile, or courier to the intended recipient at its address as set forth on the signature pages below, and all payments to be made under this Consent and Agreement shall be made by wire transfer of immediately available funds or check representing immediately collectible funds to the account or address of the intended recipient as set forth on the signature pages hereto, unless the recipient has given notice of another address or account for receipt of notices or payments.

h. This Consent and Agreement will terminate on the Termination Date, without the need of any further documentation. The Lender shall provide the Landlord notice promptly upon occurrence of the Termination.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned by its officer duly authorized has caused this Consent and Agreement to be duly executed and delivered as of the first date written above.

EXHIBIT D

INSURANCE REQUIREMENTS

- 1) Commercial General Liability Policy with a limit of \$1,000,000 each occurrence and \$2,000,000 aggregate.
- 2) Automobile liability insurance, including coverage for owned, non-owned and hired automobiles for both bodily injury and property damage in accordance with statutory legal requirements, with combined single limits of no less than \$1,000,000 per accident.
- 3) Umbrella liability coverage, written on an occurrence basis, with a combined single limit of not less than \$4,000,000.
- 4) Workmen's compensation insurance in amounts required by applicable law or statute covering all persons employed in connection with any work done on or about the Leased Premises
- 5) Commercial property insurance on a replacement cost basis for Tenant's fixtures, equipment and personal property on the Leased Premises.

EXHIBIT E

PERMITTED EXCEPTIONS

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 2/8/2022

Report Date: 01/26/2022

Report No: 4.

Submitted By: Barbara Pyeatt

Subject: Consider, and act upon, the award of IFB 2021-01 1" Base Course to Aggregate Technologies, LLC in the estimated amount of \$84,183.00. *(David Nunnelley, Utilities Director)*

Fiscal Impact: 84,183.00

Amount Budgeted: \$100,000

Fund: 081-5503-461-4520

Additional Fiscal Impact:

Recommendation: Award IFB 2021-01 to Aggregate Technologies, LLC.

Background: IFB 2021-03 was advertised on January 2nd and 9th, 2022. Bid was opened on January 14, 2022 at 2:00PM. There was one responsive bid received, Aggregate Technologies, LLC. The bid was reviewed and determined to be acceptable and in compliance with the terms and conditions of the IFB.

This is an estimated quantity, multi-term contract. The term of this contract is to commence on February 15th 2022 through February 14th 2023. The contract may be extended for three one-year terms. Quantity is determined on an estimated annual maximum usage.

BID TABULATION
"1" Base Course
CITY OF ALAMOGORDO IFB 2022-01
January 14, 2022 2:00 PM

ITEM NO.	ESTIMATED QUANTITY TONS	DESCRIPTION	Aggregate Technologies, LLC	
			Unit Price	Total Price
1	1 Ton	Base Course, as per attached specifications (not delivered)	\$6.50	\$6.50
2	8,000 tons	Base Course, as per attached specifications (not delivered)	\$10.50	\$84,000.00
3	1ea	Cost per ton mile for base course deliveries	\$1.50	\$1.50
4	1 ea	Cost per hour for 10 to 12 ton Capacity dump to haul base course to other than City Public Works Yard	\$80.00	\$80.00
5	1 ea	Cost per hour for 19 to 24 ton Capacity dump to haul base course to other than City Public Works Yard.	\$95.00	\$95.00
TOTAL BASE BID				\$84,183.00

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 2/8/2022

Report Date: 01/28/2022

Report No: 5.

Submitted By: Kimberly Underwood

Subject: Consider, and act upon, accepting the NM State Library American Rescue Plan Act (ARPA) grant agreement in the amount of \$17,828.00 for the Alamogordo Public Library for FY2022. *(Kim Underwood, Library Manager & Veronica Ortega, Director of Community Services)*

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact: Fund: 032-7101-317.06-01

Amount: \$17,828.00

Actions: Sign the American Rescue Plan Act (ARPA) Grant to Public Libraries Agreement for FY2022.

Recommendation: Accept the ARPA grant award of \$17,828.00 to be used to deliver requisite library services during the period of March 1, 2022 through September 30, 2022 for the Alamogordo Public Library.

Background: The New Mexico State Library has distributed federal funding from the American Rescue Plan Act (ARPA) to all public and tribal libraries in the state of New Mexico. All main public libraries are receiving \$17,828.00 to be used for allowable expenditures which include library materials, non-capital items, staff development and other operational expenditures necessary to deliver library services during the period of March 2022 through September 30, 2022.

American Rescue Plan Act (ARPA) Grant to Public Libraries
Agreement For FY2022

This Grant Agreement is entered into on the date of last signature, below, by and between the **New Mexico State Library**, hereinafter called NMSL, and **Alamogordo Public Library** located in **Alamogordo, NM**, hereinafter called the Recipient.

WHEREAS, the State Librarian, the division director of NMSL, is required to administer grants-in-aid and encourage local library service and generally promote an effective statewide library system under NMSA 1978, Section 18-2-4;

WHEREAS, Section 18-2-4 also requires the State Librarian to make rules and regulations necessary to administer NMSL and the State Librarian adopted such rules for distributing grants to public libraries, codified as 4.5.9 NMAC; and

WHEREAS, NMSL has determined that Recipient qualifies for a special grant under 4.5.9 NMAC; and

WHEREAS, NMSL is the entity responsible for disbursement of funds to libraries under the grant NMSL received from the Institute of Museum and Library Services (IMLS) American Rescue Plan Act (ARPA) funding program.

THEREFORE, the Parties agree to the following terms and conditions:

- I. Pursuant to an IMLS ARPA funding grant, NMSL has received funding from the IMLS and the U.S. Federal Government to be used in helping communities respond directly and immediately to the pandemic, as well as to related economic and community needs through equitable approaches. Spending priorities for these funds are as follows:
 - A. First, to support digital inclusion efforts to enable libraries to reach residents such as through internet hotspots, accessible Wi-Fi, and digital content and related resources, particularly in support of education, health, and workforce development needs. The following types of data, among others, can inform efforts to reach underserved populations:
 1. Poverty/Supplemental Nutrition Assistance Program (SNAP)
 2. Unemployment
 3. Broadband availability;
 - B. Second, to provide rapid emergency relief to libraries across the country, allowing them to safely respond to the pandemic and implement public health protocols;
 - C. Third, to support library services that meet the needs of communities throughout the U.S., including costs such as personnel, technology, training, materials, supplies, equipment, and associated indirect costs; and
 - D. With respect to (A), (B), or (C), reach tribal and museum partners best positioned to assist with pandemic response efforts, in addition to traditionally eligible library entities, where appropriate.
- II. NMSL agrees to pay the Recipient a grant in the amount not to exceed (\$17,828) on the terms and

conditions set forth in this Grant Agreement.

III. The Recipient agrees to and shall strictly observe the following grant requirements and limitations on expenditures:

A. Use the Grant Funds for the following purposes:

1. To help communities respond directly and immediately to the pandemic, as well as to related economic and communities needs through equitable approaches in digital inclusion and library services;

2. To support the goals of the NMSL Five-Year Plan for FY 2018-2022. In New Mexico, specific goals address:

a) Expanding services for learning and access to information and educational resources, in all types of libraries for individuals of all ages in order to support such individuals' needs for education, lifelong learning, workforce development, and digital literacy skills;

b) Establishing or enhancing interlibrary resource sharing electronically via ILLiad and improve coordination among and between libraries in New Mexico for the purpose of improving the quality of and access to library information services;

c) Providing library services to visually impaired, rural, homebound, and underserved New Mexico residents, and

d) Expanding services for learning and access to information and educational resources, in all types of libraries for individuals of all ages in order to support such individuals' needs for education, lifelong learning, workforce development, and digital literacy skills;

3. Prioritizing the following uses of the Grant Funds:

a. To support digital inclusion efforts to enable libraries to reach residents such as through internet hotspots, accessible Wi-Fi, and digital content and related resources, particularly in support of education, health, and workforce development needs. The following types of data, among others, can inform efforts to reach underserved populations:

- i. Poverty/Supplemental Nutrition Assistance Program (SNAP)
- ii. Unemployment
- iii. Broadband availability;

b. To provide rapid emergency relief to libraries across the country, allowing them to safely respond to the pandemic and implement public health protocols;

c. To support library services that meet the needs of communities throughout the U.S., including costs such as personnel, technology, training, materials, supplies, equipment, and associated indirect costs; and

d. With respect to 3(a), (b), or (c), reach tribal and museum partners best positioned to assist with pandemic response efforts, in addition to traditionally eligible library entities, where appropriate.

B. Continue to comply with 4.5.9 NMAC and other statutes and rules applicable to developing libraries or public libraries;

C. Engage in good communication and the exchange of information with NMSL regarding library activities and the grant's use;

D. Expend the grant according to the rules outlined in 4.5.9 NMAC, attached hereto as **Attachment A**;

E. The expenditure of the Grant Funds is subject to the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards regulations (Uniform Guidance) promulgated by the Office of Management and Budget (2 CFR part 200) and related IMLS guidance. See **Attachment B** attached hereto for the latter referenced IMLS guidance.

F. No later than October 15, 2022, provide NMSL with a report, in a form approved by and acceptable to NMSL, detailing how the grant was spent, which report should be a part of and contained within Recipient's annual reports to NMSL; and

G. Sign and return this Agreement to NMSL within 60 days from receipt of the Agreement, which shall be calculated from the date of postmark or electronic postmark. **If Recipient does not submit this Agreement within the required time period, Recipient forfeits the grant award.**

H. All Grant Funds must be expended no later than September 30, 2022. Any Grant Funds not expended by this date shall be returned to NMSL no later than October 30, 2022.

IV. This agreement shall be governed by and construed in accordance with the laws of the state of New Mexico and subject to the federal American Rescue Plan Act

V. If the parties dispute the terms of this Agreement, the Recipient and NMSL hereby agree to and consent to New Mexico state court jurisdiction to decide the dispute.

VI. Termination for Lack of Appropriations. 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, this Agreement shall terminate immediately upon written notice being given by NMSL to the Recipient. NMSL's decision as to whether sufficient appropriations are available shall be accepted by the Recipient and shall be final.

The Recipient by its signature certifies that the Recipient will use the grant money only for the uses specified in this Agreement and will comply with all other applicable requirements of this Agreement.

Signed: _____ Date: _____

Official Title: _____ Authorized Agent of Recipient

☐ I certify that am the authorized agent who has authority to enter into a legal contract with the State of New Mexico

Signed and Dated: _____ By: Eli Guinnee, New Mexico State Librarian

TITLE 4 CULTURAL RESOURCES
CHAPTER 5 STATE LIBRARY
PART 9 SPECIAL GRANTS TO PUBLIC LIBRARIES

4.5.9.1 ISSUING AGENCY: Department of Cultural Affairs, New Mexico State Library Division.
[4.5.9.1 NMAC - N, 7/1/2015]

4.5.9.2 SCOPE: Public libraries and developing public libraries. [4.5.9.2 NMAC - N, 7/1/2015]

4.5.9.3 STATUTORY AUTHORITY: Subsection I of Section 18-2-4 NMSA 1978 directs the state librarian to make rules and regulations necessary to administer the division and as provided by law. Subsection B of Section 18-2-4 NMSA 1978 directs the state librarian to administer grants-in-aid and encourage local library services and generally promote an effective statewide library system.
[4.5.9.3 NMAC - N, 7/1/2015]

4.5.9.4 DURATION: Permanent. [4.5.9.4 NMAC - N, 7/1/2015]

4.5.9.5 EFFECTIVE DATE: July 1, 2015 unless a later date is cited at the end of a section. [4.5.9.5 NMAC - N, 7/1/2015]

4.5.9.6 OBJECTIVE: The objective of this rule is to describe the special grants program. The special grants program shall provide supplemental assistance to libraries for activities that are not funded by state grants in aid or are not fully funded by state grants in aid and encourage local library service and promote an effective statewide library system.
[4.5.9.6 NMAC - N, 7/1/2015]

4.5.9.7 DEFINITIONS:

- A. "Developing library" has the same meaning as in 4.5.2 NMAC.
 - B. "Grant recipient" means a public library or developing library that the state librarian selects to receive a special grant.
 - C. "Public library" has the same meaning as in 4.5.2 NMAC.
 - D. "Special grants" means funds awarded by the state librarian for special library programs.
 - E. "Special library program" means an activity that is not funded by state grants-in-aid or is not fully funded by state grants-in aid and that encourages local library service and enhances the effectiveness of a statewide library system.
- [4.5.9.7 NMAC - N, 7/1/2015]

4.5.9.8 SPECIAL GRANTS INITIATION: The state library or a public library may propose a special library program.
[4.5.9.8 NMAC - N, 7/1/2015]

4.5.9.9 GRANT AVAILABILITY: The state library shall offer special grants when the state librarian identifies the need for state-wide coordination of a special library program and determines that sufficient federal or state funds are available.
[4.5.9.9 NMAC - N, 7/1/2015]

4.5.9.10 FUNDING SOURCE: Special grants may be funded with federal funds, state funds, and

any other funds available to the state librarian and not otherwise restricted. Use of state funds for special grants shall not reduce state grants-in-aid.

[4.5.9.10 NMAC - N, 7/1/2015; A/E, 7/1/2021; A, 12/28/2021]

4.5.9.11 ELIGIBILITY: Public libraries and developing libraries that are eligible for state grants-in-aid in a given fiscal year are also eligible for special grants, unless the grant guidelines provide otherwise.

[4.5.9.11 NMAC - N, 7/1/2015; A/E, 7/1/2021; A, 12/28/2021]

4.5.9.12 GRANT GUIDELINES: When the state librarian identifies the need for state-wide coordination of a special library program and determines that sufficient funding is available, the state librarian shall issue a special grant announcement to all developing libraries and public libraries with grant guidelines. The grant guidelines shall include the following components:

- A. Description of the special library program;
- B. Grant application;
- C. Application timeline;
- D. Special library program's budget-planning worksheet;
- E. Applicable rules and regulations; and
- F. Selection criteria. [4.5.9.12 NMAC - N, 7/1/2015]

4.5.9.13 SELECTION: A committee selected by the state librarian shall review special grant applications and award special grants based on the selection criteria specified in the grant guidelines.

[4.5.9.13 NMAC - N, 7/1/2015]

4.5.9.14 TRANSFER OF FUNDS: Special grants shall only transfer to the grant recipient after the grant recipient signs a contract, agreeing to the terms applicable to the applicable special library program.

[4.5.9.14 NMAC - N, 7/1/2015; A/E, 7/1/2021; A, 12/28/2021]

4.5.9.15 ACCOUNTABILITY:

- A. Grant recipients shall account for special grants separately from other funds.
- B. If a special grant includes federal funds, federal requirements for procurement and record retention shall apply.
- C. The state library shall monitor special library programs. [4.5.9.15 NMAC - N, 7/1/2015]

4.5.9.16 MAINTAINANCE OF EFFORT: A grant recipient's governing body shall not reduce the grant recipient's budget as a result of the grant recipient's receipt of a special grant. Upon demonstrated evidence that such a reduction has occurred, the grant recipient shall be ineligible to receive special grants or state grants-in-aid for one year after the reduction occurs.

[4.5.9.16 NMAC - N, 7/1/2015]

HISTORY OF 4.5.9 NMAC: [RESERVED]

IMLS ARPA Funding **Expenditures Guidance Sheet**

The Institute of Museum and Library Services (IMLS) provides the funding for this grant pursuant to the provisions of the American Rescue Plan Act (ARPA) (Public Law 117-2) and the IMLS authorization statute (20 U.S.C. § 9101 et seq.). The New Mexico State Library (NMSL) is the administrator of the funds.

In order to achieve the purposes of the Act with respect to Grants to States, this funding shall be used to help communities respond directly and immediately to the pandemic, as well as to related economic and communities needs through equitable approaches in digital inclusion and library services, with the following priorities::

1. First, to support digital inclusion efforts to enable libraries to reach residents such as through internet hotspots, accessible Wi-Fi, and digital content and related resources, particularly in support of education, health, and workforce development needs. The following types of data, among others, can inform efforts to reach underserved populations:
 - Poverty/Supplemental Nutrition Assistance Program (SNAP)
 - Unemployment
 - Broadband availability;
2. Second, to provide rapid, emergency relief to libraries across the country, allowing them to safely respond to the pandemic, by implementing public health and safety protocols;
3. Third, to support library services that meet the needs of communities throughout the U.S., including costs such as personnel, technology, training, materials, supplies, equipment, and associated indirect costs; and
4. With respect to (1), (2), or (3), reach tribal and museum partners best positioned to assist with pandemic response efforts, in addition to traditionally eligible library entities, where appropriate.

Expenditures should also be within the goals set forth in the NMSL Five Year Plan 2018-2022, i.e.:

1. Expanding services for learning and access to information and educational resources, in all types of libraries for individuals of all ages in order to support such individuals' needs for education, lifelong learning, workforce development, and digital literacy skills;
2. Establishing or enhancing interlibrary resource sharing electronically via ILLiad and improve coordination among and between libraries in New Mexico for the purpose of improving the quality of and access to library information services;
3. Providing library services to visually impaired, rural, homebound, and underserved New Mexico residents, and
4. Expanding services for learning and access to information and educational resources, in all types of libraries for individuals of all ages in order to support such individuals' needs for education, lifelong learning, workforce development, and digital literacy skills;

Grant Requirements

- Spend all grant funds by September 30, 2022.
- Maintain comprehensive records/invoices to complete the ARPA fund designated section on the FY22 Annual Report.

- The NMSL *may require* invoices for items and/or services specific to ARPA funds.
- Grant records, including receipts, shall be kept by the library for three (3) years after the grant period ends on September 30, 2022.

If there are questions as how to expend ARPA funds, please contact the Library Development Bureau for clarification prior to making purchases – Carmelita.Aragon@state.nm.us

Allowable Purchases – IMLS ARPA funds **can** be used for (by way of example and not limitation):

- Library Collections
 - Items traditionally available at the library and intended for public use, such as books, e-books, audiobooks, DVDs, CDs, electronic and digital media, licensed databases (e.g., ancestry.com, mango languages), etc.
- Library Staff Salaries
 - Regular library staff salaries for their work involving the library.
- Library Equipment
 - Items associated with meeting the information needs of library patron's such as public computers, printers, wireless routers, Wi-Fi hotspots, scanners, etc.
- Other Operational Expenditures Associated with Delivery of Library Services
 - COVID-19 related expenses for library staff and patrons. This includes PPE, cleaning supplies, movable/temporary plexiglass shields, etc.
 - Expenditures associated with the delivery of library services, such as the library's catalog, programming supplies, electric bills, phone bills, directional signage, copy paper, security costs, etc.
 - Contracts directly related to the delivery of basic library services to patrons, including educational program subject matter experts, etc.

Non-Allowable Purchases - IMLS CARES Act funds **cannot** be used for:

- Administrative or indirect expenses such as budgeting, accounting, financial management, information systems, data processing, and legal services.
- Food, giveaways/incentives, college classes for library staff (i.e., tuition reimbursement), library decorations, library staff furniture, recreational rentals/purchases (e.g., bouncy houses, party supplies, pony rentals), etc.
- Operational expenditures that do not directly relate to the delivery of basic library services to library patrons, including cost of parties, receptions, fund-raising events, other social functions, maintenance/cleaning supplies, toilet paper, paper towels, cleaning equipment, vacuums, etc.
- Capital improvements and construction, including any permanent COVID-19 related fixtures.

**New Mexico State Library
1209 Camino Carlos Rey
Santa Fe, NM 87507**

FY2022 American Rescue Plan Act (ARPA) Grant ALLOCATION NOTIFICATION

1.	Recipient Name:	Alamogordo Public Library
2.	Remit to Name and Address:	City of Alamogordo, Alamogordo Public Library 920 Oregon Ave Alamogordo, NM 88310
3.	State of NM Vendor #:	54303
4.	Project Title and Legal and Fiscal Data:	American Rescue Plan Act (ARPA) Grant to Public Library Statute/Administrative Code NMSA 1978 Section 18-2-4 B, 4.5.9 NMAC
5.	State Library Contact:	Carmelita Aragon New Mexico State Library Carmelita.Aragon@state.nm.us
6.	Source of Funding:	<i>Federal American Rescue Plan Act (ARPA) Federal Award ID Number (FAIN) LS-250227-OLS-21</i>
7.	Grant Type and Amount Received:	Library Type Grant: Public Library Branch(es) Grant: \$0 Total Grant: \$17,828
8.	Allocation Period:	<u>ALL</u> ARPA FUNDS MUST BE SPENT BY SEPTEMBER 30, 2022.
9.	Terms and Conditions of Allocation:	<i>American Rescue Plan Act (ARPA) Grant Funds may be used for:</i> <i>1) library collections;</i> <i>2) library staff salaries;</i> <i>3) library staff professional development;</i> <i>4) library equipment; or</i> <i>5) other operational expenditures associated with delivery of library services.</i> Libraries must report how funds were spent in their Annual Report(s) and in the provided tracking sheet. A library's local budget shall not be reduced by its governing body as a result of eligibility for the grant. Upon demonstrated evidence that such a reduction has occurred, the library shall be ineligible to receive funds from the library grants award for one year after the reduction has occurred.
10.	Date:	January 20, 2022

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 2/8/2022

Report Date: 01/31/2022

Report No: 6.

Submitted By: Barbara Pyeatt

Subject: Consider, and act upon, approving the award of RFP 2022-001 On-Call Utility Services to General Hydronics Utilities LLC. (*David Nunnelley, Utilities Director*)

Fiscal Impact:

Amount Budgeted: \$0.00

Fund: 081-5603-432-5747 and 081-5703-461-5747

Additional Fiscal Impact:

Recommendation: Approve the award and authorize staff to proceed with the services agreement

Background: RFP 2022-01 Scope of work is to prove the City of Alamogordo requires on-call utility services. On-call utility services within the scope of this description may be utilized for a wide variety of requirements, as determined by the City. The limits of work will be primarily within the corporate limits of the City of Alamogordo but may extend outside said limits from time to time.

RFP was advertised on January 2nd, 2022 in both the Alamogordo Daily News and the Albuquerque Journal. One proposal was received on January 20th 2022. General Hydronics Utilities, LLC. Proposal was reviewed and determined to be acceptable and in compliance with the terms and conditions of the RFP.

Copies of the proposal are available from the Purchasing Department

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 2/8/2022

Report Date: 02/01/2022

Report No: 7.

Submitted By: Evelyn Huff

Subject: Consider, and act upon, Resolution 2022-09 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 February 8, 2022. *(Evelyn Huff, Finance Director)* **(Roll Call Vote Required)**

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact: Beginning Cash Balances \$69,595,645

Revenues \$ 101,767 Increase

Expenditures \$ 161,901 Increase

Transfers In \$ 34,460 Increase

Transfers Out \$ 34,460 Increase

Recommendation: Approve the Resolution

Background: The City Commission adopted the FY 2021-2022 budget on May 11, 2021. The Department of Finance & Administration granted approval of the City of Alamogordo's Fiscal Year 2021-2022 Final Budget on August 12, 2021. Resolution 2022-09 amends the budget to reflect a more true and accurate projection of the actual revenues and expenditures. A summary and explanation of the revisions are attached for your review.

RESOLUTION NO. 2022-09

A RESOLUTION REQUESTING THE DEPARTMENT OF FINANCE AND ADMINISTRATION, STATE OF NEW MEXICO, APPROVE REVISED BUDGET FIGURES FOR CERTAIN LINE ITEMS IN THE CITY'S BUDGET FOR FISCAL YEAR 2021-22.

WHEREAS, the City of Alamogordo, New Mexico wishes approval to change some of the budget line item figures of various funds; and

WHEREAS, the Department of Finance and Administration, State of New Mexico, gave its final approval to the City of Alamogordo, New Mexico's annual budget on August 12, 2021, for fiscal year 2021-2022; and

WHEREAS, the City of Alamogordo, New Mexico, has tabulated on the following pages the additional resources and expenditures for fiscal year 2021-2022.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF ALAMOGORDO, NEW MEXICO, that the City's annual budget for fiscal year 2022 be and hereby is revised as of February 8, 2022, to reflect a more true and accurate projection of the actual revenues and expenditures for fiscal year 2021-2022 as shown on the following pages.

NOW, BE IT FURTHER RESOLVED BY THE GOVERNING BODY OF THE CITY OF ALAMOGORDO, NEW MEXICO, that the Department of Finance and Administration, State of New Mexico, be requested to give its written approval to the revised budget figures computed on February 8, 2022, as a more true and accurate projection of the actual revenues and expenditures for fiscal year 2021-2022.

PASSED, APPROVED AND ADOPTED by the Governing Body of the City of Alamogordo, New Mexico, at a Regular Meeting held this 8th. day of February 2022.

CITY OF ALAMOGORDO, NEW MEXICO,
A NEW MEXICO MUNICIPAL CORPORATION

By: _____
Susan L. Payne, Mayor

ATTEST:

Rachel Hughs, City Clerk

APPROVED AS TO FORM:

Petria Bengoechea, City Attorney

**ALL FUNDS SUMMARY
BUDGET 2021-2022**

1/12TH REQ RSRV
1,624,534
1/12TH REQ RSRV
0
Fund Reserve Policy
560,074
Bal. Remaining
3,163,086

FY22 BUDGET - RESOLUTION 2022-09 (#8) February 8, 2022

FUND NO.	FY 2021-2022 FUND DESCRIPTION	UNAUDITED BEGINNING CASH BALANCE	ESTIMATED REVENUES	TRANSFERS IN	TRANSFERS OUT	NET CASH TRANSFERS	BUDGETED EXPENDITURES	ESTIMATED ENDING CASH BALANCE	LOCAL RESERVE REQUIREMENTS UNAVAILABLE FOR BUDGETING	ADJUSTED ENDING CASH BALANCE
11	GENERAL OPERATING FUND	14,022,061	19,506,946	869,652	9,556,563	(8,686,911)	19,494,402	5,347,694	2,184,608	3,163,086
12	INTERNAL SERVICE FUND	80,006	448,885	4,592,706	0	4,592,706	5,071,312	50,285		\$50,285
15	CORRECTIONS-JAIL	45,984	75,994	45,000	248	44,752	161,000	5,730		\$5,730
16	LODGER'S TAX-PROMOTIONAL FUND	314,183	218,407	6,744	1,405	5,339	276,852	261,077		\$261,077
17	POLICE COURT BOND	7,938	0	0	0	0	0	7,938		\$7,938
19	COURT AUTOMATION FUND	8,582	50,000	0	10,571	(10,571)	40,895	7,116		\$7,116
20	LODGER'S TAX-CITY	169,504	390,326	0	70,150	(70,150)	274,589	215,091		\$215,091
21	D.A.R.E. DONATIONS FUND	22,409	2,165	0	0	0	10,109	14,465		\$14,465
24	GRANT CAPITAL IMPROVEMENT	0	3,187,207	15,414	0	15,414	2,682,151	520,470		\$520,470
27	MUNICIPAL COURT OPERATIONS	26,309	13,000	450,000	16,009	433,991	450,691	22,609		\$22,609
28	POLICE CONTINGENCY	69,213	2,549	0	0	0	10,000	61,762		\$61,762
31	CEMETERY-PERPETUAL CARE	816,480	20,140	0	0	0	0	836,620		\$836,620
32	COMMUNITY SERVICES	438,488	496,574	4,704,888	617,373	4,087,515	5,016,329	6,248		\$6,248
33	FIRE PROTECTION	689,963	662,583	0	0	0	1,262,643	89,903		\$89,903
35	HIDTA GRANT FUND	0	17,400	0	0	0	17,400	0		\$0
36	LAW ENFORCEMENT FUND	4,818	55,200	0	0	0	60,018	(0)		(\$0)
37	STATE HIGHWAY FUND	147,869	70,751	0	0	0	128,828	89,792		\$89,792
38	TRAFFIC SAFETY FUND	54,656	10,491	0	0	0	10,000	55,147		\$55,147
39	STATE JUDICIAL	2,749	75,500	0	0	0	75,500	2,749		\$2,749
42	1984 GROSS RECEIPTS TAX	2,385,672	1,730,991	0	2,150,774	(2,150,774)	22,675	1,943,214	252,119	\$1,691,095
44	TRANSPORTATION FUND	165,480	1,239,016	2,126,537	140,914	1,985,623	3,385,453	4,666		\$4,666
48	NEW MEXICO C.D.B.G.	0	500,000	1,406,305	0	1,406,305	1,906,305	0		\$0
49	1986 GROSS RECEIPTS TAX	3,911,631	1,781,383	0	2,742,303	(2,742,303)	1,150,657	1,800,054	268,391	\$1,531,663
50	PROPERTY ACQUISITION	85,010	0	0	0	0	0	85,010		\$85,010
53	GENERAL OBLIGATION	908,523	1,062,849	0	0	0	1,114,058	857,314	557,029	\$300,285
54	REVERSE OSMOSIS PROJECT RSV	21,967	0	16,239	0	16,239	16,239	21,967		\$21,967
56	99 GRT FLOOD CONTROL BOND PROJ	7	29,091	1,830,905	19,476	1,811,429	1,608,382	232,145		\$232,145
59	REVENUE BOND P & I FUND	150,101	7,363	2,679,243	0	2,679,243	2,679,243	157,464		\$157,464
61	MUNICIPAL INFRASTRUCTURE .0625%	890,520	437,756	0	468,000	(468,000)	5,669	854,607		\$854,607
63	COMMUNITY DEVELOPMENT	6,519	0	505,090	37,143	467,947	472,434	2,032		\$2,032
69	1994 GROSS RECEIPTS	2,560,463	1,755,150	0	1,975,754	(1,975,754)	22,675	2,317,184	553,051	\$1,764,133
71	ALAMO SENIOR CENTER	2,079	906,686	852,500	0	852,500	1,733,218	28,047		\$28,047

74	ALAMO SENIOR CENTER GIFT	138,081	21,238	0	0	0	71,996	87,323		\$87,323
75	RETIRED & SENIOR VOL. PROGRAM	14,328	176,851	46,000	16,102	29,898	205,231	15,846		\$15,846
81	WATER/SEWER OPERATING	5,996,510	18,888,231	3,703,413	1,855,098	1,848,315	20,926,974	5,806,082	1,463,850	\$4,342,232
82	98 JT WATER/SEWER BOND P&I	1,583,799	32,886	1,893,605	0	1,893,605	1,893,607	1,616,683		\$1,616,683
86	SOLID WASTE COLLECTION SYS.	584,696	2,107,151	0	135,438	(135,438)	2,153,773	402,636	178,583	\$224,053
88	BONITO CAMPGROUND	394,450	3,498	0	0	0	4,000	393,948		\$393,948
89	ESGRT .0625%	2,538,217	458,704	0	1,406,625	(1,406,625)	995,582	594,714		\$594,714
90	GOLF COURSE	72,040	1,473,298	660,000	91,334	568,666	2,110,514	3,490		\$3,490
91	AIRPORT	17,373	744,425	65,000	53,178	11,822	740,750	32,870		\$32,870
94	OTERO GREENTREE REG LANDFILL	4,909,828	1,379,465	0	725	(725)	4,528,855	1,759,713		\$1,759,713
96	SELF-INSURED FUND	561,415	64,595	0	150,000	(150,000)	75,628	400,382		\$400,382
98	PAYROLL CLEARING	291,874	0	0	0	0	0	291,874		\$291,874
104	UTILITY DEPOSITS	653,070	0	0	0	0	0	653,070		\$653,070
105	ECONOMIC DEVELOPMENT	4,508,656	925,576	0	0	0	423,257	5,010,975		\$5,010,975
107	SELF INSURED/LIABILITY	1,176,628	6,805	0	0	0	635,000	548,433		\$548,433
109	2004 GRT CAPITAL OUTLAY	15,469,629	3,593,680	0	4,954,058	(4,954,058)	9,102,805	5,006,446	534,452	\$4,471,994
114	SIDEWALKS REVOLVING LOANS	143,001	1,454	0	0	0	0	144,455		\$144,455
115	CORP ESCROW ACCOUNT RESERVE	1,000	0	0	0	0	0	1,000		\$1,000
119	2012 GRT REF/IMP REVBD	407,932	29,960	0	0	0	154,384	283,508		\$283,508
121	2015 GO BONDS-FUN CENTER	90,064	914	0	0	0	0	90,978		\$90,978
122	2015 GO BONDS-STREETS	174,516	1,771	0	0	0	0	176,287		\$176,287
124	AMERICAN RESCUE PLAN ACT	0	3,952,892	0	0	0	3,952,892	0		\$0
901	HOUSING LOW RENT OPERATING	1,146,135	822,703	0	0	0	1,064,409	904,429	354,627	\$549,802
903	HOUSING HOMEOWNERSHIP OPER	713,222	1,525	0	0	0	17,969	696,778		\$696,778
904	HOUSING CAPITAL FUND PROJECTS	0	1,333,878	0	0	0	1,333,878	0		\$0
TOTALS FY2022		69,595,645	70,775,903	26,469,241	26,469,241	0	99,551,231	40,820,317	6,346,710	34,473,608

ALL FUNDS SUMMARY

BUDGET 2021-2022

1/12TH REQ RSRV

1,624,534

1/12TH REQ RSRV

0

Fund Reserve Policy

560,074

Bal. Remaining

3,210,258

FY22 BUDGET - RESOLUTION 2022-09 (#8) February 8, 2022

FUND NO.	FY 2021-2022 FUND DESCRIPTION	UNAUDITED BEGINNING CASH BALANCE	ESTIMATED REVENUES	TRANSFERS IN	TRANSFERS OUT	NET CASH TRANSFERS	BUDGETED EXPENDITURES	ESTIMATED ENDING CASH BALANCE	LOCAL RESERVE REQUIREMENTS UNAVAILABLE FOR BUDGETING	ADJUSTED ENDING CASH BALANCE
11	GENERAL OPERATING FUND	14,022,061	19,506,468	850,000	9,541,755	(8,691,755)	19,441,908	5,394,866	2,184,608	3,210,258
	Revision #2-Fire Station 5 Asphalt Redo			19,652		19,652	19,652	0		0
	Revision #6-Director's Deferred Comp					0	32,364	(32,364)		(32,364)
	Revision #7-Sale of Scrap		478			0	478	0		0
	Revision #8-Increase Transfer to Fund 16				4,808	(4,808)		(4,808)		(4,808)
	Revision #10-Auto Lift Price Increase				10,000	(10,000)		(10,000)		(10,000)
	Total Revised Fund 11	14,022,061	19,506,946	869,652	9,556,563	(8,686,911)	19,494,402	5,347,694	2,184,608	3,163,086
12	INTERNAL SERVICE FUND	80,006	448,885	4,582,706	0	4,582,706	5,059,116	52,481		\$52,481
	Revision #6-Director's Deferred Comp					0	2,196	(2,196)		(\$2,196)
	Revision #10-Auto Lift Price Increase			10,000		10,000	10,000	0		\$0
	Total Revised Fund 12	80,006	448,885	4,592,706	0	4,592,706	5,071,312	50,285		50,285
15	CORRECTIONS-JAIL	45,984	75,994	45,000	248	44,752	161,000	5,730		\$5,730
	Total Revised Fund 15	45,984	75,994	45,000	248	44,752	161,000	5,730		5,730
16	LODGER'S TAX-PROMOTIONAL FUND	314,183	218,407	1,936	1,405	531	276,852	256,269		\$256,269
	Revision #8-Increase Transfer fr Fund 11			4,808		4,808		4,808		\$4,808
	Total Revised Fund 16	314,183	218,407	6,744	1,405	5,339	276,852	261,077		261,077
17	POLICE COURT BOND	7,938	0	0	0	0	0	7,938		\$7,938
	Total Revised Fund 17	7,938	0	0	0	0	0	7,938		7,938
19	COURT AUTOMATION FUND	8,582	50,000	0	10,571	(10,571)	40,895	7,116		\$7,116
	Total Revised Fund 19	8,582	50,000	0	10,571	(10,571)	40,895	7,116		7,116
20	LODGER'S TAX-CITY	169,504	364,007	0	70,150	(70,150)	253,770	209,591		\$209,591
	Revision #1-Special Event Sponsors		4,000				4,000	0		\$0
	Revision #4-Civic Center Reprojections		22,319			0	16,819	5,500		\$5,500
	Total Revised Fund 20	169,504	390,326	0	70,150	(70,150)	274,589	215,091		215,091
21	D.A.R.E. DONATIONS FUND	22,409	2,165			0	10,109	14,465		\$14,465
	Total Revised Fund 21	22,409	2,165	0	0	0	10,109	14,465		14,465
24	GRANT CAPITAL IMPROVEMENT	0	3,134,417	15,414	0	15,414	2,629,361	520,470		\$520,470
	Revision #3-Traffic Safety Grant		27,727			0	27,727	0		\$0
	Revision #12-HB285 Funds-Senior Center		25,063			0	25,063	0		\$0
	Total Revised Fund 24	0	3,187,207	15,414	0	15,414	2,682,151	520,470		520,470
27	MUNICIPAL COURT OPERATIONS	26,309	13,000	450,000	16,009	433,991	450,691	22,609		\$22,609
	Total Revised Fund 27	26,309	13,000	450,000	16,009	433,991	450,691	22,609		22,609
28	POLICE CONTINGENCY	69,213	2,549			0	10,000	61,762		\$61,762
	Total Revised Fund 28	69,213	2,549	0	0	0	10,000	61,762		61,762
31	CEMETERY-PERPETUAL CARE	816,480	20,140			0		836,620		\$836,620
	Total Revised Fund 31	816,480	20,140	0	0	0	0	836,620		836,620

32	COMMUNITY SERVICES	438,488	468,409	4,704,888	617,373	4,087,515	4,988,434	5,978		\$5,978
	Revision #5-Zoo Gift Shop		17,500			0	13,738	3,762		\$3,762
	Revision #6-Director's Deferred Comp					0	3,492	(3,492)		(\$3,492)
	Revision #7-Sale of Scrap		665			0	665	0		\$0
	Revision #9-Library Donation		10,000			0	10,000	0		\$0
	Total Revised Fund 32	438,488	496,574	4,704,888	617,373	4,087,515	5,016,329	6,248		6,248
33	FIRE PROTECTION	689,963	662,583	0	0	0	1,262,643	89,903		\$89,903
	Total Revised Fund 33	689,963	662,583	0	0	0	1,262,643	89,903		89,903
35	HIDTA GRANT FUND	0	17,400			0	17,400	0		\$0
	Total Revised Fund 35	0	17,400	0	0	0	17,400	0		0
36	LAW ENFORCEMENT FUND	4,818	55,200	0	0	0	60,018	(0)		(\$0)
	Total Revised Fund 36	4,818	55,200	0	0	0	60,018	(0)		(0)
37	STATE HIGHWAY FUND	147,869	70,751	0	0	0	128,828	89,792		\$89,792
	Total Revised Fund 37	147,869	70,751	0	0	0	128,828	89,792		89,792
38	TRAFFIC SAFETY FUND	54,656	10,491	0	0	0	10,000	55,147		\$55,147
	Total Revised Fund 38	54,656	10,491	0	0	0	10,000	55,147		55,147
39	STATE JUDICIAL	2,749	75,500			0	75,500	2,749		\$2,749
	Total Revised Fund 39	2,749	75,500	0	0	0	75,500	2,749		2,749
42	1984 GROSS RECEIPTS TAX	2,385,672	1,730,991	0	2,150,774	(2,150,774)	22,675	1,943,214	252,119	\$1,691,095
	Total Revised Fund 42	2,385,672	1,730,991	0	2,150,774	(2,150,774)	22,675	1,943,214	252,119	1,691,095
44	TRANSPORTATION FUND	165,480	1,239,016	2,126,537	140,914	1,985,623	3,385,453	4,666		\$4,666
	Total Revised Fund 44	165,480	1,239,016	2,126,537	140,914	1,985,623	3,385,453	4,666		4,666
48	NEW MEXICO C.D.B.G.	0	500,000	1,406,305	0	1,406,305	1,906,305	0		\$0
	Total Revised Fund 48	0	500,000	1,406,305	0	1,406,305	1,906,305	0		0
49	1986 GROSS RECEIPTS TAX	3,911,631	1,781,383	0	2,742,303	(2,742,303)	1,150,657	1,800,054	268,391	\$1,531,663
	Total Revised Fund 49	3,911,631	1,781,383	0	2,742,303	(2,742,303)	1,150,657	1,800,054	268,391	1,531,663
50	PROPERTY ACQUISITION	85,010	0	0	0	0	0	85,010		\$85,010
	Total Revised Fund 50	85,010	0	0	0	0	0	85,010		85,010
53	GENERAL OBLIGATION	908,523	1,062,849			0	1,114,058	857,314	557,029	\$300,285
	Total Revised Fund 53	908,523	1,062,849	0	0	0	1,114,058	857,314	557,029	300,285
54	REVERSE OSMOSIS PROJECT RSV	21,967	0	16,239	0	16,239	16,239	21,967		\$21,967
	Total Revised Fund 54	21,967	0	16,239	0	16,239	16,239	21,967		21,967
56	99 GRT FLOOD CONTROL BOND PROJ	7	29,091	1,830,905	19,476	1,811,429	1,608,382	232,145		\$232,145
	Total Revised Fund 56	7	29,091	1,830,905	19,476	1,811,429	1,608,382	232,145		232,145
59	REVENUE BOND P & I FUND	150,101	7,363	2,679,243		2,679,243	2,679,243	157,464		\$157,464
	Total Revised Fund 59	150,101	7,363	2,679,243	0	2,679,243	2,679,243	157,464		157,464
61	MUNICIPAL INFRASTRUCTURE .0625%	890,520	437,756	0	468,000	(468,000)	5,669	854,607		\$854,607
	Total Revised Fund 61	890,520	437,756	0	468,000	(468,000)	5,669	854,607		854,607
63	COMMUNITY DEVELOPMENT	6,519	0	505,090	37,143	467,947	472,434	2,032		\$2,032
	Total Revised Fund 63	6,519	0	505,090	37,143	467,947	472,434	2,032		\$2,032
69	1994 GROSS RECEIPTS	2,560,463	1,755,150	0	1,956,102	(1,956,102)	22,675	2,336,836	553,051	\$1,783,785
	Revision #2-Fire Station 5 Asphalt Redo				19,652	(19,652)				(19,652)
	Total Revised Fund 69	2,560,463	1,755,150	0	1,975,754	(1,975,754)	22,675	2,317,184	553,051	1,764,133
71	ALAMO SENIOR CENTER	2,079	912,916	852,500	0	852,500	1,739,448	28,047		\$28,047
	Revision #7-Sale of Scrap		770			0	770	0		\$0
	Revision #11-Title IIIB-Transportation Grant		(7,000)			0	(7,000)	0		\$0
	Total Revised Fund 71	2,079	906,686	852,500	0	852,500	1,733,218	28,047		28,047
74	ALAMO SENIOR CENTER GIFT	138,081	21,238	0	0	0	71,996	87,323		\$87,323
	Total Revised Fund 74	138,081	21,238	0	0	0	71,996	87,323		87,323
75	RETIRED & SENIOR VOL. PROGRAM	14,328	176,851	46,000	16,102	29,898	205,231	15,846		\$15,846
	Total Revised Fund 75	14,328	176,851	46,000	16,102	29,898	205,231	15,846		15,846

81	WATER/SEWER OPERATING	5,996,510	18,887,986	3,703,413	1,855,098	1,848,315	20,925,613	5,807,198	1,463,850	\$4,343,348
	Revision #6-Director's Deferred Comp					0	1,116	(1,116)		(\$1,116)
	Revision #7-Sale of Scrap		245			0	245	0		\$0
	Total Revised Fund 81	5,996,510	18,888,231	3,703,413	1,855,098	1,848,315	20,926,974	5,806,082	1,463,850	4,342,232
82	98 JT WATER/SEWER BOND P&I	1,583,799	32,886	1,893,605		1,893,605	1,893,607	1,616,683		\$1,616,683
	Total Revised Fund 82	1,583,799	32,886	1,893,605	0	1,893,605	1,893,607	1,616,683		1,616,683
86	SOLID WASTE COLLECTION SYS.	584,696	2,107,151	0	135,438	(135,438)	2,153,773	402,636	178,583	\$224,053
	Total Revised Fund 86	584,696	2,107,151	0	135,438	(135,438)	2,153,773	402,636	178,583	224,053
88	BONITO CAMPGROUND	394,450	3,498			0	4,000	393,948		\$393,948
	Total Revised Fund 88	394,450	3,498	0	0	0	4,000	393,948		393,948
89	ESGRT .0625%	2,538,217	458,704	0	1,406,625	(1,406,625)	995,582	594,714		\$594,714
	Total Revised Fund 89	2,538,217	458,704	0	1,406,625	(1,406,625)	995,582	594,714		594,714
90	GOLF COURSE	72,040	1,473,298	660,000	91,334	568,666	2,110,514	3,490		\$3,490
	Total Revised Fund 90	72,040	1,473,298	660,000	91,334	568,666	2,110,514	3,490		3,490
91	AIRPORT	17,373	744,425	65,000	53,178	11,822	740,750	32,870		\$32,870
	Total Revised Fund 91	17,373	744,425	65,000	53,178	11,822	740,750	32,870		32,870
94	OTERO GREENTREE REG LANDFILL	4,909,828	1,379,465	0	725	(725)	4,528,855	1,759,713		\$1,759,713
	Total Revised Fund 94	4,909,828	1,379,465	0	725	(725)	4,528,855	1,759,713		1,759,713
96	SELF-INSURED FUND	561,415	64,595	0	150,000	(150,000)	75,628	400,382		\$400,382
	Total Revised Fund 96	561,415	64,595	0	150,000	(150,000)	75,628	400,382		400,382
98	PAYROLL CLEARING	291,874	0	0	0	0	0	291,874		\$291,874
	Total Revised Fund 98	291,874	0	0	0	0	0	291,874		291,874
104	UTILITY DEPOSITS	653,070	0	0	0	0	0	653,070		\$653,070
	Total Revised Fund 104	653,070	0	0	0	0	0	653,070		653,070
105	ECONOMIC DEVELOPMENT	4,508,656	925,576	0	0	0	423,257	5,010,975		\$5,010,975
	Total Revised Fund 105	4,508,656	925,576	0	0	0	423,257	5,010,975		5,010,975
107	SELF INSURED/LIABILITY	1,176,628	6,805	0	0	0	635,000	548,433		\$548,433
	Total Revised Fund 107	1,176,628	6,805	0	0	0	635,000	548,433		548,433
109	2004 GRT CAPITAL OUTLAY	15,469,629	3,593,680	0	4,954,058	(4,954,058)	9,102,805	5,006,446	534,452	\$4,471,994
	Total Revised Fund 109	15,469,629	3,593,680	0	4,954,058	(4,954,058)	9,102,805	5,006,446	534,452	4,471,994
114	SIDEWALKS REVOLVING LOANS	143,001	1,454	0	0	0	0	144,455		\$144,455
	Total Revised Fund 114	143,001	1,454	0	0	0	0	144,455		144,455
115	CORP ESCROW ACCOUNT RESERVE	1,000	0	0	0	0	0	1,000		\$1,000
	Total Revised Fund 115	1,000	0	0	0	0	0	1,000		1,000
119	2012 GRT REF/IMP REVBD	407,932	29,960	0	0	0	154,384	283,508		\$283,508
	Total Revised Fund 119	407,932	29,960	0	0	0	154,384	283,508		283,508
121	2015 GO BONDS-FUN CENTER	90,064	914	0	0	0	0	90,978		\$90,978
	Total Revised Fund 121	90,064	914	0	0	0	0	90,978		90,978
122	2015 GO BONDS-STREETS	174,516	1,771	0	0	0	0	176,287		\$176,287
	Total Revised Fund 122	174,516	1,771	0	0	0	0	176,287		176,287
124	AMERICAN RESCUE PLAN ACT	0	3,952,892	0	0	0	3,952,892	0		\$0
	Total Revised Fund 124	0	3,952,892	0	0	0	3,952,892	0		0
901	HOUSING LOW RENT OPERATING	1,146,135	822,703	0	0	0	1,063,881	904,957	354,627	\$550,330
	Revision #6-Director's Deferred Comp					0	528	(528)		(\$528)
	Total Revised Fund 901	1,146,135	822,703	0	0	0	1,064,409	904,429	354,627	549,802
903	HOUSING HOMEOWNERSHIP OPER	713,222	1,525	0	0	0	17,921	696,826		\$696,826
	Revision #6-Director's Deferred Comp					0	48	(48)		(\$48)
	Total Revised Fund 903	713,222	1,525	0	0	0	17,969	696,778		696,778
904	HOUSING CAPITAL FUND PROJECTS	0	1,333,878	0	0	0	1,333,878	0		\$0
	Total Revised Fund 904	0	1,333,878	0	0	0	1,333,878	0		0
TOTALS FY2022		69,595,645	70,775,903	26,469,241	26,469,241	0	99,551,231	40,820,317	6,346,710	34,473,607

RECURRING/ NON- RECURRING	FUND NO.	LINE ITEM NO.	LINE ITEM DESCRIPTION	ORIGINAL BUDGET AMOUNT	INCREASE (DECREASE)	REVISED BUDGET AMOUNT
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REVISION #1

This budget revision is to increase Special Events Revenue & Expenditure line-items to account for sponsorship money for special events such as the Brew at the Zoo and the New Years Eve Ball.

20 LODGER'S TAX - CITY'S SHARE						
<i>Revenues</i>						
	020-0000-316.15-28	Special Events		12,345	4,000	16,345
		Total Revenue		12,345	4,000	16,345
<i>Expenditures</i>						
	020-0006-454.57-93	Special Events		21,150	4,000	25,150
		Total Expenditures		21,150	4,000	25,150

REVISION #2

This budget revision is to cover asphalt repairs at Fire Station 5, South Florida Avenue. Includes all labor, material to demo, haul off, prep and place, and finish. Funding for this project is provided by increasing the Transfer from Fund 069-94 Gross Receipts.

11 GENERAL FUND						
<i>Transfers in</i>						
	011-0000-391.19-69	Trans fr (69) '94 Gross Receipts		850,000	19,652	869,652
		Total Transfers In		850,000	19,652	869,652
<i>Expenditures</i>						
	011-4204-421.63-91	Building Improvements		88,000	19,652	107,652
		Total Expenditures		88,000	19,652	107,652
69 94 Gross Receipts						
<i>Transfers Out</i>						
	069-0000-491.18-11	Trans to (011) General Fund		850,000	19,652	869,652
		Total Transfers Out		850,000	19,652	869,652

REVISION #3

This budget revision is to account for the new Traffic Safety Grant received for the Police Department, Community DWI Prevention program for FY21-22.

24 GRANT CAPITAL IMPROVEMENT						
<i>Revenues</i>						
	024-4642-317.16-13	State Grant		0	14,758	14,758
	024-4642-317.16-73	Federal Grant		0	12,969	12,969
		Total Revenue		0	27,727	27,727
<i>Expenditures</i>						
	024-4642-420.20-04	Overtime		0	27,727	27,727
		Total Expenditures		0	27,727	27,727

REVISION #4

This budget revision is to adjust to projected year end amounts based on current revenue and projected year-end amounts. Projected revenues are based upon current Civic Center event reservations, increased sponsor commitments, and Eventbrite payout. Expenditures are increased to projected levels and where funds are needed.

20 LODGER'S TAX-CITY'S SHARE						
<i>Revenues</i>						
	020-0000-314.13-15	Concessions		16,932	10,000	26,932
	020-0000-314.13-09	Facility Rental		10,000	6,000	16,000
	020-0000-316.15-28	Special Events		12,345	6,319	18,664
		Total Revenue		39,277	22,319	61,596
<i>Expenditures</i>						
	020-0006-454.57-93	Special Events		21,150	6,319	27,469
	020-0006-454.30-55	Fuels		500	500	1,000
	020-0006-454.31-65	Civic Center Supplies		1,195	1,500	2,695
	020-0006-454.31-66	Event Supplies		4,600	7,000	11,600
	020-0006-454.31-75	Cleaning Supplies		2,092	1,500	3,592
		Total Expenditures		29,537	16,819	46,356

REVISION #5

This budget revision is to increase Zoo Gift Shop revenues and Zoo Gift Shop Supplies expenditures to projected levels based upon actual results through mid year.

32 COMMUNITY SERVICES						
<i>Revenues</i>						
	032-6306-316.15-63	Zoo Gift Shop Income		42,500	17,500	60,000
		Total Revenue		42,500	17,500	60,000
<i>Expenditures</i>						
	032-6306-452.30-95	Zoo Gift Shop Supplies		26,262	13,738	40,000
		Total Expenditures		26,262	13,738	40,000

REVISION #6

This budget revision is to create budgets for Deferred Compensation clauses that were added to the Director's contracts in January 2022.

11 GENERAL FUND				
	<i>Expenditures</i>			
	011-1301-413.20-11	Deferred Compensation	0	3,480
	011-1501-415.20-11	Deferred Compensation	0	6,120
	011-2001-411.20-11	Deferred Compensation	0	6,120
	011-2102-415.20-11	Deferred Compensation	0	4,452
	011-4104-420.20-11	Deferred Compensation	0	2,328
	011-4204-421.20-11	Deferred Compensation	0	9,864
		Total Expenditures	0	32,364
12 INTERNAL SERVICE FUND				
	<i>Expenditures</i>			
	012-1701-415.20-11	Deferred Compensation	0	2,196
		Total Expenditures	0	2,196
32 COMMUNITY SERVICE FUND				
	<i>Expenditures</i>			
	032-6606-450.20-11	Deferred Compensation	0	3,492
		Total Expenditures	0	3,492
81 WATER/SEWER				
	<i>Expenditures</i>			
	081-2202-461.20-11	Deferred Compensation	0	1,116
		Total Expenditures	0	1,116
901 HOUSING LOW RENT OPERATING				
	<i>Expenditures</i>			
	901-0007-463.20-11	Deferred Compensation	0	528
		Total Expenditures	0	528
903 HOUSING HOMEOWNERSHIP OPERATING				
	<i>Expenditures</i>			
	903-0007-463.20-11	Deferred Compensation	0	48
		Total Expenditures	0	48

REVISION #7

This budget adjustment records Sale of Scrap revenue with a corresponding increase in expenditures for October and November 2021.

11 GENERAL OPERATING				
	<i>Revenues</i>			
	011-4104-316.15-05	Sale of Scrap	5,981	478
		Total Revenue	5,981	478
	<i>Expenditures</i>			
CERDPS	011-4104-420.61-85	Equipment Replacement	4,981	478
		Total Expenditures	4,981	5,459
32 COMMUNITY SERVICES				
	<i>Revenues</i>			
	032-0006-316.15-05	Sale of Scrap	0	665
		Total Revenue	0	665
	<i>Expenditures</i>			
	032-0006-419.61-85	Equipment Replacement	0	665
		Total Expenditures	0	665
71 SENIOR CENTER				
	<i>Revenues</i>			
	071-0000-316.15-05	Sale of Scrap	819	770
		Total Revenue	819	770
	<i>Expenditures</i>			
	071-8116-445.61-85	Equipment Replacement	755	770
		Total Expenditures	755	1,525
81 WATER/SEWER OP. FUND				
	<i>Revenues</i>			
	081-5703-316.15-05	Sale of Scrap	319	245
		Total Revenue	319	245
	<i>Expenditures</i>			
CERWFP	081-5703-461.61-85	CER Equipment Replacement	168,481	245
		Total Expenditures	168,481	168,726

REVISION #8

This budget revision is to increase transfer from the General Fund (011) for changes in the computer software and travel budgets for Fund 16 Lodgers Tax-Promotions.

16 LODGER'S TAX-PROMOTIONS				
	<i>Transfers In</i>			
016-0000-391.19-11	Tran fr (11) General Fund	1,936	4,808	6,744
	Total Transfers In	1,936	4,808	6,744
11 GENERAL FUND				
	<i>Transfers Out</i>			
011-0000-491.18-16	Trans to (16) Lodger's Tax-Promotions	1,936	4,808	6,744
	Total Transfers Out	1,936	4,808	6,744

REVISION #9

This budget revision is to recognize an anonymous donation of \$ 10,000 on December 29, 2021 for the Alamogordo Public Library. The benefactor stated there were no stipulations regarding use of the funds and asked that the City not reduce the Library's budget due to the receipt of the donation.

32 COMMUNITY SERVICES				
	<i>Revenues</i>			
L11703 032-7101-314.13-36	Donations	6,000	10,000	16,000
	Total Revenue	6,000	10,000	16,000
	<i>Expenditures</i>			
L11703 032-7101-455.33-28	Misc. Donation Materials	12,884	10,000	22,884
	Total Expenditures	12,884	10,000	22,884

REVISION #10

This budget revision is to provide additional funding from the General Fund for an increase in the purchase price for an auto lift in the Internal Service Fund-Fleet Maintenance division.

12 INTERNAL SERVICE FUND				
	<i>Transfers in</i>			
012-0000-391.19-11	Trans fr (11) General Fund	3,093,056	10,000	3,103,056
	Total Transfers In	3,093,056	10,000	3,103,056
	<i>Expenditures</i>			
012-3503-419.61-60	Capital Equipment	46,191	10,000	56,191
	Total Expenditures	46,191	10,000	56,191
11 GENERAL FUND				
	<i>Transfers Out</i>			
011-0000-491.18-12	Trans to (12) Internal Service Fund	3,093,056	10,000	3,103,056
	Total Transfers Out	3,093,056	10,000	3,103,056

REVISION #11

This budget revision is to adjust Federal Funds -Title IIIB Transportation Grant to the actual funding amount for FY22 in the Senior Center Fund, Transportation division.

71 SENIOR CENTER FUND				
	<i>Revenues</i>			
071-8025-317.16-30	SWNMAAA, Federal (SA1)	88,283	(7,000)	81,283
	Total Revenue	88,283	(7,000)	81,283
	<i>Expenditures</i>			
071-8025-445.32-75	Program Supplies	48,818	(7,000)	41,818
	Total Expenditures	48,818	(7,000)	41,818

REVISION #12

This budget revision is to account for the HB285 ALTSD Grant Funds for Kitchen Equipment-Severance Tax Bond (DD Oven & Small Braiser/Tilting Skillet) for the Senior Center.

24 GRANT CAPITAL IMPROVEMENT FUND				
	<i>Revenues</i>			
SCKE22 024-0000-317.16-13	State Grant	2,967,717	25,063	2,992,780
	Total Revenue	2,967,717	25,063	2,992,780
	<i>Expenditures</i>			
SCKE22 024-0000-419.61-60	Capital Equipment	712,939	25,063	738,002
	Total Expenditures	712,939	25,063	738,002

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 2/8/2022

Report Date: 02/02/2022

Report No: 8.

Submitted By: Petria Bengoechea

Subject: Adjourn into Executive Closed Session in compliance with 10-15-1(H)(2) NMSA (as amended) to discuss limited personnel matters: City Manager Evaluation follow-up and contract extension negotiations. **(Roll Call Required)**

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation:

Background: