Alamogordo City Commission

NOTICE OF MEETING

Regular Meeting Agenda

November 1, 2022 - 6:30 PM
Donald E. Carroll Commission Chambers
City Hall, 1376 E. Ninth Street

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

Brian Cesar .... City Manager
Ashley Smith ....City Attorney
Rachel Hughs ....City Clerk

MISSION STATEMENT as Adopted by the City Commission on March 24, 1995.
The City of Alamogordo is a Municipal Corporation that exists solely for the purpose of providing the best possible services to our customers, the citizens of Alamogordo. We are committed to providing these services with honesty, integrity, compassion, fairness, and a commitment to excellence.

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

In accordance with Section 10-15-1.D, NMSA 1978 (2010 Cumulative Supplement), this agenda has been posted on the bulletin board located in the east/west lobby of the City Hall and in the glass case located outside 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

PRESENTATIONS

1. Extra Mile Day Proclamation. *(Susan L.Payne, Mayor)*

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.

2. Consider, and act upon, the adoption and final publication of Ordinance 1659, amending Chapter 2 of the Alamogordo Code of Ordinances, by adding 02-050 "City Commission Use of Social Media". *(Brian Cesar, City Manager)* **(Roll Call Vote Required)**

3. Consider, and act upon, the adoption and final publication of Ordinance 1661, amending Chapter 17 of the Alamogordo Code of Ordinances concerning Licenses and Miscellaneous Business Regulations. *(Rachel Hughs, City Clerk)* **(Roll Call Vote Required)**

4. Consider, and act upon, the adoption and final publication of Ordinance 1662, amending Chapter 2 of the Alamogordo Code of Ordinances, by adding 02-060 "Code of Conduct." *(Brian Cesar, City Manager)* **(Roll Call Vote Required)**

5. Consider, and act upon, the adoption and final publication of Ordinance 1663, repealing Chapter 27 of the Alamogordo Code of Ordinances concerning Vehicles for Hire. *(Rachel Hughs, City Clerk)* **(Roll Call Vote Required)**

6. Consider, and act upon, approval for Alamogordo Fire Department to accept a $25,000 stipend award from the New Mexico Department of Homeland Security. *(Richard Adler, Chief, Alamogordo Fire Department)*

7. Consider, and act upon, approval of Resolution 2022-45 authorizing the submission of a grant application for the purpose of rebuilding the circulatory roads at the Bonito Lake Recreational Area. *(Debbie Osborne, Grant Coordinator)* **(Roll Call Vote Required)**

8. Consider, and act upon, acceptance of a grant agreement from the New Mexico Economic Development Department in the amount of $99,000 to repave a section of the walking path on Indian Wells Rd. *(Veronica Ortega, Community Services Director)*

ITEMS REMOVED FROM CONSENT AGENDA

NEW BUSINESS

ADJOURNMENT

AGENDA REPORT
CITY OF ALAMOGORDO
CITY COMMISSION

Meeting Date: 11/1/2022 **Report Date:** **Report No:** 1.

Submitted By:

Subject: Extra Mile Day Proclamation. *(Susan L.Payne, Mayor)*

Fiscal Impact:
Amount Budgeted:
Fund:

Additional Fiscal Impact:

Recommendation:

Background:

AGENDA REPORT
CITY OF ALAMOGORDO
CITY COMMISSION

Meeting Date: 11/1/2022 **Report Date:** **Report No:** 2.

Submitted By:

Subject: Consider, and act upon, the adoption and final publication of Ordinance 1659, amending Chapter 2 of the Alamogordo Code of Ordinances, by adding 02-050 "City Commission Use of Social Media". *(Brian Cesar, City Manager)* **(Roll Call Vote Required)**

Fiscal Impact:
Amount Budgeted:
Fund:

Additional Fiscal Impact: Minimize risk for Litigation.

Recommendation: Adopt the ordinance.

Background:

On October 11, 2022, the Commission approved the ordinance for first publication with a vote of 6-0.

ORDINANCE NO. 1659

ALAMOGORDO CODE OF ORDINANCES GOVERNING ELECTED AND APPOINTED OFFICIALS USE OF SOCIAL MEDIA

WHEREAS, the City Commission of the City of Alamogordo, New Mexico recognizes social media as a form of notification to the citizens concerning information, alerts, and city business.

WHEREAS, the City Commission of the City of Alamogordo, New Mexico, has an important interest in assuring the accuracy and consistency of information provided to the citizens

WHEREAS the City Commission of the City of Alamogordo, New Mexico, believe that honest, civil, and productive discussions provide the best environment for citizens to understand the work of their government.

BE IT THEREFORE ORDAINED by the City Commission of the City of Alamogordo, New Mexico, that Chapter 2 of the *code of ordinances* is amended to include the following

2-02-050 City Commission Use of Social Media

1. These terms and conditions apply to all our current and future official City of Alamogordo social media sites.
2. Elected or appointed officials shall request to publish or post information under the City's official social media platforms.
3. Elected or appointed officials should know that social media posts, comments, and replies to those posts and any direct or private messages sent to us may be public records subject to applicable public records release.
4. The City of Alamogordo's social media accounts are not monitored 24/7. Automatic replies will be set up, asking citizens to use official communications, such as city email or phone, to contact city staff or report a complaint.
5. Elected or appointed officials are prohibited from conducting city business on their private pages.

Violation of this ordinance is subject to steps outlined in *"The City f Alamogordo Code of Conduct for Elected and Appointed Officials.*

PASSED, APPROVED AND ADOPTED 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:

____
Ashley Smith, City Attorney

AGENDA REPORT
CITY OF ALAMOGORDO
CITY COMMISSION

Meeting Date: 11/1/2022 **Report Date:** **Report No:** 3.

Submitted By: Rachel Hughs

Subject: Consider, and act upon, the adoption and final publication of Ordinance 1661, amending Chapter 17 of the Alamogordo Code of Ordinances concerning Licenses and Miscellaneous Business Regulations. *(Rachel Hughs, City Clerk)* **(Roll Call Vote Required)**

Fiscal Impact:
Amount Budgeted:
Fund:

Additional Fiscal Impact:

Recommendation: Adopt the ordinance.

Background: On October 11, 2022, the Commission approved the ordinance for first publication with a vote of 6-0.

<u>Correction to the proposed ordinance.</u>
Under section 17-01A-040 Revocation of License, staff forgot to strike out the 10 days notice of hearing. This will be by an appeal to the city manager.

<u>Changes</u>

- streamline the application process
- timeframe of receiving a business registration or license
- adding per month late fee and inactivation of business after 3 months of non renewal
- the appeal of denial shall go to the city manager
- moving some licenses to registrations
- removing some licenses
- removing some requirements for food vendors
- removing garage and yard sales, it will be added to a different chapter
- removing peddlers and solicitors, licenses are no longer issued, so it will be added to the traffic ordinance
- most registrations and licenses will be on a 12-month renewal and not a calendar year renewal

ORDINANCE NO. 1661

AN ORDINANCE AMENDING CHAPTER 17 OF THE ALAMOGORDO CODE OF ORDINANCES CONCERNING LICENSES AND MISCELLANEOUS BUSINESS REGULATIONS

WHEREAS, the City Commission of the City of Alamogordo, New Mexico, acknowledges that businesses and occupations provide valuable services to the citizens of Alamogordo; and,

WHEREAS, the City Commission of the City of Alamogordo, New Mexico, acknowledges that streamlining the current process would be favorable when requesting business registrations and licenses; and,

WHEREAS, the City Commission of the City of Alamogordo, New Mexico, recognizes some licenses would be better suited under business registrations; and,

WHEREAS, the City Commission of the City of Alamogordo, New Mexico, considers it necessary to amend sections of Chapter 17 of the Code of Ordinances.

NOW, THEREFORE, BE IT ORDAINED by the City Commission of the City of Alamogordo, New Mexico, that Chapter 17 of the Code of Ordinances be amended to read as follows:

CHAPTER 17 ~~LICENSES AND MISCELLANEOUS~~ BUSINESS REGULATIONS AND LICENSES

ARTICLE 17-01. GENERAL PROVISIONS AND BUSINESS REGISTRATION

17-01-010. Applicability.

The provisions of this article shall apply to all persons doing business in the city, except persons paying license fees under other articles of this chapter or other chapters of this Code ~~and artists who made less than one thousand dollars during the previous calendar year need not pay the registration fee required by section 17-01-030~~.

17-01-020. Definitions.

Unless the context clearly indicates that a different meaning is intended, the words and phrases used in this chapter shall have the following meanings:

~~*Amusement hall:* Any arcade, building or premises having as its primary business the providing of mechanical or electronic amusement devices, including but not limited to the following: Pinball machines, electronic or video games of skill or chance, claw or scoop machines, jukeboxes or coin-operated table games.~~
Business: Any profession, trade or occupation and all and every kind of calling, whether or not carried on for profit, except those organizations exempt from the federal income tax pursuant to Section 501(c)(3) of the United States Internal Revenue Code, as amended or renumbered; provided, however, "business" shall include an "unrelated trade or business" of such organizations as the latter terms are defined in Section 513 of the United States Internal Revenue Code of 1954, as amended or renumbered.

Conduct, carry on: To engage in, carry on, own, maintain, manage, or operate any business, trade, art, profession, calling, employment, occupation or any commercial, industrial, or professional pursuit, vocation, or enterprise in this city.

~~*Outdoor displays and sales:* The display or sale of goods or merchandise not in or from an enclosed permanent building. This term shall not apply to:~~

~~(1) Special sales, not more than two (2) days in duration, conducted by a merchant from or adjacent to the building which is its normal place of business; or~~

~~(2) Sales at fairs, fiestas, art shows and similar events sponsored by civic or charitable organizations.~~

~~These sales shall nevertheless be subject to registration, as provided in section 17-01-030.~~

Place of business: Any location within the Alamogordo city limits, building or portion thereof, or premises in which or from which a business is carried on. ~~The term includes, but is not limited to, an office, warehouse, yard, location where books and records are kept, or the location from which business is solicited~~.

17-025. Required.

All business registrations and business licenses with the City of Alamogordo are required to maintain any applicable Local, State, Federal, and other licensing to do business in the city.

17-01-026. Prerequisite for application.

(a) Applicant shall provide a copy the Planning and Zoning Department's approved form.
(b) Applicant shall provide a copy the Alamogordo Fire Department's approved form.

17-01-030. Business registration fee.

(a) A business registration fee is hereby charged on each place of business conducted within the municipality which is not otherwise licensed by the municipality. The business registration fee shall be thirty-five dollars ($35.00).

(b) Prior to engaging in any business, ~~a person~~ the applicant shall pay ~~to the city~~ the business registration fee, which may not be prorated for businesses conducted for a portion of the year. Prior to ~~January 31 of each year~~ the expiration date of business registration any person engaging in business within the municipality shall apply for renewal of ~~any applicable~~ the business registration~~, if the person is not otherwise subject to licensing by the municipality,~~ and shall include with ~~his~~ the application the business registration fee and ~~his~~ current New Mexico ~~revenue division~~ tax~~payer~~ identification number. ~~or evidence of application for a current revenue division taxpayer identification number.~~

17-01-035. Application process.

Upon the receipt of an application for a business registration and approval forms, the city clerk's department shall review application, and if approved, within 2 (two) business days a business registration certificate will be issued.

If, as a result of the review, it is determined that the issuance of a business registration is not in the interest of the health, safety and general welfare of the public, the applicant shall be given notice of denial. The applicant may present to the city manager reason for obtaining a registration. If the city manager determines that issuance of the registration is not in the best interest of the public health, safety, or welfare, the denial shall stand.

17-01-040. Late registration or renewal; surcharge.

If any person fails to obtain the appropriate registration or license pursuant to the terms of this chapter~~,~~ or fails to renew such registration or license before ~~January 31 of the year of renewal~~ the expiration date of business registration, a surcharge will be assessed in the amount of ten dollars ($10.00) per month for up to three months. The business will be inactivated after three months of non-compliance of renewal. This surcharge may be imposed in addition to the penalties provided in section 17-01-100. The same process as a new business registration will be followed by the applicant for any renewals with a change of business location.

17-01-050. Forms

Applications for business registration and licenses shall be made in writing to the city clerk, who shall prescribe the form required for such applications. The ~~clerk may require the~~ applicant ~~to~~ shall provide all information considered necessary to process the application and to determine that the policies of this chapter are complied with.

17-01-060. Transfer of registration or license.

No registration or license issued pursuant to this chapter shall be transferable from one business to another. Registrations and licenses issued ~~pursuant to section 17-01-030~~ shall not be transferable from one person conducting a business to a succeeding person conducting the same business~~;~~. ~~however, licenses issued pursuant to Article I-A of this chapter may be transferred to a succeeding operator of the same business, upon the payment of a ten dollar ($10.00) transfer fee.~~

17-01-070. Display of registration or license.

The city clerk shall provide a ~~suitable~~ certificate of registration or license to each place of business coming within the terms of this chapter, which shall be ~~prominently~~ conspicuously displayed at the place of business for which the registration or license is issued. A duplicate certificate of registration or license may be issued by the city clerk to replace a lost or destroyed certificate, upon the payment of a filing fee of ten dollars ($10.00).

17-01-080. Proper business location.

No license or registration shall be issued pursuant to this chapter, unless the facilities and buildings at the location of the proposed business meet all applicable building code, fire code and zoning restrictions currently in force in the city. ~~If all such codes are complied with, and if ten (10) days' notice is given to the clerk, the location of a business may be changed within the city.~~

~~17-01-090. State licenses.~~

~~No license or registration pursuant to this chapter shall be issued to any business where a license required for such business by the State of New Mexico, has not been obtained.~~

17-01-~~100~~ 90. Offenses; nuisances; procedures nonexclusive.

(a) It is unlawful for any person to engage in, conduct or carry on any business or occupation within the City of Alamogordo without first registering the same or obtaining a license therefor, and without first paying the fees in compliance with the provisions of this chapter.

(b) It is unlawful for any person to knowingly file an application for issuance or renewal of any business registration or business license, upon which any of the information required by the application has been falsified.

(c) It is unlawful for any person to engage in, conduct or carry on any business within the City of Alamogordo without obtaining any license that may be required for it by the State of New Mexico. ~~This prohibition includes, but is not limited to, engaging in the business of contracting of a type for which the owner is not licensed, even though the owner may be licensed for another type of contracting~~.

(d) Any person violating the provisions of this section shall be punished as provided in section 1-01-100 of the Alamogordo Municipal Code.

(e) No business registration or license issued pursuant to this chapter shall be construed to permit the operation of the business as a nuisance.

(f) The remedies provided in this section are nonexclusive. If a person engages in business in the city, without obtaining the required registration or license, the city may proceed in any manner authorized by law, including specifically, but not limited to, the procedures set forth in sections 3-38-5 and 3-38-6, N.M.S.A., 1978 as the same may be amended or superseded from time to time.

(g) In addition to other remedies provided in this section, the city may enforce the requirements of sections 3-38-1 through 3-38-6, N.M.S.A., 1978, as amended or superseded, by an appropriate action in a court of competent jurisdiction any time up to four (4) years after the violation.

ARTICLE 17-01A. BUSINESSES TO BE LICENSED

17-01A-010. Purpose.

The governing body of the City of Alamogordo does find and declare that the licensing and regulation of the businesses enumerated in this article and subsequent articles in this chapter is conducive to the promotion of the health, general welfare, and safety of the public.

17-01A-020. Applicability.

The provisions of this article shall apply, in addition to the businesses listed~~,~~ to the businesses required to be licensed under later articles in this chapter and elsewhere in this Code. If there is a conflict, the provisions of the later article or elsewhere in this Code shall control.

17-01A-025. Prerequisite for application.

(a) Applicant shall provide a copy the Planning and Zoning Department’s approved form.
(b) Applicant shall provide a copy the Alamogordo Fire Department’s approved form.

17-01A-030. Investigation of applicant.

~~Upon the receipt of an application for a business license, the clerk shall require an investigation of the applicant, to protect the public health, safety and welfare, and refer the application to the appropriate investigating officer. The investigating officer shall make a report on the application, favorable or unfavorable, within ten (10) days of receiving the application. If, as a result of the investigation, the city clerk determines that the issuance of a business license is not in the interest of the health, safety and general welfare of the public, the application shall be referred to the city commission for hearing and issuance or denial of a license. Before the hearing, the applicant shall be given notice and at the hearing shall have an opportunity to be heard before the city commission. The city commission may also hear any other evidence presented on the matter. If, upon hearing, a majority of the city commission present at the hearing determine that issuance of the license is not in the best interest of the public health, safety or welfare, the license may be refused.~~

Upon the receipt of an application for a business license and letters of approval, the city clerk’s department shall review application, and if approved, within 2 (two) business days a business license certificate will be issued.

If, as a result of the review, it is determined that the issuance of a business license is not in the interest of the health, safety and general welfare of the public, the applicant shall be given notice of denial. The applicant may present to the city manager reason for obtaining a license. If the city manager determines that issuance of the license is not in the best interest of the public health, safety, or welfare, the denial shall stand.

17-01A-040. Revocation of license.

The city ~~commission~~ manager or their designee may revoke a license issued pursuant to this article or a later article in this chapter, where the license holder has been adjudged guilty of a violation of this chapter, or whenever the public health, safety or welfare requires revocation. Before revocation, the city clerk shall notify the holder of the license, in writing, of the proposed revocation, specifying the nature of the charges for which revocation is sought, ~~and specifying a date for a hearing not less than ten (10) days after the issuance of the notice~~. The licensee shall have the right to ~~appear at such hearing in person or by counsel, and present evidence~~ appeal to the city manager as to why the license should not be revoked. If~~, upon hearing, a majority of~~ the city ~~commission~~ manager determines that revocation of the license is in the best interest of the public health, safety and welfare, the license shall be revoked, and an order shall be entered revoking the license and stating the reasons to the applicant. ~~for the action of the city commission~~.

17-01A-050. License fees for certain businesses.

All persons, firms, corporations, or associations engaged in any of the following pursuits, businesses and occupations shall, before commencing business, and ~~on or~~ before the ~~1st day of January of~~ expiration of the license each year thereafter, secure a license from the city clerk and pay the listed fee instead of the business registration required by article I of this chapter:

~~Amusement halls, per year$ 35.00~~

~~Boxing, sparring, wrestling or martial arts contest, per day35.00~~

~~Carnivals and circuses, per day35.00~~

~~Commercial solicitors (in addition to other license and business registration fees), per year35.00~~

~~Drive-in restaurants, per year 35.00~~

~~Outdoor concerts, exhibitions and amusements for profit, per day35.00~~

~~Outdoor displays and sales, per year35.00~~

~~Pawnbrokers, per year35.00~~

~~Public dances, per day35.00~~

Alcohol regulated by Chapter 5, per year $250

Food vendors, per year $35.00

Marijuana regulated by Chapter 34, per year $250 and $500

~~Vehicles for hire regulated by Chapter 2735.00~~

~~ARTICLE 17-02. FIREARMS DEALERS~~

~~17-02-010. Records to be kept.~~

~~Each person or firm in the city engaged in the business of purchasing, selling or lending money on secondhand or used firearms shall keep records on the transactions involving the firearms as follows:~~

~~(1) The make, caliber, description and serial number of each firearm purchased or sold or on which money is lent;~~

~~(2) The name and address of the person or firm from whom purchased, to whom sold or to whom money is lent; and~~

~~(3) The date of each transaction.~~

~~17-02-020. Exceptions to chapter.~~

~~Regularly established businesses within the city engaged in the business of selling, at retail, new firearms which have been procured at wholesale from a manufacturer or jobber shall not be subject to the provisions of this article.~~

~~17-02-030. Time of retaining records.~~

~~The records required to be kept hereunder shall be preserved and maintained for at least five (5) years from the date of each such transaction and shall be made available at any time upon request to law enforcement agencies.~~

~~17-02-040. Transactions with minors.~~

~~It shall be the responsibility of each person or firm who buys, sells or loans money on secondhand or used firearms to ascertain whether or not the person with whom the transaction is consummated is a minor under the age of twenty-one (21) years and to report to the director of public safety of the city any transaction with such minor.~~

~~ARTICLE 17-03. LODGING VENDORS~~

~~17-03-010. License—Required.~~

~~No vendor shall engage in the business of providing lodging in the city who has not first obtained a license as provided in this article.~~

~~17-03-020. Same—Application.~~

~~Applicants for a vendor's license required by section 17-03-010 shall submit an application to the city manager stating:~~

~~(1) The name of the vendor including identification of any person, as defined in this chapter, who owns or operates or both owns and operates a place of lodging and the name or trade names under which the vendor proposes to do business and the post office address thereof.~~

~~(2) A description of the facilities, including the number of rooms and the usual schedule of rates therefor.~~

~~(3) A description of other facilities provided by the vendor or others to users of the lodgings such as restaurant, bar, cleaning, laundry, courtesy car, stenographic, tailor or others, and a statement identifying the license issued, to whom issued, the authority issuing, and the period for which issued, if applicable, and the identification number provided by the bureau of revenue of the state.~~

~~(4) The nature of the business practices of the vendor and to what extent, if any, his business is exempt from the lodgers' tax.~~

~~(5) Other information reasonably necessary to effect a determination of eligibility for such license.~~

~~17-03-030. Same—Review of application; issuance.~~

~~The city manager shall review applications for a license required by section 17-03-010 within ten (10) days of receipt thereof and grant the license in due course if he finds the applicant is doing business subject to the lodgers' tax.~~

~~17-03-040. Same—Denial of application; notice.~~

~~(a) If the city manager finds that the applicant for a license required by section 17-03-010 is not qualified to do business subject to the lodgers' tax, he shall not more than ten (10) days after receipt of the application, advise the applicant of his decision and give the reasons therefor. The notice of such action shall be given by registered mail, postage prepaid, addressed to the applicant at the address given on the application, deposited in the post office at Alamogordo on the date thereof.~~

~~(b) If the city manager finds the applicant not exempt under the terms of the lodgers' tax ordinance he shall not more than ten (10) days after receipt of the application advise the applicant of his decision and give the reasons therefor.~~

~~17-03-050. Same—Appeal from denial.~~

~~An applicant who is dissatisfied with the decision of the city manager on his application for a license required by section 17-03-010 may appeal the decision to the city commission by written notice to the city manager of such appeal to be made within fifteen (15) days of the date of the decision of the city manager on the application. The matter shall be referred to the city commission for hearing at a regular or special meeting in the usual course of business. The decision of the city commission made thereof shall be expressed in writing and be communicated in the same manner as the decision of the city manager is transmitted. The action of the city commission shall be final.~~

~~17-03-060. Same—Action after appeal.~~

~~If the city commission finds for the applicant upon an appeal as provided for in section 17-03-050, the city manager shall issue the appropriate license or other notice conforming to the decision made by the commission.~~

~~ARTICLE 17-04. PUBLIC AUCTIONS~~

~~**17-04-010. Definitions.**~~

~~When used in this article, the following terms and words shall have the meaning and effect as follows:~~

~~*Auctioneer* shall mean any person conducting a sale by public auction of personal property or real property of his own or as agent for another.~~

~~*Property* includes all goods, wares, merchandise, commodities, compounds, things, chattels, jewelry, and all other property of whatsoever form or nature, exceeding an aggregate retail value of one thousand dollars ($1,000.00) but does not include choices in action or real property.~~

~~*Public auction* includes any public offer to sell personal property or real property to the highest bidder or to the person offering to pay the highest prices therefor, and shall be without qualifications or reservations, unless at the time of the offer of each article or parcel and before any bids are asked thereon a minimum price therefore be publicly stated. The term shall not include judicial sales, sales on account of executors or administrators, sales by trustees under deed of assignment or lienors, sales by public officers, and sales by bona fide religious or charitable organizations conducting auctions on premises regularly occupied or used by those organizations for their activities.~~

~~*Real Property* shall mean the land, together with the improvements thereon and attached thereto.~~

~~17-04-020. Auctioneer's license—Required.~~

~~The sale of any personal or real property at public auction shall be unlawful unless such sale is directly conducted by an auctioneer licensed pursuant to the provisions of this article. It shall be unlawful for any license to be granted to any minor or to any person not of good reputation and moral character. Licensing of auctions of jewelry shall be pursuant to section 61-16-3 et seq., N.M.S.A., 1978.~~

~~17-04-030. Same—Application.~~

~~Every applicant for an auctioneer's license pursuant to this article shall present to the clerk a written application signed and duly verified by him, which application shall state the following:~~

~~(1) His full name, age, residence by street, number and place, present occupation;~~

~~(2) That he is a citizen of the United States and a resident of the state or a foreign corporation authorized to do business in the state;~~

~~(3) Place where he intends to conduct the business of auctioneer in the city;~~

~~(4) A summary of his qualifications;~~

~~(5) Where and when he was previously licensed as auctioneer; and~~

~~(6) Whether any previous license as auctioneer was cancelled for cause.~~

~~17-04-040. Same—Bond.~~

~~The applicant shall present to the clerk, with his application, a bond issued by a duly authorized surety company, in a penal sum of five thousand dollars ($5,000.00), conditioned on the faithful observance of the laws of New Mexico and ordinances of the city, for the performance of all duties, the renditions of all accounts and the payment of all monies required by law to be paid, and for the payment to the city for and on behalf of any person who is defrauded or suffers loss by reason of the auctioneer's violation of any state law or city ordinance. The bond must be approved as to form and compliance with this chapter by the city attorney.~~

~~17-04-050. Same—Clerk's records.~~

~~The clerk shall preserve each application for an auctioneer's license as a public record of his office and shall make a notation of each application in a book to be kept for that purpose, properly indexed, showing the name of the applicant, the effective date and the duration and number of any license issued on such application.~~

~~17-04-060. Same—Fee; issuance; term.~~

~~Auctioneers shall pay a business license fee in an amount equal to that levied in Section 17-01-030 as it may be amended.~~

~~17-04-070. Prohibited acts.~~

~~The following acts, omissions and practices in connection with the sales of goods, wares and merchandise at auction are hereby prohibited:~~

~~(1) The use of deceit, fraud or misrepresentation in the sale or offering for sale of any article or articles.~~

~~(2) The substitution of any article in the place of an article bid upon at auction.~~

~~(3) The bidding in or withdrawal from sale of any article after receiving a second bid therefor, or receiving any bid from a person not a bona fide bidder at such sale, or any person acting as a "capper," "booster" or "shiller."~~

~~(4) The use of bells, buzzers, ballyhoo or any variety of mechanical or excessive vocal sound to attract attention in connection with sales at auction.~~

~~(5) The conduct of a sale where entertainment is provided on the premises where the sale is conducted for the prospective bidders.~~

~~(6)The substitution of an unlicensed person in place of a licensed auctioneer~~

~~(7) The use of any false or misleading advertising matter, whether relating to the kind or quality of the goods or to other past history, present status or otherwise.~~

~~(8) The failure to exhibit an auctioneer's license to conduct such sale to any police officer upon demand at the place where an auction is being conducted.~~

~~(9) The receipt for sale by auction or the sale by auction by any licensed auctioneer of any goods, wares or merchandise from any minor, knowing him to be such.~~

~~(10) The opening of any public auction sale until all the provisions of this article have been complied with or the conduct of any such sale in a manner contrary to any of the provisions of this article.~~

~~ARTICLE 17-05. PAWNBROKERS AND SECONDHAND DEALERS~~

~~17-05-010. Short title.~~

~~This article shall be known as and may be cited as the "Pawnbrokers and Secondhand Dealers Ordinance."~~

~~17-05-020. Purpose.~~

~~The purpose of this article is to regulate those businesses which primarily purchase or receive through pawn transaction merchandise from the general public for the purpose of resale.~~

~~17-05-030. Definitions~~

~~For the purpose of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning.~~

~~*Firearm* as defined in 18 United States Code Section 921.~~

~~*Item,* in addition to meaning an individual item, shall include a coherent unit, such as a tool set with a tool box, for purposes of the reporting requirements of this article, provided that the contents of such units are reasonably described therein.~~

~~*Pawnbroker* shall mean a person who:~~

~~(1) Engages in the business of lending money on the deposit or pledge of personal property;~~

~~(2) Purchases personal property with the expressed or implied agreement or understanding to sell it back at a stipulated price; or~~

~~(3) Engages in the business of purchasing items of gold, silver, platinum or other precious metal or gems and reselling the product.~~

~~*Secondhand dealer* shall mean a person engaged in the business of purchasing, trading, bartering or exchanging secondhand goods.~~

~~*Secondhand goods* shall mean any item of personal property which is not purchased or sold as new. Secondhand goods do not include property purchased by one (1) license holder in the normal course of business from another license holder. Secondhand goods include, but are not limited to the following items:~~

~~(1) Jewelry of any kind and of any metal;~~

~~(2) Gold, silver, and/or other precious metals in whatever form except coins or bullion;~~

~~(3) Any precious stone;~~

~~(4) Consumer electronics intended for everyday use, most often in the entertainment, communications and office productivity area to include personal computers, telephones, MP3 players, audio equipment, televisions, calculators, GPS automotive electronics, digital cameras and recorders using video media such as DVDs, VCRs or camcorders, and;~~

~~(5) Hand tools, power tools and gardening tools.~~

~~*License holder* shall mean a person to whom a license has been issued pursuant to this article including such person's agents and employees.~~

~~*Person* shall mean any individual, partnership, corporation, firm or association.~~

~~17-05-040. Licenses required; revocation; provisions; penalty.~~

~~The business license requirements, revocations, provisions and penalties shall be as set forth in Chapter 17, Article 01, General Provisions and Business Registration and Chapter 17, Article 01A, Businesses to be Licensed.~~

~~17-05-050. Applicability of other laws.~~

~~The license provided for in this article does not constitute a waiver of any requirement or provision contained in any other city ordinance or state or federal law.~~

~~17-05-060. Bond required.~~

~~No person shall engage in the business of being a pawnbroker without having executed and delivered a bond to the city, in the sum of ten thousand dollars ($10,000.00), with a corporate surety qualified to do business in the state. The bond shall be in a form approved by the city attorney's office and shall be conditioned upon the conduct of such pawnbroker's business according to the provisions of this article, and other city ordinances and state and federal law. Such bond shall be for the benefit of each and every person damaged by a breach of any condition set forth in the bond. Every pawnbroker shall provide the city attorney's office with thirty (30) days written notice of cancellation of bond.~~

~~17-05-070. Reporting requirements; violation.~~

~~(a) Every pawnbroker/secondhand dealer shall each day accurately complete a report of all used property of every kind received or purchased during the preceding business day on a form approved by the police department. A photo identification card shall be required of each person pawning or selling merchandise to a pawnbroker or secondhand dealer. Each item received shall be listed on a separate report form. The report shall include the following:~~

~~(1) Name of item.~~

~~(2) Descriptions and photographs of item including make, model number and serial number, if any.~~

~~(3) Date, time and type of transaction.~~

~~(4) Name and address of person offering form.~~

~~(5) Description of the person offering the item including sex, complexion, hair color, approximate height and weight, and date of birth.~~

~~(6) Type of identification used by person offering item and identifying number of the identification. If the person presents a driver's license, the report shall also indicate the state of issuance.~~

~~(b) All reports required by this article shall be completed accurately and be made available by 12:00 noon of the day following the day that the property was received or purchased and said reports shall be made available for pickup by the police department within three (3) days of the receipt or purchase of the property.~~

~~(c) Used personal property purchased directly from another license holder regulated by this article who has already reported the item pursuant to this section is exempt from the requirements of this section.~~

~~(d) Persistent or frequent erroneous or incomplete entries in or delays in submitting the above required reports shall constitute a violation of this section.~~

~~(e) All persons required to file reports as provided for in this article shall maintain a copy of each report for at least six (6) months from the date the reported transaction occurred.~~

~~(f) All required reports shall be submitted daily by the license holder to LeadsOnline, an online investigative system that links law enforcement agencies and businesses through web based electronic reporting.~~

~~17-05-080. Inspection.~~

~~The reports of the license holder required by this article shall be available for inspection by the chief of police or any sworn member of the police department at all reasonable time.~~

~~17-05-090. Disposition of pawned property and secondhand goods.~~

~~(a) Pawned property shall not be sold or disposed of, except by redemption, by a pawnbroker within one hundred twenty (120) days from the date said personal property was pawned with the pawnbroker or within ninety (90) days after the indebtedness becomes due, whichever is later.~~

~~(b) Secondhand goods shall not be sold or disposed of by a secondhand dealer within fifteen (15) days from the date said item was received by the license holder.~~

~~17-05-100. Used merchandise tags.~~

~~Each item pawned or purchased or received by the license holder for which a report is required shall have attached thereto a tag with an alphabetic and/or numeric identification system matching the item with a corresponding report and record.~~

~~17-05-110. Purchase and receipt limitations.~~

~~No license holder shall purchase or receive any item from the following;~~

~~(1) Any person under the age of eighteen (18); or~~

~~(2) Any person under the apparent influence of intoxicating liquor or drugs.~~

~~17-05-120. Exclusions.~~

~~This article does not apply to persons who are exclusively involved in the following businesses or transactions:~~

~~(1) Junk dealer who deals in old metal, glass, paper, cordage, rags, rubber or other waste which may be treated so as to be used again in some form; vehicles or machines which are worn out and intended for scrapping; or any item considered to be junk for the purpose of trade. Junk does not include secondhand items or parts of secondhand items which are still usable for the purpose for which they were originally intended and are sold with a view to such further original use;~~

~~(2) Used motor vehicle dealers;~~

~~(3) Antique dealers who deal in paintings, furniture, china or other item painted or made more than fifty (50) years ago and which are valuable primarily by reason of age, scarcity or the skill and craftsmanship of the artists or artisans. Antiques shall not include family heirlooms made of gold and silver or other precious metals;~~

~~(4) Coin and bullion collectors and dealers. This exclusion does not exempt such collectors or dealers from compliance with the regulations as herein provided in relation to any gold, silver, platinum or other precious metal or jewelry which they may purchase, trade, barter or exchange in addition to the coin and bullion operations;~~

~~(5) Individuals who sell and purchase items at neighborhood garage sales and who are not in the business of reselling these items;~~

~~(6) Nonprofit or charitable secondhand goods or thrift shops;~~

~~(7) Licensed gun dealers. This exclusion does not exempt such dealers from compliance with the regulations as herein provided in relation to any gold, silver, platinum, or other precious metal or jewelry which they may purchase, sell, trade, barter or exchange in addition to their gun business;~~

~~(8) Consignment stores where a consignor transfers possession of personal property but not ownership to a consignor for sale with the understanding that the consignee pays the consignor a portion of the sale proceeds.~~

~~17-05-130. Unlawful transactions.~~

~~No license holder shall purchase or receive any item:~~

~~(1) From which the manufacturer's name plate, serial number or distinguishing number or identification mark has been obviously defaced, altered, covered or destroyed; or~~

~~(2) Which the license holder knows or should have known is not lawfully owned by the person offering the same.~~

~~ARTICLE 17-06. GARAGE AND YARD SALES~~

~~17.06.010. [In general.]~~

~~(a) *Applicability of chapter.* Garage and yard sales, as defined below, need not be licensed or registered under the provisions of this chapter, but shall be subject to the enforcement provisions of section 17-01-100.~~

~~(b) *Definition; conduct of sales.* Garage or yard sales are sales in which personal property and or used merchandise is offered for sale, which are conducted on residential premises by one (1) or more members of the family or families who live there, and to which the public is invited. Garage and yard sales are permitted within the city provided that:~~

~~(1) Garage and yard sales shall only be held between the hours of 8:00 a.m. and 8:00 p.m. and shall not exceed three (3) consecutive days' duration. No more than three (3) sales shall be held at a given residence in any twelve-month period. No more than two (2) garage or yard sales shall be conducted at the same location within ninety (90) days of another such sale at such location by the same person(s).~~

~~(2) Garage and yard sales are intended for the sale of items normally accumulated by a household. No items shall be sold at a garage or yard sale which were specifically purchased for the purpose of resale.~~

~~(3) Signs may be erected no earlier than 6:00 a.m. on the first day of the sale and shall be removed by 9:00 p.m. on the last day upon which the sale is held. Signs may not be placed in the city's right-of-way or attached to utility poles as provided in sections 3-01-15 and 11-06-200 of these ordinances.~~

~~(4) No garage or yard sale shall be conducted in such a manner as to create a nuisance or hazard.~~

~~(c) *Exemptions.* These provisions shall not apply to or affect the following:~~

~~(1) Persons acting pursuant to an order or process of a court of competent jurisdiction.~~

~~(2) Persons acting in accordance with their powers and duties as public officials.~~

~~ARTICLE 17-07. SECURITY AGENCIES~~

~~17-07-010. Definitions.~~

~~For the purpose of this article the following words and terms shall have the meaning ascribed to them by this section.~~

~~*Private detective.* A private detective is hereby defined to be a person, not in uniform, who, within the city, engages in the detective business for hire, and does not employ or use any employees, assistants, clerks, bookkeepers or operatives.~~

~~*Private detective agency.* Any person engaged in the detective business, for hire, who employs one or more persons, not in uniform, as his employees, assistants, clerks, bookkeepers or operatives in his business.~~

~~*Special police agency.* A special police agency is hereby defined to be any person who, within the city, engages in police service for hire and who employs one or more persons, in uniform, to give such police service.~~

~~*Special policeman.* Any person in uniform who, for hire or reward, shall guard or protect any building, premises, person or property within the city; provided, however, this shall not apply to the regular appointed police officers of the city or any sheriff or deputy sheriff of the county, state or federal officers. A special policeman, as used herein, shall include all private guards, private patrols, patrol system and services.~~

~~17-07-020. License—Required.~~

~~It shall be unlawful for any person to engage in the business of or to represent himself to be a special policeman, private detective or to conduct or operate a special police agency or private detective agency within the city without first procuring and maintaining in full force and effect a license to do so as provided for in this article.~~

~~17-07-030. Same—Application; issuance or denial; appeal from denial; qualifications of applicant; examination; examination fee.~~

~~(a) Any person desiring a license required by section 17-07-020 shall make application to the director of public safety of the city for a license to perform the duties of a special policeman or private detective or to operate a special police agency or private detective agency, either as an employee or as an owner and/or operator.~~

~~(b) The director shall accept applications and recommend issuance or rejection of such license within thirty (30) days to the city manager. If application for such license is rejected by the city manager, applicant may appeal to the city commission.~~

~~(c)Such applicant shall possess the following qualifications: He shall be an American citizen, twenty-one (21) or more years of age and be of good moral character. No person having been convicted of a felony or any offense involving moral turpitude, or dismissed for cause involving reprehensible conduct as a police officer by any law enforcement agency, within the past ten (10) years, shall be appointed as such special policeman or private detective, nor shall he be permitted to operate a special police agency or private detective agency.~~

~~(d) Such applicant shall present himself to the director for examination as to his qualifications and shall well and truthfully answer all questions contained in such application, including his name and address and, in the case of a firm or corporation, the name and address of the president and secretary thereof, in the case of a partnership, the name and address of all the members thereof together with the trade name under which they intend to operate. The examination fee shall be three dollars ($3.00) and no part of such fee shall be refunded because of the failure of the applicant to qualify for a license. The director shall keep a record of all fees so received and shall pay the same to the city and be credited to the general fund of the city; provided, however, that, no fee shall be charged when the application for the appointment is made by the director of any city department of the city for service to be rendered the city.~~

~~17-07-040. Same—Fees.~~

~~(a) The annual license fee for special policemen, special police agencies, private detectives or private detective agencies, shall be in accordance with the following schedule and all such licenses shall expire on December thirty-first following the date of issue:~~

~~(1) Special policeman, twenty-five dollars ($25.00) per annum.~~

~~(2) Private detective, twenty-five dollars ($25.00) per annum.~~

~~(3) Private detective agency, one hundred dollars ($100.00) per annum.~~

~~(4) Special police agency, one hundred dollars ($100.00) per annum.~~

~~(b) All fees shall be payable unto the city and credited to the general fund.~~

~~17-07-050. Same—Exemptions.~~

~~No license required by section 17-07-020 shall be required of any person while protecting persons, passengers or property being transported in interstate or intrastate common carriers; provided, however, that, special policemen or private detectives whose employment is limited to only one corporation, company or person for the exclusive protection of its or their own property or product and whose activities are strictly confined to its or their own property, shall be exempt from payment of the license fee, but shall be subject to all other provisions of this article.~~

~~17-07-060. Same—Transferability.~~

~~No license required by section 17-07-020 shall be transferable.~~

~~17-07-070. Same—State license prerequisite to issuance.~~

~~Before the license required by section 17-07-020 is issued, the applicant shall furnish the director of public safety with satisfactory evidence that the applicant has been duly licensed under the private investigators act of the state to the extent required by such act to conduct the services authorized by this license. The applicant shall furnish to the director a duplicate copy of all licenses he has from the state under such act. Suspension or revocation of the state license required herein shall automatically suspend the license of the applicant under this article until such suspension or revocation has been removed by the state.~~

~~17-07-080. Same—Revocation; grounds for.~~

~~The city commission, upon recommendation of the director of public safety, or upon its own motion, shall have the right and authority, to revoke, for cause, any license issued under the provisions of this article, after notice and opportunity to be heard before the city commission. Just cause shall include, but not be limited to the following:~~

~~(1) If such licensee has wilfully violated any of the provisions of this article.~~

~~(2) If any employee of such licensee shall have violated any of the provisions of this article with the permission or instructions of such licensee to do so.~~

~~(3) Conviction of any felony or any offense involving moral turpitude. (Excepting minor traffic violations.)~~

~~(4) Violation of the rules and regulations of the police department of the city so far as the same may be applicable.~~

~~17-07-090. Reports to be filed with director of public safety.~~

~~(a) It is required that every special police agency or private detective agency shall submit a semiannual report not later than January seventh and July seventh of each year to the police department as to the identity of all employees hired and/or discharged during the preceding six-month period.~~

~~(b) Any property found or recovered by any special policeman or private detective shall be reported to the director of public safety as soon as practicable under the circumstances.~~

~~(c) Failure to comply with the submission of any information as provided for herein shall be deemed a violation of this Code and considered as just cause to revoke the license of such person or agency.~~

~~17-07-100. Powers and duties of licensees.~~

~~The powers and duties of all persons licensed under the provisions of this article shall consist of:~~

~~(1) Obeying the orders of the director of public safety insofar as the duties and responsibilities of a special policeman or private detective are concerned.~~

~~(2) Being permitted to carry arms only when on duty and in compliance with the requirements established by the director.~~

~~(3) Obeying and complying with all the rules and regulations of the police department of the city so far as same may be applicable.~~

~~(4) A special policeman when on patrol or guard duty must wear proper uniform. Such uniforms shall all be identical and shall be of a different color than those worn by the police department; provided, however, plant guards and those employees who are engaged in the protection of any employer's own property or products may wear a uniform of their own choice, color or design. Badges must be different than those of city, county or state police officers.~~

~~(5) Any special policeman or private detective having knowledge of a felony shall immediately notify the police department and the county sheriff's office and stand by until regular police officers arrive. At no time shall he conduct any investigation before calling the police department. During an investigation of any crime, the police department reserves the right to stop a special policeman or private detective, whether local or foreign, from interfering in any way with the police department.~~

~~ARTICLE 17-08. PEDDLERS AND SOLICITORS~~

~~17-08-010. Definitions.~~

~~For the purposes of this article, the terms used herein are defined as follows:~~

~~*Aggressive manner* means and includes:~~

~~(1) Intentionally or recklessly making any physical contact with or touching another person in the course of the solicitation without the person's consent;~~

~~(2) Following the person being solicited, if that conduct is:~~

~~a. Intended to or is likely to cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon property in the person's possession; or~~

~~b. Is intended to or is reasonably likely to intimidate the person being solicited into responding affirmatively to the solicitation;~~

~~(3) Continuing to solicit within five (5) feet of the person being solicited after the person has made a negative response, if continuing the solicitation is:~~

~~a. Intended to or is likely to cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon property in the person's possession; or~~

~~b. Is intended to or is reasonably likely to intimidate the person being solicited into responding affirmatively to the solicitation;~~

~~It is prima facie evidence of an intention to cause a reasonable person fear of imminent bodily harm, if the person continues to solicit from a person who has asked him/her to stop.~~

~~(4) Intentionally or recklessly blocking the safe or free passage of the person being solicited or requiring the person, or the driver of a vehicle to take evasive action to avoid physical contact with the person making the solicitation. Acts authorized as an exercise of one's constitutional right to picket or legally protest, and acts authorized by a business registration issued pursuant to chapter 17 of this Code, shall not constitute obstruction of pedestrian or vehicular traffic;~~

~~(5) Intentionally using obscene or abusive language or gestures:~~

~~a. Intended to or likely to cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon property in the person's possession; or~~
~~b. Words intended to or reasonably likely to intimidate the person into responding affirmatively to the solicitation; or~~

~~(6) Approaching the person being solicited in a manner that:~~

~~a. Is intended to or is likely to cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon property in the person's possession; or~~
~~b. Intended to or is reasonably likely to intimidate the person being solicited into responding affirmatively to the solicitation.~~

~~*Automated teller machine* means a device, linked to a financial institution's account records, which is able to carry out transactions, including, but not limited to: account transfers, deposits, cash withdrawals, balance inquiries, and mortgage and loan payments.~~

~~*Automated teller machine facility* means the area comprising one (1) or more automatic teller machines, and any adjacent space which is made available to banking customers after regular banking hours~~

~~*Bank* means any banking corporation as defined under the laws of the state.~~

~~*Check cashing business* means any business which represents itself to the public as engaged in the business of cashing checks, drafts or money orders for consideration~~

~~*Peddler* means any person who goes from house to house, place to place, or from street to street carrying, conveying, or transporting foods, wares, or merchandise, meats, fish, vegetables, fruits, garden truck, farm products, or provisions, offering or exposing such for sale or making sales and delivering articles to purchasers. The term "peddler" shall include the terms "hawker, huckster, transient merchant and itinerant vendor." Peddler shall not include any persons exempt from licensing under Section 7-23-1, NMSA 1978.~~

~~*Public area* means an area to which the public or a substantial group of persons has access, and includes, but is not limited to, alleys, bridges, buildings, driveways, parking lots, parks, playgrounds, plazas, sidewalks, and streets open to the general public, and the doorways and entrances to buildings and dwellings, and the grounds enclosing them.~~

~~*Solicit* means to request an immediate payment, donation of money or other thing of value, including an order or promise of future payment, from another person, regardless of the solicitor's purpose or intended use of the money or other thing of value. The solicitation may be, without limitation, by the spoken, written, or printed word, or by other means of communication.~~

~~*Solicitation activities* shall mean the practices of solicitors as listed in (1) and (2) under the definition of "solicitor" as well as the practice of peddling.~~

~~*Solicitor* shall mean any person, including an employee or agent of another, traveling either by foot, automobile, truck or other type of conveyance, who engages in the practice of going door-to-door, house-to-house or along any streets within the city:~~

~~(1) Selling or taking orders for or offering to sell or take orders for goods, merchandise, wares or other items of value for future delivery or for services to be performed in the future for commercial purposes; or~~

~~(2) Requesting contribution of funds, property or anything of value or of the pledge of any type of future donation or selling or offering for sale any type of property, including but not limited to goods, tickets, books and pamphlets, for political, charitable, religious or other noncommercial purposes.~~

~~17-08-072. Solicitation on or near street or highway.~~

~~(a) The purpose of this section is to prevent dangers to persons and property, to prevent traffic delays, and to avoid interference with traffic flow. Roadways that have center medians often are designed to handle specific traffic flow problems. Any delay or distraction may interfere with traffic planning. Sometimes persons stand near intersections and near traffic lights to contact drivers or passengers in cars that are passing or that are stopped temporarily due to traffic lights.~~

~~(b) It shall be unlawful for any person to solicit employment, business, contributions, or sales of any kind, or collect monies for the same, from the occupant of any vehicle traveling upon any street or highway when the solicitation or collection:~~

~~(1) Causes the person performing the activity to enter onto the traveled portion of a street or highway.~~

~~(2) Involves the person performing the activity to be located upon any median area which separates traffic lanes for vehicular travel in opposite directions.~~

~~(3) The person performing the activity is located such that vehicles cannot move into a legal parking area to safely conduct the transaction.~~

~~(c) For purposes of this section, the traveled portion of the street or highway shall mean that portion of the road normally used by moving motor vehicle traffic.~~

~~17-08-110. Penalties.~~

~~Any person who violates any provision of this article shall be subject to the penalty provisions contained in section 1-01-100 through 1-01-120, inclusive, of this code.~~

~~ARTICLE 17-09. CONTROLS AND REGULATIONS FOR ALARM USERS~~

~~17-09-010. Short title.~~

~~This ordinance shall be known and may be cited as the "Alamogordo Alarm System Ordinance."~~

~~17-09-020. Purpose.~~

~~The purpose of this ordinance is to provide minimum standards and regulations applicable to fire, burglar and holdup alarm systems, alarm businesses, alarm agents, and alarm users as defined in this ordinance.~~

~~17-09-030. Definitions.~~

~~(a) The term "alarm system business" means the business of any individual, partnership, corporation, or other entity engaged in selling, leasing, maintaining, servicing, repairing, alerting, replacing, monitoring, installing any alarm system, or in causing any alarm system to be sold, leased, maintained, serviced, repaired, altered, replaced, monitored or installed in any building, structure, or facility.~~

~~(b) The term "alarm system" means any mechanical or electrical device which is designed primarily for the detection of a fire or an unauthorized entry into a building, structure, facility, or of the commission of a robbery within a building, structure, or both; and which emits a sound or transmits a signal or message when actuated, which causes notification to be made to the Department of Public Safety. The representation in the ordinary course of business by a person selling or leasing a device that the device is sold or leased for the purpose of such detection shall create a presumption that the device is an alarm system. For the purposes of this definition, an "alarm system" shall not include:~~

~~1. A device installed on a motor vehicle, except for the provisions of section 17-09-070(c);~~

~~2. Devices which are not designed or used to register alarms that are audible, visible, or perceptible outside of the protected building, structure, or facility; or devices installed in buildings, structure, or facilities controlled by the Federal government, the state or any of their agencies, institutions or political subdivisions.~~

~~3. A device for alerting others of a medical emergency situation.~~

~~(c) The term "alarm user" means the person listed on the alarm registration as being responsible for the alarm system identified in the registration whether individually or as part of the alarm system monitored by an alarm system business.~~

~~(d) The term "automatic dialing device" refers to an alarm system which automatically sends over regular telephone lines, by direct connection or otherwise, a prerecorded voice message or coded signal indicating the existence of the emergency situation that the alarm system is designed to detect.~~

~~(e) The term "central station" means that part of alarm business which intercepts signals indicating the activation of an alarm device and which relays this information by live voice to the department of public safety.~~

~~(f) The term "direct line" means a telephone line leading directly from a central station to the communication center of the department of public safety that is for use only to report emergency signals on a person-to-person basis.~~

~~(g) The term "false alarm" means the activation of any alarm system which was not the result of an emergency or threat of emergency of the kind for which the alarm system was designed to give notice. False alarms shall not include alarms caused by lightning, electrical interruptions, floods or other natural disasters.~~

~~(h) The term "hearing officer" means the city manager or a person designated by the city manager to act as an impartial arbitrator at hearings related to the enforcement of this ordinance.~~

~~(i) The term "interconnect" means to connect an alarm system to a voice grade telephone line, either directly or through a mechanical device that utilizes a standard telephone, for the purpose of using the telephone line to transmit an emergency message upon the activation of the alarm system.~~

~~(j) The term "local alarm system" refers to a signaling system which when activated causes an audible and visual signaling device, or both, to be activated in or on the premises within which the system is installed.~~

~~(k) The term "person" means any individual, firm, partnership, association, corporation, company, or organization of any kind.~~

~~(l) The term "public safety director" means the current director of the department of public safety or a designated representative.~~

~~(m) The term "primary trunk line" means a telephone line leading directly into the communications center of the department of public safety that is for the purpose of handling emergency calls on a person-to-person basis, and which is identified as such by a specific number included among the emergency numbers listed in the telephone directory issued by telephone company and covering the service area within the department's jurisdiction. The "911" emergency number is a primary trunk line.~~

~~17-09-040. Alarm user registration.~~

~~(a) It shall be a violation of this ordinance for any person to operate an alarm system that has not been properly registered with the department of public safety.~~

~~(b) No person shall operate or permit the operation of an alarm system which was installed on the person's property prior to the effective date of this ordinance unless it has been properly registered with the department of public safety. Within sixty (60) days of the effective date, the alarm user or the alarm system business for alarms monitored by an alarm system business, shall register the alarm with the department of public safety pursuant to section 17-09-050.~~

~~(c) Within thirty (30) days of the installation of an alarm system after the effective date of this ordinance, the alarm user or the alarm system business for alarms monitored by an alarm system business shall register the alarm pursuant to section 17-09-050.~~

~~17-09-050. Alarm user registration application.~~

~~(a) Application for the registration of an alarm system that will not be monitored by an alarm system business shall be made by the alarm user. Such application shall be in writing to the director of public safety on a form designated by the city for that purpose. On such application the applicant shall set forth:~~

~~1. The name, address, and telephone number of the alarm user.~~

~~2. The street address of the premises on which the alarm system is to be installed and operated.~~

~~3. Any business name used for the premises on which the alarm system is to be installed and operated.~~

~~4. The type of alarm system or systems and the purpose for which they are designed.~~

~~5. The names and telephone numbers of two (2) persons who are able and who, if contacted, at any time will come to the alarm site within forty-five (45) minutes after receiving a request from a member of the department of public safety to do so and grant access to the alarm site and to deactivate the alarm system if such becomes necessary.~~

~~(b) The director of public safety shall register the alarm in the name of the alarm user upon submission of an application therefore in accordance with this section, unless any statement made in the application was incomplete or false.~~

~~(c) Whenever the name or telephone number of the alarm user or any other information in subsection (a) changes, the alarm user shall file an amendment to the permit application within thirty (30) days of such change.~~

~~(d) Registration of alarms that are monitored by an alarm system business shall be the responsibility of the alarm system business. The alarm system business shall provide the director of public safety with the same information required in subsection (a) for all alarms monitored in the city. It shall be the responsibility of the alarm system business to keep this information updated on at least a thirty-day basis. Any person that has an alarm system monitored by an alarm system business will be responsible for any user fees charges pursuant to this ordinance. Failure on the part of an alarm system business to maintain a current listing of the persons responsible for the alarm systems they monitor will subject the alarm system business for any user fees that would be charged to the alarm user.~~

~~17-09-060. Alarm system businesses.~~

~~(a) Any person whose business it is to repair or install an alarm system must possess a valid license issued by the Construction Industries Division of the Regulation and Licensing Department of the State of New Mexico and a current business registration from the city. Any alarm system business that employs technicians to perform any of the functions of such business under the authority of said valid license shall issue such employees an identification card that clearly identifies them as employees of the licensed business. Said license or identification card must be presented to a public safety officer, the city manager or a designated representative, upon request.~~

~~(b) Whenever an alarm system business agrees with any person to maintain or service any alarm system, such business shall:~~

~~(1) Ensure that personnel of such business who are able to render effective assistance arrive at such alarm site within seventy-two (72) hours of a request by a member of the department of public safety for assistance if such alarm system business has agreed with any person to maintain or service such alarm system.~~

~~(2) Keep a written record of the date and time of repair and a description of the specific repair which was performed on any alarm system when such repair was made in response to notification by the person responsible for the alarm system or a member of the department of public safety that such alarm system was in need of repair. Such written records shall be maintained for at least twelve (12) months and shall be made available for inspection and duplication upon request by the city manager~~

~~or a member of the department of public safety at the office of the alarm system business within two (2) hours of the request during regular business hours.~~

~~(c) Any alarm system business which operates a central station and any telephone answering service shall:~~

~~(1) Have sufficient personnel trained in the procedures to be followed in receiving and relaying notice of the activation of any alarm system on duty at all times to ensure that emergency messages or alarm signals received by such business can be relayed immediately to the department of public safety.~~

~~(2) Notify the appropriate person of the activation of the alarm system within twenty-four (24) hours of the time the alarm was activated by telephone or by placing such notice in the mail, addressed to the person in control of the property. In the case of a local alarm where the alarm system business was not notified of such activation, the alarm system business shall be exempt from the requirements of this subsection.~~

~~(d) Alarm system businesses shall additionally keep a written record of the date and time each notification of the activation of an alarm system is received and the date, time and method by which the appropriate person was notified. Such records shall be retained for at least twelve (12) months and shall be made available for inspection and duplication upon request by the city manager or a member of the department of public safety at the office of the alarm system business or telephone answering service within two (2) hours of the request during regular business hours.~~

~~(e) Whenever the ownership or management of the alarm system business changes, the new operator shall notify the director of public safety of the names, address and telephone numbers of the new owners or managers and each address serviced by that business within thirty (30) days of the change.~~

~~17-09-070. Automatic dialing service and audible alarms.~~

~~(a) No automatic dialing service shall be interconnected to a primary trunk line, direct line, or regular telephone line to the department of public safety unless it is an alarm for a governmental building or a financial institution approved by the director of public safety and in compliance with the regulations in subsection (a).~~

~~(b) Any alarm system which emits a sound that can be heard outside of the protected structure or property shall be equipped with no greater than a fifteen (15) minute automatic time out.~~

~~17-09-080. Non-emergency activation.~~

~~No person shall activate an alarm system for any purpose other than an emergency or threat of emergency of the kind for which the alarm system was designed to give notice; provided, however, it shall be an affirmative defense to prosecution under this section that the alarm system was sounded solely for the purpose of testing the alarm and the person who tested the alarm took reasonable precautions to avoid any request being made to the department of public safety to respond to such alarm.~~

~~17-09-090. User fees.~~

~~The department of public safety may respond to proper notification of activation of an alarm system without charge except that the following fees shall be charged to the alarm user for each response by the department of public safety to notification of activation of an alarm system in excess of five (5) alarms from the same alarm location within a calendar year.~~

~~(a) Twenty-five dollars ($25.00) for each response to notification of activation of an alarm system at a single location in excess of five (5) alarms but not more than ten (10) alarms within a calendar year.~~

~~(b) Forty dollars ($40.00) for each response to notification of activation of an alarm system at a single location in excess of ten (10) alarms within a calendar year.~~

~~(c) Provided, however, no notification of the activation of an alarm system shall be considered in determining the fees set out above, nor shall any fee be charged if the alarm user shows that the~~

~~activation was not a false alarm, and any response by the department of public safety to notification of activation of an alarm system will not be included in determining the fees set out above if the alarm user shows that such activation was not a false alarm. For purposes of determining the fees set out above, the burden shall be on the alarm user to prove that the activation of the alarm system was not a false alarm.~~

~~(d) The person responsible for the alarm system shall be given written notice of any fees chargeable under this section. Such fees shall be paid to the city within thirty (30) calendar days of the date of the notice of fees due, unless the alarm user requests a hearing pursuant to section 17-09-110, in which event the payment of the fees shall be suspended pending the decision of the hearing officer.~~

~~(e) There shall be no fees imposed for a false alarm occurring within thirty (30) days after the fifth false alarm provided that the false alarms were caused by mechanical defect and the alarm user is making a good faith effort to repair the defect. The director of public safety may extend the thirty-day period for a reasonable time if the alarm user shows that the defect could not be repaired within thirty (30) days because of circumstances beyond the user's control. Nothing in this subsection shall be construed to prevent a false alarm from being used to compute the amount due pursuant to subsections (a) and (b) of the section.~~

~~17-09-100. Violations—Suspensions and revocations of alarm registrations.~~

~~(a) If the city manager has probable cause to believe that the person responsible for an alarm system has:~~

~~1. Violated any provision of the ordinance.~~

~~2. Made fraudulent, misrepresentative, or false statements in the application for an alarm user permit.~~

~~3. Has had an excessive number of false alarms and has failed, after notice from the director of public safety, to correct the problems causing the alarms.~~

~~The city manager shall give the alarm user written notice by first class mail of a hearing to be held within thirty (30) calendar days before the hearing officer to determine whether or not the registration should be suspended or revoked. This notice must contain a statement of the facts upon which the city manager acted.~~

~~(b) Any alarm registration may be suspended or revoked if the alarm user has been found, following notice and hearing, to have violated the provisions of section 17-09-100(a) of this ordinance.~~

~~(c) Any person whose alarm registration has been revoked shall not be permitted to apply for another alarm user's permit for one (1) year after the filing of a written statement by the hearing officer revoking the alarm registration, unless the hearing officer deems that proper corrective measures have been taken by the alarm user.~~

~~17-09-110. Hearings.~~

~~(a) Upon receipt of a notice of fees due, as set forth in section 17-09-090 or of a violation of section 17-09-100, of this ordinance, the alarm user may request a hearing before the hearing officer to show cause why the alarm user should not be charged the fees specified in the notice or have the registration suspended or revoked. Such requests must be filed in writing with the city manager within thirty (30) calendar days of the notice of fees due. The alarm user shall be given written notice by first class mail of the hearing at least ten (10) calendar days before the hearing.~~

~~(b) An applicant may request a hearing before the hearing officer to show cause why the alarm should be registered pursuant to section 17-09-050. Such requests must be filed in writing with the city manager within thirty (30) calendar days of the notice to the applicant that the alarm registration will not be approved. The applicant shall be given written notice by first class mail of the hearing at least ten (10) calendar days before the hearing.~~

~~(c) All hearings shall be open to the public and shall be held only after notice is given to the applicant, permit holder or alarm user as provided in this ordinance. Notice of the hearing shall be posted in the lobby of city hall at least twenty-four (24) hours prior to the time of hearing.~~

~~(d) Hearing procedure shall be as follows:~~

~~(1) The hearing shall be conducted by the hearing officer.~~

~~(2) Formal rules of evidence shall not apply to the conduct of the hearing.~~

~~(3) Cross-questioning is neither prohibited nor encouraged. The hearing officer has full discretion whether to allow it.~~

~~(4) The hearing officer may hear testimony from any expert witness.~~

~~(5) After calling the meeting to order, the hearing officer shall outline the procedure to be followed in the conduct of the hearing.~~

~~(6) The hearing may be recessed or adjourned to another time and place, or both, upon the discretion of the hearing officer.~~

~~(e) The decision of the hearing officer is the final step in the administrative procedures and is conclusive upon the applicant, or alarm user and shall be considered to have exhausted all administrative remedies that are available to an applicant or alarm user. Decisions of the hearing officer may be appealed to the district court within thirty (30) days of receipt of the decision of the hearing officer.~~

~~17-09-120. Administration of this ordinance and applicability of other law.~~

~~The city manager shall adopt such rules and regulations as necessary for the safe and equitable administration of this ordinance. Violations of regulations pursuant to this ordinance will be considered a violation of this ordinance and subject the person, entity or organization doing so to the penalties specified in the ordinance. The registration of an alarm does not constitute a waiver of any requirement or provision contained in any ordinance of the City of Alamogordo or state or federal law.~~

~~17-09-130. Severability clause.~~

~~The provisions of this ordinance are severable, and if any provisions of this ordinance or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the ordinance which can be given effect without the invalid provisions or applications.~~

~~ARTICLE 17-10. SPICE ORDINANCE~~

~~17-10-010. Short title.~~

~~This article shall be known and may be cited as the "spice ordinance."~~

~~17-10-020. Purpose and intent.~~

~~(a) A product commonly referred to as "spice" is sold by local businesses. Spice typically appears as a packaged dried plant product or leaves, and is sold at gas stations, liquor stores, convenience stores, smoke shops and other outlets. While spice sometimes has a label warning against human consumption, that is its intended use. Businesses that sell spice openly solicit the product by claiming that, when smoked, spice causes a marijuana-like high. Spice is a green leafy product sprayed with synthetic substances that mimic the effects of marijuana when smoked. Spice is marketed under numerous brand names, including Spice, Spice Silver, Spice Gold, Spice Diamond, Spice Tropical Synergy, Spice Arctic Synergy, Spice Gold Spirit, PEP Spice, PEPpourri, K2, Genie, Yucatan Fire, Dream, Ex-ses, Blaze, Spike 99, Spark, Fusion, Magma, Hard Core, and Deliverance, as well as other names.~~

~~(b) Distribution of spice and spice like products is a violation of state law. However, the manufacturers and vendors of spice products change the names, labeling, or chemical composition of the products to avoid~~

~~prosecution. Consumers, including minors, quickly learn the name of the new mock substance by word of mouth or on the internet. Businesses that distribute spice create a public nuisance in the city as defined by state law and city ordinances.~~

~~(c) While spice and natural marijuana act on the body's natural cannabinoid receptors, spice is not marijuana. Research and anecdotal reports show that spice produces dangerous symptoms not normally associated with marijuana. Spice may be combined with other toxic substances. Emergency room physicians report that users of these products experience serious side effects, including convulsions, anxiety, dangerously elevated heart rates, increased blood pressure, vomiting, and disorientation. According to February 8, 2012 data from the American Association of Poison Control Centers, in one (1) year there has been a greater than two-fold increase in the number of calls about exposure to spice.~~

~~(d) Field testing technology is inadequate in many cases and the products being sold to the public have to be seized from the vendor and lab tested. Lab testing is costly and time consuming. If a particular brand name product is determined to be an illegal substance, that substance will often be repackaged or relabeled by the time the police return to the business. This subterfuge wastes police resources and further endangers the public.~~

~~(e) Spice and spice-like products tend to avoid drug testing methods used to determine whether a person has consumed a controlled substance. Some of the most dangerous consumers, those prohibited from consumption of illicit drugs or alcohol by court orders or terms of probation, gravitate toward spice because it is difficult to detect or undetectable.~~

~~(g) Spice and spice-like products endanger the health and safety of the community. This article is a remedial ordinance promulgated pursuant to the city's home rule authority.~~

~~17-10-030. Definitions.~~

~~*Business.* The premises, whether it be a main business location or an outlet, branch or other location thereof, temporary or otherwise, to which the public is expressly or impliedly invited for the purpose of transacting business. The term "business" includes the sales persons on site.~~

~~*Business day.* Regular business hours Monday through Friday. The day the business receives a cease and desist order and notice of violation does not count as a business day. If the business has irregular hours or the hours are not posted, a business day shall be the next two (2) full twenty-four-hour week days after receipt of a cease and desist order and notice of violation.~~

~~*Business operator.* The person or persons on site at the business in actual or apparent control of the business during business hours.~~

~~*Cease and desist order and notice of violation.* Documentation delivered to the business operator ordering the business closed for inspection and testing. The cease and desist order and notice of violation shall provide notice that a hearing must be requested within ten (10) business days of receipt and that hearing rights shall be terminated if a hearing is not promptly requested. The cease and desist order and notice of violation shall provide information on how and where a hearing may be requested, including a contact address and phone number.~~

~~*Enforcement officer.* Enforcement officer shall mean any officer or employee with the authority to enforce the City of Alamogordo Municipal Code. This includes city public safety officers.~~

~~*Person.* An individual, proprietorship, partnership, corporation, association, or other legal entity.~~

~~*Place of business.* Any location, building or portion thereof, or premises in which or from which a business is carried on. The term includes, but is not limited to, an office, warehouse, yard, location where books and records are kept, or the location from which business is solicited.~~

~~*Sales person.* Any agent or independent contractor of the business employed or engaged to transact business with the public on the premises.~~

~~*Spice.* A synthetic cannabinoid as defined by NMSA 1978, § 30-31-6 (2011) as amended from time to time.~~

~~*Transfer of ownership or control of a business.*~~

~~(1) The sale, lease, or sublease of the business;~~

~~(2) The transfer of securities that constitute a controlling interest in the business, whether by sale, exchange, or similar means; or~~

~~(3) The establishment of a trust, gift, or other similar legal device that transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.~~

~~17-10-040. Violation.~~

~~It is a violation of this article for a business to manufacture, stock, sell, distribute, dispense, possess, purchase, advertise for sale, publicly display for sale, give, trade, offer to sell, order, or offer to order spice.~~

~~17-10-050. Responsibility.~~

~~Any person engaging in business within the city shall be responsible for the actions of their employees with respect to the manufacturing, stocking, selling, distributing, dispensing, possessing, purchasing, advertising for sale, publicly displaying for sale, giving, trading, offering to sell, ordering, or offering to order spice.~~

~~17-10-060. Enforcement.~~

~~(a) If an enforcement officer has probable cause to believe a violation of this article has occurred, the enforcement officer shall obtain a sample of the substance believed to be spice. The sample shall be tested by methods commonly utilized by law enforcement labs to determine whether a substance is a controlled substance under state law. If the test determines that the substance is spice, the director of public safety shall have the authority to issue a cease and desist order and notice of violation to the business operator. Thereafter, an enforcement officer shall serve the cease and desist order and notice of violation upon the business operator and seize the entire inventory of spice from the business. The cease and desist order shall be filed with the city clerk. When the cease and desist order and notice of violation is delivered to the business, if a enforcement officer has probable cause to believe that the spice has been relabeled, repackaged or incorporated into other substances, those substances shall also be seized and tested. If the test is negative, the inventory shall be returned to the business. The transfer of ownership or control of the business does not avoid the seizure authorized by this paragraph.~~

~~(b) Upon receipt of the cease and desist order and notice of violation by the business operator, the business shall immediately allow and not interfere with the seizure of the inventory which is spice or is reasonably believed to be spice that has been relabeled, repackaged or incorporated into other substances. Any interference with the seizure is a violation of this article punishable pursuant to § 1-01-100 of Alamogordo Municipal Code, and not subject to appeal to a hearing officer.~~

~~(c)If the business receives a second cease and desist order and notice of violation in a period of five (5) years from receipt of the first cease and desist order and notice of violation, the business shall close and cease transacting business with the public for the next ten (10) full twenty-four-hour calendar days during which time an enforcement officer, in cooperation with other agencies if required, shall inspect the premises and seize and destroy the spice or any relabeled, repackaged or reincorporated spice substances. The transfer of ownership or control of the business does not avoid the closure and inspection authorized by this paragraph.~~

~~No inventory, merchandise, personal property, chattel property or other property shall be received by or taken off the business premises during closure unless authorized by an enforcement officer.~~

~~(d) Upon a third or subsequent violation of this article within five (5) years from receipt of the second cease and desist order and notice of violation, the city clerk shall refuse to renew or grant a business~~

~~registration under article 17-01 to the business for a period of one (1) year from the date of the receipt of the third or subsequent cease and desist order and notice of violation or decision of the hearing officer against the business if a hearing takes place. The transfer of ownership or control of the business does not avoid the operation of this paragraph.~~

~~(e) The city shall have the authority to seek an injunction to compel compliance with this article on grounds that the business is causing irreparable harm to the community by distributing spice.~~

~~17-10-070. Appeal.~~

~~(a) Upon delivery of a cease and desist order and notice of violation, the business has the right to request in writing a hearing on the matter. Hearing requests must be made within ten (10) business days of the issuance of the delivery of a cease and desist order and notice of violation and delivered to the city clerk. Failure to request a hearing within ten (10) business days of the delivery of a cease and desist order and notice of violation will terminate the right to a hearing. The filing of an appeal under this section stays actions except seizure of the spice.~~

~~(b) Upon receipt of such a request, the city clerk shall set the time and place for the hearing. Written notice of the hearing time and place shall be mailed or delivered to the business at least ten (10) business days prior to the hearing.~~

~~(c) An appeal shall be heard by a hearing officer. The hearing officer must be an impartial person designated by the city manager to conduct the hearing. The burden of proof shall be on the city to prove the violation.~~

~~(d) A decision shall be issued by the hearing officer within ten (10) business days. If the hearing officer determines that a violation of this article did occur, that decision, along with the hearing officer's reasons for finding a violation shall be recorded in writing, a copy of which shall be provided to the city and the business by in person delivery or mail as soon as practicable. Likewise, if the hearing officer finds that no violation occurred, those findings shall be recorded and a copy provided to the city and the business by in person delivery or mail as soon as practicable.~~

~~(e) The decision of the hearing officer is final. Any appeal of the decision made by the hearing officer shall be filed in the district court for the city in which the alleged violation occurred within ten (10) business days.~~

ARTICLE 17-11. FOOD VENDORS

ARTICLE 7-~~11~~ 2. GENERAL

17-~~11~~2. 010. Purpose.

The purpose of this article is to regulate food vendors, whether mobile and/or temporary food vending activities in order to protect public health, safety, and welfare~~,~~. ~~while accommodating commercial uses that generally promote an active and social pedestrian environment within the appropriate areas of the city. This article is also written with specific consideration given to the continued successful operation of existing brick and mortar restaurant establishments in recognition of the investments they make, and tax revenue they generate within the city. The overall goal of this article is to provide a business climate that offers fair opportunities for all food vendor operations and permanent restaurants in order to provide residents and visitors with a variety of food options that promote a vibrant food selection within our community~~.

17-11-020. Scope.

This article shall apply to all food vendor establishments operating within the city, regardless of type.

17-11-030. Definitions.

~~*City official* means city manager, city attorney, fire department command staff, police department command staff, code enforcement supervisor and officers.~~

Food vendor means a food establishment where food is served or sold from a mobile food truck, mobile food trailer, mobile sidewalk cart, temporary food booth, tent and/or stand.

Ice cream truck means a mobile food establishment that sells either frozen dessert servings that are prepackaged/enclosed in a wrapper or container having been manufactured, prepared, or wrapped in a licensed food establishment or ice cream that is not pre-packaged.

Licensee means a food vendor that holds a city food vendor license.

Mobile food trailer means a trailer specifically designed and used for cooking, keeping, storing, or warming food or beverage which are for sale by a vendor, which does not move under its own power, but may be towed by a vehicle.

Mobile food truck means a vehicle specifically designed and used for cooking, keeping, storing, or warming food or beverage which are for sale by a vendor, which may move under its own power.

Mobile food vendor means a vendor selling from a mobile food establishment.

Mobile sidewalk cart means a bicycle cart or a wheeled pushcart, specifically designed and used for keeping, storing, or warming food or beverage which are for sale by a vendor, which may be moved by one (1) person without the assistance of a motor. Each sidewalk cart shall be non-motorized and capable of being moved and kept under control by one (1) person.

Temporary farm stand means a booth, tent, or stand which exclusively sells non-processed raw agricultural products.

Temporary food booth, tent, or *stand* means a booth, tent, or stand vending type unit which sells food or beverages.

17-11-035. Prerequisite for application.

(a) Applicant shall provide a copy the New Mexico Environment Department approved documents for the food vendor to operate, if applicable.

(b) Applicant shall provide a copy the Alamogordo Fire Department’s approved form.

17-11-040. Licensing requirements for food vendors.

It shall be unlawful for any food vendor to engage in sales activities in the city without first obtaining a business license from the city.

(a) *License application.* Each food vendor ~~owner that wishes to operate within the city~~ shall file annually for an application for a city food vendor ~~operator's~~ license with the city clerk or ~~his/her~~ their designee on forms provided by the city. Each applicant shall pay ~~an established~~ an annual license fee of $35 at the time application is submitted. ~~before a license is issued, and be subject to an annual fire inspection that will be conducted by the Alamogordo Fire Department. All food vendors will be inspected according to the International Fire Code adopted, and according to the standards outlined in the National Fire Code (NFC~~). The application form ~~provided~~ shall require the following information from the applicant:

(1) ~~The~~ Applicant name, address, telephone number, ~~of the person~~, and name of business ~~firm, association or corporation that owns the unit and their New Mexico Tax ID number~~;

(2) New Mexico tax identification number for the business.

~~(2) The length of time for which the right to conduct business is desired;~~
~~(3) The make, model and license number of any vehicle or trailer to be used in the food vendor operation;~~
~~(4) The location or locations from which the applicant desires to operate the unit;~~
~~(5) A copy of the applicant's application, Priority II letter and/or permit issued by the State of New Mexico Environmental Department; and~~
~~(6) A letter of written permission to operate on private property if applicable.~~

(b) *License approval process.* Upon receipt of proper documentation and payment of an application for a license, the city clerk or ~~his/her~~ their designee will ~~start the license approval process, and will refer the application to planning and zoning, the fire chief, or his/her designee, the police chief, or his/her designee, and the city manager or his/her designee in order to complete the application process~~ review the application. All applications will be processed within ~~ten (10)~~ two (2) business days. Upon completion, the ~~permit~~ license will be issued unless the city clerk determines any of the following:

~~(1) The applicant made a false statement on the application.~~
~~(2) The applicant is under eighteen (18) years old. This is only applicable to operators of mobile food establishments which requires a CDL License.~~
~~(3)~~(1) The application is incomplete, or
~~(4)~~(2) The application ~~and/or its contents do~~ does not meet the criteria of ~~any~~ city ordinances~~, and/or policy adopted by the city~~.

(c) *Appeal process for licensed vendors.* Any decision of the city clerk or ~~his/her~~ their designee in respect to the issuance or refusal to issue a ~~permit~~ license or the revocation of a ~~permit~~ license may be appealed to the city manager by written notice. The decision of the city manager shall be made in writing and shall be final.

(d) *License revocation or suspension for licensed vendors.* A license may be suspended or revoked by ~~the city clerk, the fire chief, the chief of police and/or~~ the city manager~~,~~ or their designee ~~if it is found at any time that the license holder made any material omission or inaccurate statements in the license application, or~~ if the license holder is found to be in violation of any ordinance or statutory violation directly related to the licensed activity. A "notice of suspension or revocation" will be served on the applicant and will include a statement of violations. The appeal process is addressed in section 17-11-040(c).

(e) *Operational requirements.* Operational requirements for all food vendors shall be consistent with section 17-11-0~~80~~70 of this article.

~~17-11-050. Food vendors operating at special events and block parties.~~

~~All food vendors operating at special events and/or block parties are required to be fully permitted through the New Mexico Environmental Department, the city, and be subject to a fire inspection conducted by the Alamogordo Fire Department as stated above. The city will require all special event and block party organizers submit a list of vendor operator names ten (10) business days prior to the event for the purpose of verifying that all vendors have meet the criteria set forth by the city. Note: Additional fees may be required by the organizer of such events that are not part of the annual license fee.~~

17-11-~~060~~ 050. ~~Non-profit operators.~~ Exemption from license.

~~All non-profit temporary food vendors covered by this article shall provide a copy of their 501(C)(3) documents to the, before operating at special events and/or block parties are required to be fully permitted through the New Mexico Environmental Department and be subject to a fire inspection conducted by the Alamogordo Fire Department, with the exception of m~~Minor's under the age of eighteen (18) who participate in food vendor activities are exempt from the licensing requirements of this article except when they are acting as agents of adults~~. Please refer to section 17-08-030 titled "exemptions."~~ ~~Non-profit groups may operate on private property if granted permission, provided that public health, safety and welfare is not compromised.~~

~~Non-profit groups may vend in public places designated by the city adhering to all conditions required by the city, which such conditions may address compensation for use of city property as well as limitations on hours of operation and specific places of operation. As stated above, non-profits groups may also operate in conjunction with special events.~~

17-11-0~~7~~60. Farm stand operators.

~~Temporary farm stands food vendors operating are required to be fully permitted through the New Mexico Environmental Department if slicing or cutting products in any way for public consumption, the city, and be subject to a fire inspection conducted by the Alamogordo Fire Department. Farm stand operators may operate on private property if granted permission, provided that public health, safety and welfare is not compromised. Temporary farm stands may vend in public places designated by the city adhering to all conditions required by the city, which such conditions may address compensation for use of city property as well as limitations on hours of operation and specific places of operation. Temporary farm stands may also operate in conjunction in with special events~~. A group of temporary farm stands may operate under one (1) organizer for a specific location.

17-11-0~~80~~70. General operating requirements.

(a) *Operations.*

~~(1) The licensee or the licensee's employee or agent shall be present within the vending site during all times in which items are sold.~~

~~(2)~~(1) Food vendor display of license and proper documentation~~:~~

~~a.~~ Each license issued ~~or required under this article~~ shall be displayed in a conspicuous location which is visible to the public.

~~b. Each licensee shall display the copy of the applicant's Priority II letter and/or permit issued by the State of New Mexico Environmental Department in a conspicuous location which is visible to the public.~~

~~c. If operating on private property, the vendor must keep written permission from the property owner within the vending unit at all times.~~

~~d. If operating on a route, the vendor must keep the outlined route map that was provided to the city clerk within the vending unit at all times.~~

~~(3)~~(2) Temporary free-standing signs associated with mobile food vendors shall be prohibited unless allowed by the sign ordinance. Please refer to 3-01-015 titled "Temporary signs."

~~(4)~~(3) No mobile food vendors shall use bells or lights, ~~noise-makers~~ noisemakers, including music, to attract customers. "Ice cream/dessert vendors" are exempt from this restriction. Any noise originating from a mobile food vendor operation shall comply with the city noise ordinance.

~~(5)~~(4) Mobile food vendors are prohibited from using city water, electricity, or other utilities in the course of its operations unless explicitly provided permission from the city with an arrangement made for compensation.

~~(b) *Required insurance.* Food vendors licensed by the city operating on city property shall provide proof of liability insurance for any single accident and for any property damage in the amount required by the "State of New Mexico Tort Claims Act." Such liability insurance shall be in effect at all times the vendor is licensed in accordance with this section. A certificate of insurance shall list the city as certificate holder for such coverage and shall be delivered to the event coordinator prior to the event. If such insurance coverage is cancelled, not renewed, or changed, the insurer and licensee shall immediately provide notice to the event coordinator. Failure to maintain such insurance may result in the suspension or revocation of the license.~~

~~(c) *Vehicle regulations.*~~

~~(1) Each food vendor platform or vehicle shall be designed and constructed specifically for the purpose of vending the product or products to be sold.~~

~~(2) Each food vendor platform or vehicle shall have valid license plates and registration as required by the State of New Mexico Department of Motor Vehicles Division.~~

~~(3) Each food vendor platform or vehicle shall be in compliance with all Federal, State and local laws or regulations which govern motor vehicles, including, but not limited to, vehicle size requirements.~~

~~(4) Each food vendor platform or vehicle shall be kept in a safe, operable condition with no visible signs of rust or other deterioration or unsightly condition~~.

~~(d)~~(b) *Garbage requirements.*

~~(1)~~ The licensee and ~~his/her~~ their employee(s) shall be responsible at all times for the removal of all refuse resulting from ~~his/her~~ their business or customers use of ~~his/her~~ their business. Such refuse shall be placed solely in the mobile food establishment's waste bins. All such containers shall be kept covered with a tight-fitting lid. No food vendor establishments shall discharge any material onto the street, sidewalk, gutters, storm drain or the property of another, including, but not limited to, public property. All operators are responsible for ensuring that all waste is disposed of in accordance with city ordinances and/or maintaining all areas used for food vending and customer activity in a safe and clean condition.

~~(2) All food vendors shall deploy at least two (2) leak-proof, thirty (30) gallon trash containers accessible to the public.~~

~~(3) All mobile sidewalk carts shall be equipped with at least one (1) appropriately sized leak-proof garbage container.~~

~~(e)~~(c) *Specified locations of operation.*

(1) No food vendor may conduct businesses located on city-owned or controlled location unless permitted by the city.

~~(2) All food vendors shall be located on a paved surface at all times, unless expressly allowed by the city.~~

~~(3)~~(2) All food vendor business activity taking place in the public right-of-way shall be conducted from the curbside of the vehicle at all times, unless expressly approved by the city.

~~(4)~~(3) No food vendor shall operate in a way that impedes pedestrian or vehicle circulation.

~~(5) Food vendor parking on designated city owned or controlled property will be allowed to operate on a "first come first served" basis within designated vending locations identified by the city. Parking spaces may be occupied by non-vendors. Designated vending locations will be in effect at all times unless otherwise expressly approved by the city and/or permitted in conjunction with a special event.~~

~~(f) *Distance restriction from restaurants generally.* Food vendors are prohibited from conducting business within two hundred (200) feet of a public entrance of any business which is a licensed or permitted restaurant by the New Mexico Environmental Department, and the city during the hours the subject business is open to the public. If a food vendor wishes to operate within the two hundred (200) foot threshold, written permission must be granted by the business owner, all food vendors shall keep the written permission on site for review purposes.~~

~~(g) *Distance restriction from restaurants during special events.* During permitted special events, food vendors may not operate within one hundred (100) feet of any business selling the same or similar type products unless written permission is granted by the business.~~

~~(h) *Distance restriction from permitted special events.* Food vendors shall not conduct business within five hundred (500) feet of any city permitted special event unless the vendor has obtained written permission from the event organizer or permittee.~~

~~(i) *Operating on private property.* Food vendors shall be prohibited from conducting business on any private property without written permission from the property owner. A copy of the written permission shall be kept in the food vendor unit at all times. The food vendor shall comply if asked to leave the private property by the property owner or a city official.~~

~~(j)~~(d) *Operating in residential zones.* Food vendors are prohibited from operating in residentially zoned districts or residential property uses. "Mobile ice cream/dessert vendors" may conduct business within R-l, R-2, and R-3 residential zoned districts from the public right-of-way, while adhering to all other operational regulations of this article.

~~(k)~~(e) *Designated hours of operation.*

(1) Sunday through Saturday: 6:00 a.m. to 10:00 p.m.

(2) Food vendors may operate in designated locations/areas for the duration of designated times of operation and are not required to move during those times.

(3) Day and time of operation restrictions shall be in effect for food vendors in all designated vending locations, unless operating in conjunction with special events.

(4) In addition to those times listed in (1) of this section, licensed ice cream/dessert vendors may operate from the public right-of-way within the R-l, R-2, and R-3 residential districts Sunday through Saturday, 11:00 a.m. to a half hour before sunset but no later than 8:00 p.m. Ice cream/dessert vendors may not conduct business at a location longer than fifteen (15) continuous minutes in residential zoned districts, meaning the vendor must move not less than two hundred fifty (250) feet every fifteen (15) minutes.

~~(5) Food vendors may operate at a special events during approved hours of the event.~~

PASSED, APPROVED AND ADOPTED 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:

____
Ashley Smith, City Attorney

City of Alamogordo

Business Registration Form

Step 1 Planning & Zoning
Step 2: Fire Inspection
Step 3: City Clerk

You must bring the completed application and business registration payment to the city clerk's office. If you submitted payment online, please provide proof of payment.

For questions regarding zoning requirements or fire inspections, refer to the Alamogordo Code of ordinances located at

library.municode.com/nm/alamogordo/codes/code_of_ordinances

CONTACT INFORMATION

PLANNING & ZONING

PHONE: (575) 439-4220

ADDRESS: 1376 E. Ninth Street
Alamogordo, NM 88310

WEBSITE: *ci.alamogordo.nm.us/162/Planning-Zoning*

EMAIL: pnz@ci.alamogordo.nm.us

ALAMOGORDO FIRE DEPT.

PHONE: (575) 439-4298
(575) 439-4119

ADDRESS: 619 Texas Avenue
Alamogordo, NM 88310

WEBSITE: *https://ci.alamogordo.nm.us/475/Fire-Department*

EMAIL: armstrongj@ci.alamogordo.nm.us

BUSINESS INFORMATION

Date: ______________________________

Business Name: ______________________________

Business Address (Location): ______________________________

____

Business Owner Name(s): ______________________________

____

Business Owner Phone # ______________________________

Business Owner Email # ______________________________

____

FOR OFFICIAL USE: P&Z

Type of Zoning (District): ______________________________

Approved __________ **Disapproved** __________

Comments: ______________________________

____

____

______________________________ ______________
Signature **Date**

______________________ ______________________
Name (Printed) **Title**

FOR OFFICIAL USE: FIRE DEPT

Approved __________ **Disapproved** __________

Comments: ______________________________

____

______________________________ ______________
Signature **Date**

______________________ ______________________
Name (Printed) **Title**

City of Alamogordo

Annual Application for Food Vendor's License

Owner/Applicant Name:____

Owner's Address:____

Business Name:____

NM Tax ID:____

Physical Address:____

Mailing Address:____

Email Address:____

Phone #:____

How is the business operated? Select your answer below:

- o Mobile Food Trailer
- o Mobile Food Truck
- o Mobile Sidewalk Cart
- o Ice Cream Truck
- o Temporary Farm Stand
- o Temporary Food Booth, Tent, or Stand
- o Other

I certify that the above information is true and correct. Per Ordinance 17-11-30 Licensing for Food Vendors, I understand that I shall file annually for a Food Vendor's License.

______________________________ Print Name of Owner/Applicant

______________________________ Signature of Owner/Applicant

Below is for City Clerk's Department and Finance Department Use Only

License #:______________________________

AR Code: WL

Fee: $35

Receipt #:______________________________

Date Paid:______________________________

City of Alamogordo

Frequently asked Questions for Food Vendor's License

1. Where do I get a New Mexico Tax I.D. Number?

The New Mexico Taxation & Revenue Department.

Address: 1200 South St. France Drive, Santa Fe NM 87505

Phone: 1-866-285-2996

Website: https://tap.state.nm.us/

2. Where do I get a Food Permit, Priority II Letter, or a Temporary Food Permit?

The New Mexico Environment Department.

Address: 811 E. First Street, Suite D, Alamogordo, NM 88310

Phone: (575) 437-7115

Email: Alamogordo.ehb.state.nm.us

3. My permit from the New Mexico Environment Department expires before the Food Vendor's License does. Do you need a copy of the updated permit?

Yes. Please send us new permits as you receive them.

4. Where do I get the Alamogordo Fire Department's letter of approval to operate?

The Alamogordo Fire Department, Fire Station 1.

Address: 619 Texas Avenue, Alamogordo, NM 88310

Phone: 575-439-4298

5. How long is the Food Vendor's License good for?

Licenses are only valid until the end of the issued calendar year.

<u>City of Alamogordo</u>
Alamogordo Fire Department
619 Texas Avenue, Alamogordo, New Mexico 88310
Administration 575-439-4298

Food Vendor Inspection

This document is Identify that an Annual Food Vendor Inspection was completed by the Alamogordo Fire Department. The Alamogordo Fire Department inspects food vendors in compliance with 2015 International Fire Code Standards as adopted.

NOTE: Vendors/Operators will not be allowed to start an event until a final inspection and all applicable fees have been paid to the City of Alamogordo. Failure to comply with this requirement will result in a Stop Work Order.

Name of Mobile Food Vehicle: ____

Owner Name: ____

Mailing Address: ____

Phone Number: ________________________**Email**: ______________________________

Secondary Phone Number: ____

Vin Number: ____

License Plate#: ________________________Date Inspected: _________________________

Type of Operation: **Van ( ) Vehicle ( ) Trailer ( ) Pushcart ( ) Tent ( )** Specify**: ____________**

Inspector Signature: _________________________ Print: ___________________________

Summary of Inspection -
☐ Approved – No violations
☐ Approved to Operate – Violations must be corrected - (Add Comments)

Comments/Limitations
____
____
____
____
____
____

AGENDA REPORT
CITY OF ALAMOGORDO
CITY COMMISSION

Meeting Date: 11/1/2022 **Report Date:** **Report No:** 4.

Submitted By:

Subject: Consider, and act upon, the adoption and final publication of Ordinance 1662, amending Chapter 2 of the Alamogordo Code of Ordinances, by adding 02-060 "Code of Conduct." *(Brian Cesar, City Manager)* **(Roll Call Vote Required)**

Fiscal Impact:
Amount Budgeted:
Fund:

Additional Fiscal Impact:

Recommendation: Adopt the ordinance.

Background:

On October 11, 2022, the Commission approved the ordinance for first publication with a vote of 6-0.

ORDINANCE NO. 1662

ALAMOGORDO CODE OF ORDINANCES
ELECTED AND APPOINTED OFFICIAL'S CODE OF CONDUCT

WHEREAS, the City Commission of the City of Alamogordo, New Mexico, recognizes that elected or appointed officials of the city are bound to uphold the Constitution of the United States, the New Mexico Constitution, and federal, state, and local laws.

WHEREAS, the City Commission of the City of Alamogordo, New Mexico, acknowledges that elected or appointed officials adhere to the highest standards in the exercise of powers and duties of the office.

WHEREAS the City Commission of the City of Alamogordo, New Mexico, recognizes that elected or appointed officials must impartially carry out their duties regardless of personal considerations

WHEREAS the City Commission of the City of Alamogordo, New Mexico, recognizes that public interest is their primary objective.

BE IT THEREFORE ORDAINED by the City Commission of the City of Alamogordo, New Mexico that Chapter 2 of the *code of ordinances* is amended to include 02-060 "*Code of Conduct"* and shall read as follows

02-02-060 CODE OF CONDUCT

(a) Purpose

The City of Alamogordo seeks to foster and maintain transparency while conducting city business, creating policy, and undertaking the day-to-day operation of the city. This chapter establishes minimum standards of ethical behavior of elected and appointed officials. It sets forth explicit standards of conduct by requiring elected or appointed officials to disclose personal interests, financial or otherwise, in matters of the city and to remove themselves from decision-making when such interests exist.

(b) *Definitions*

(1) *Administrative Action*. Action is based upon the application or interpretation of a city ordinance, state statute, or a proceeding involving a license permit, franchise, or development use.

(2) *Anything of Value*. As defined in NMSA §8-8-19 (D).

(3) *Appointed Official*. A person who is not an elected official and has been appointed by the Governing Body.

(4) *Governing Body of City Commission*. The Governing Body of the City of Alamogordo.

(5) *Confidential Information*. Information that has been classified confidential by law.

(6) *Conflict of Interest*. A situation in which a person exercising a duty has an interest, financial or otherwise, that potentially conflicts with the exercise of the duty or that may be perceived as conflicting with the exercise of the duty.
(7) *Contract*. An agreement between two or more parties, whether express or arising by operation of law.
(8) *Ethics Official*. The City Attorney, or another attorney designated by the City Manager, will act as the ethics official, performing reviews of complaints, conducting investing actions, gathering information, and making recommendations to this chapter.
(9) *Elected Official*. A Governing Body includes a City Commissioner or the Mayor.
(10) *Ex-Parte Communication*. Direct or indirect communication with a party or the party's representative outside the presence of the other parties concerning a pending adjudication that deals with substantive matters or issues on the merits of the proceedings. Ex-parte communications do not include statements that are limited to providing publicly available information about a pending adjudication or solely related to the status of the proceeding.
(11) *Family*. An individual's spouse, domestic partner, parent, child, sibling, and like in-laws, by consanguinity or affinity, or persons, related or unrelated, living within the household.
(12) *Financial Interest*. Any interest of an elected official or an appointed official that is:

a. an ownership interest or other interest in any contract or prospective contract with the city;
b. an interest in the sale of real or personal property to or from the city;
c. a financial relationship with a person or business whose interests may be affected by the city;
d. any employment or prospective employment for which negotiations have already begun where the prospective employer has an interest in the sale of real or personal property from the city; or
e. any other interest that may be affected by the city.

For this chapter, interest shall be one either as owner, part owner, partner, or shareholder, in which such individual owns more than two percent of the outstanding stock or more than two percent of the ownership interest of any other business that is doing business with the city in an amount in excess of $7,500 annually. An interest held by the elected Official's spouse or minor children shall be considered the interest of the Elected or appointed officials for the purposes of this chapter.

(13) *Frivolous.* A determination is made by the Ethics Panel when two or more complaints made by an individual or entity have been determined to be unsubstantiated and contain allegations that are found to have no factual basis.
(14) *Harassment*. Harassment consists of knowingly pursuing a pattern of conduct intended to annoy, alarm, bully or intimidate another person and that serves no lawful purpose. The behavior must be such that it would cause a reasonable person to suffer substantial emotional distress.

(15) *Non-Public Information*. Information that is obtained during an elected official's, appointed official's, or employee's duties and is subject to public inspection under state law, but that, because of its nature, is not readily accessible to the public; and if used or disclosed, a personal benefit or advantage is likely to result.

(16) *Party*. A person who has submitted to the city an application seeking affirmative relief; a person who has filed a formal complaint or protest; a person who is the subject of a formal complaint or investigation; and members of the general public who participate in a pending adjudication.

(17) *Pending Adjudication*. Any application, petition, complaint, protest, investigation, or other administrative adjudicatory proceeding requiring a decision or action by the Governing Body.

(18) *Personal Benefit.* The obtaining or promise of obtaining anything of value.

(19) *Substantiated Claim*. Competent facts verify a violation of this chapter, and substantial evidence exists to support it.

(20) *Unsubstantiated Claim*. A claim that is not supported by competent facts or substantial evidence or existent of facts or an allegation that is not a per se violation of this chapter.

(21) *Non-Partisanship*. All actions, decisions, and votes on matters relating to city government shall be on the merits. Decisions shall be made objectively, without party or partisanship considerations, and without facts that are not directly and properly related to the matter requiring action.

(c) Public Trust

(1) Elected or appointed officials shall act according to the highest principles of representative democracy to ensure that city government is worthy of public respect, trust, and support.

(2) Elected or appointed officials shall not engage in conduct that they know or reasonably should know is likely to create in the minds of reasonable, objective, fair-minded observers the perception that they have misused their public positions unethically or otherwise have not conducted themselves in accordance with the standards of conduct of this chapter.

(3) Elected or appointed officials shall not provide or disseminate to the public any information or data that they should reasonably know to be untrue, inaccurate, or misleading. It is incumbent upon elected or appointed officials to correct such information as quickly as reasonably possible.

(4) It is a violation of this chapter for elected officials and appointed officials to knowingly violate their own rules of procedure or any other law or ordinance.

(d) Conduct Avoiding Impropriety

(1) Elected or appointed officials shall avoid conduct that creates the appearance of impropriety or that is otherwise unbefitting a public official. An impropriety can mean misconduct or behavior demonstrating an unethical process or improper influence.

(2) Elected or appointed officials shall not knowingly engage in conduct that violates the rights of others to be treated fairly.

(3) Elected or appointed officials shall refrain from engaging in conduct, even if lawful, where personal gain or advantage is involved in a way that creates a reasonable inference that such office has been used for personal benefit.

(e)Prohibited Financial Interest in City Business

(1) No elected or appointed officials may have a financial interest if the elected or appointed official is in a decision-making capacity concerning the financial interest.

(2) Elected or appointed officials with any financial interest shall disclose such interest in writing to the City Attorney's office or by making an official record at a commission meeting. By filing a disclosure of interest with the City of Attorney or recording into the record at a commission meeting, the elected or appointed official shall be disqualified from participating in any debate, decision, or vote relating thereto.

(f) Conflict of Interest, Disclosure

(1) Elected or appointed officials shall strictly avoid transactions and relationships that create a conflict of interest. Where a conflict of interest is unavoidable, the elected or appointed official shall disclose the conflict of interest and shall subordinate the conflicting interest to the public interest. The Clerk shall record the disclosure as part of the minutes of the meeting at which the disclosure is made.

(2) Elected or appointed officials shall exercise their duties, powers, and prerogatives without prejudice or favoritism to hire, promote, or reward family members, relatives, friends, or political supporters, or to hinder or punish enemies and opponents.

(3) Elected or appointed officials shall assure that constituents and others who may be affected by decisions of the city have a fair and reasonable opportunity to express their concerns, grievances, and ideas without regard to their willingness or ability to provide benefits or political support to the elected or appointed official.

(4) Elected or appointed officials shall not engage in any conduct that could create in the mind of a reasonable observer the belief that persons will receive better or different services if gifts, personal benefits, or political or charitable contributions are provided.

(5) Elected or appointed officials shall not solicit or receive gifts, personal benefits, favors, gratuities or political or charitable contributions, or anything of value under circumstances that create a reasonable belief that special access, services, favors, or official or unofficial actions will be provided as a result. Nor may anything of value be solicited or received from a person or business doing business with the city, contracting with the city, regulated by the city, has an application pending before the city, or whose interests may be affected by the city.

(6) Elected or appointed officials shall not accept anything of value from a person, business, or other entity when the elected or appointed official or employee knows or reasonably should know that said person, business, or entity does any business with the city, desires to do business with the city, contracts with the city, is regulated by the city, has an application pending before the city, or whose interests may be affected by the city.

(g) Confidential Information and Misuse of Non-Public Confidential Information

No elected official or appointed official shall disclose or use confidential information maintained by the city without proper authorization. No elected or appointed official shall use confidential information for personal benefit. Such information shall not be used to advance said person's financial or other private interests.

(h) Use of Position to Obtain Information

No elected or appointed official shall use their position to obtain information from another entity or individual for personal benefit. Nor shall an elected or appointed official to obtain, or attempt to obtain, information from an individual or entity on behalf of the city when the information will be used for their personal interest or benefit.

(i) Misuse of City Property and Resources for Private Gain or Personal Advantage

(1) An elected or appointed official shall not use public property for any private or nongovernmental purpose except as expressly provided by law. Public property includes public funds, staff time, facilities, property, equipment, mailing lists, computer data, services, or any other governmental asset or resource. This section does not prohibit reserving or renting city property designated as either public or meeting space and is otherwise made available to all members of the public.

(2) Unless authorized by the City of Alamogordo employee manual, no city employee shall be asked or permitted to perform personal services for an elected or appointed official. An elected or appointed official shall not require a city employee to perform personal services or assist in a private activity.

(j) Misuse of City Property or Resources for Political Purposes

No municipal resources, including funds, facilities, and personnel, may be used for political campaign purposes or to influence an election; provided that this shall not prohibit the use of public resources proposed for the limited purpose of educating voters about the details of a ballot question placed on the ballot as authorized by the City of Alamogordo Governing Body pursuant to Section 1-16-3 NMSA 1978 (as amended). An elected official shall not use or authorize municipal funds, time, facilities, equipment, mailing lists, computer data, social media platforms, resources, services, or other government assets for political fundraising, campaigning, or influencing an election.

(k) Use of Confidential Information for Private Gain

An elected, appointed, or former elected official who terminated city service within one year shall not use or disclose confidential information to obtain a benefit for any person. This section does not allow the disclosure of information made confidential by law.

(l) Misuse of Title or Prestige of Office for Private Gain or Personal Advantage

(1) An elected or appointed official shall not use, induce, cause, or encourage others to use the authority, title, official letterhead, or prestige of the elected or appointed official for private gain or personal advantage.

(2) An elected or appointed official shall not solicit or accept anything of value under terms and conditions where the compensation is not commensurate with the services performed or where a reasonable person would believe that the authority, title, or prestige of office had been exploited.

(m) Political Activity

(1) No elected or appointed officials shall compel, coerce or intimidate any elected or appointed officials to make, or refrain from making, any political contribution. No elected or appointed officials shall solicit or obtain any political contribution from

employees by coercion. Nothing in this subsection shall be interpreted to provide that an elected or appointed official is precluded from voluntarily making a contribution or receiving a voluntary contribution.

(2) No elected officer of the city shall hold any other elected office or be employed by the city during the term for which the member was elected.

(3) Nothing in this section shall be construed to prohibit the Governing Body from selecting any current, former mayor or city commissioner to represent the city before any other governmental entity.

(4) An elected or appointed official shall not require an employee to perform political activity:

a. as part of the employee's duties;
b. as a condition of city employment; or
c. during any time off that is compensated by the city.

(5) No elected or appointed official shall engage in any conduct that would, to an objective third party, constitute an undue threat to an employee's continued employment.

(6) The city shall employ no former mayor or city Commissioner until one year after the expiration of the term for which the member was elected.

(n) Coercion

(1) An elected or appointed official shall not, directly or by authorizing another to act on their behalf, state or imply that the elected official's willingness to meet with a person or organization is dependent on the person or organization making a campaign contribution, donating to a cause favored by the official, or providing anything of value to the official.

(2) An elected official shall not directly or by authorizing another to act on the elected official's behalf:

(3) Agree or threaten to take or withhold any city governmental action as a result of a person's decision to provide or not provide a political contribution; or

(4) State or imply that the elected official will perform or refrain from performing a lawful constituent service as a result of a person's decision to provide or not provide a political contribution; or

(5) Agree to or participate in a scheme or plan intended to evade the requirements of any applicable state ethics statutes, this chapter, or another financial disclosure provision of state or city law; or

(6) Knowingly accept a contribution given or offered in violation of any applicable state ethics statutes or this chapter.

(o) Ex-Parte Communications

(1) Ex parte communications prohibited.

(2) An elected official or appointed official designated to hear an administrative adjudicatory matter pursuant to city ordinance shall not initiate, permit or consider a communication directly or indirectly with a party or the party's representative outside of the hearing and outside of the presence of all other interested parties concerning the pending matter.

(3) An administrative adjudicatory matter involves the use of a discretionary standard, as specified by code or other city ordinance, to an application for discretionary approval.

(4) Notwithstanding the provisions of subsection (A)(1) of this section, ex parte communications for procedural or administrative purposes, during emergencies, or that do not deal with the merits of the application shall not be prohibited if the elected official or appointed official reasonably believes that no party will gain an advantage as a result of the ex parte communication and promptly notifies all other parties of the substance of the ex parte communication.
(5) An elected or appointed official who receives or who makes or knowingly causes to have communication prohibited by this chapter shall disclose the communication to all parties and allow other parties to respond.

(p) Recusal.

(1) An elected official or appointed official shall recuse themself in any pending administrative adjudicatory matter in which the official is unable to make a fair and impartial decision or in which there is reasonable doubt about whether the official can make a fair and impartial decision, including:

a. When the official has a personal bias or prejudice concerning a party or its representative or has prejudged a disputed evidentiary fact. For the purposes of this paragraph, "personal bias or prejudice" means the predisposition toward a person based on a previous or ongoing relationship, including a professional, personal, familial, or other intimate relationship, that renders the official unable to exercise their functions impartially; or
b. When the official has a pecuniary or financial interest in the outcome of the proceeding; or
c. When, during the previous employment, the official served as an attorney, advisor, consultant, or witness in the matter of controversy (previous employment is employment during the previous 12 months); or
d. When the official announced how they would rule on the adjudicatory proceeding or a factual issue in the adjudicatory proceeding.

(2) An elected or appointed official shall not be required to recuse themself in any pending administrative adjudicatory matter merely because the official possesses and discusses general viewpoints on public policy that an application may raise. Similarly, an elected official shall not be required to recuse themself in any pending administrative adjudicatory matter merely because the elected official made representations during a political campaign on viewpoints on public policy that an application may raise.
(3) The elected or appointed official recusing themself shall disclose the reason for recusal.
(4) If, before the hearing, an elected official or appointed official fails to recuse themself when it appears that grounds exist, a party shall promptly notify the elected official or appointed official of the grounds for recusal. If the elected or appointed official declines to recuse themself upon request of a party, the official shall provide a complete explanation as to why they refuse

(5) If during the hearing, an elected official or appointed official fails to recuse themself when it appears that grounds exist, a party shall promptly notify the Mayor of the grounds for recusal. If the elected official or appointed official declines to recuse themself, the Chair may entertain a motion to excuse the official from further participation in the matter. If the motion is successful, the official shall be excused from further participation in the matter.

(q) Restrictions on the Governing Body; Personnel System and Management

The Governing Body shall not perform, collectively or individually, general executive management functions in the administration of city government; these functions shall be delegated to the City Manager, including administration of the personnel system. This paragraph shall not apply to matters of policy, the responsibility, and the authority of the Governing Body to approve the annual budget.

(r) Reporting, Investigating, and Determination of Violations Pertaining to this Chapter

(1) Any elected or appointed official, employee, entity, or member of the public may submit a complaint of unethical conduct to the City Attorney's office, a complaint alleging facts which, if true, would constitute a violation of this chapter. If the City Attorney is not appointed as the Ethics Official, the City Attorney shall forward the complaint to Ethics Official.

(2) Ethics Official shall investigate all applicable complaints forwarded to them and make one of the following recommendations regarding the complaint:

a. Unsubstantiated claim under this chapter; or
b. Substantiated claim under this chapter.

(3) If an unsubstantiated claim is a recommendation made by the Ethics Official, the ethics official shall produce a report reflecting their findings and details of the investigation. An unsubstantiated claim shall not be forwarded to the Ethics Panel unless necessary to determine a frivolous claim.

(4) Upon the completion of an investigation, the Ethics Official may determine that a claim is substantiated. At such time, the Ethics Official will produce a report which contains their findings and recommendations. The Ethics Panel shall conduct a public hearing of all substantiated claims and shall decide, by majority vote, if a provision(s) under this chapter has been violated. Penalties shall be determined according to this chapter. The Ethics Official shall be present at the public hearing to respond to questions from the Ethics Panel regarding their findings and recommendations. The complaining party and the respondent to the complaint shall be notified via certified mail to all hearings. The respondent or a legal representative hired by the respondent shall be allowed to respond to the complaint at a public hearing.

(5) If an individual or entity files two or more unsubstantiated complaints directed at the same individual for harassment or to cause the individual public shame or embarrassment, the Ethics Official may recommend a public hearing to the Ethics Panel.

a. Notice shall be provided to the complaining party no later than 14 calendar days before the scheduled public hearing.

b. The Ethics Panel shall conduct a public hearing to determine if the complaints are frivolous and if the complaints were intended to annoy, harass or otherwise cause the targeted individual public shame or embarrassment.
c. If the Ethics Panel determines by majority vote that the complaints are frivolous and intended to annoy, harass, or cause the targeted individual shame or embarrassment, they may prescribe a penalty under this chapter.
d. If the complaining party disagrees, that may be appealed to the Twelfth Judicial District Court.

(s) City Ethics Panel

(1) If the Ethics Official substantiates a complaint, an ethics panel shall be created.

(2) A City of Alamogordo Ethics Panel shall be created that shall consist of three members plus one alternate.

a. The City Manager will appoint the Chair of the Ethics Panel. The Chair preferably shall be a lawyer, former judicial official, or former law enforcement.
b. The remaining two members and alternate shall be appointed by the Ethics Panel Chair.

(3) All ethics panel members shall not be affiliated with the city government in any capacity. This includes, but is not limited to, employment, employment for which the salary is in any way funded by or through the city, appointment, or election. The members of the Ethics Panel may not hold elected public office or office with any political party within the city.

(4) The jurisdiction of the Ethics Panel is limited to acting within the scope of matters covered by this chapter but may periodically review and recommend amendments to this chapter.

(5) The Ethics Panel shall adopt rules of procedure for conducting hearings pursuant to this chapter. The rules of procedure shall be consistent with the rules for conducting administrative hearings in Alamogordo and shall be reviewed by the City Attorney.

(6) The Ethics Panel shall have the power to issue administrative subpoenas compelling attendance of witnesses at hearings and the production of documents and the authority to seek enforcement of those subpoenas by the Twelfth Judicial District Court.

(7) If the Ethics Panel finds, by a preponderance of evidence and upon a majority vote, that the elected or appointed official has violated this chapter, the Ethics Panel may impose any of the following penalties after the written findings of fact and conclusions of law:

a. A civil fine not to exceed $500; or
b. A written finding of censure; or
c. A referral to the District Attorney or appropriate governmental office for commencement of criminal or other proceedings; or
d. A recommendation to the District Attorney that proceedings to remove the person from elected office be commenced pursuant to NMSA 1978 § 10-4-1 et seq. (as amended).

(8) No action may be taken by the Ethics Official or Ethics Panel on any complaint filed later than one year after a violation of this chapter is alleged to have occurred, or that is

filed more than six months from the date of the discovery of the alleged violation upon due diligence by the complaining party of facts constituting a violation, whichever event occurs later.

(9) The Ethics Panel may also provide advisory opinions regarding the applicability or interpretation of the provisions of this chapter upon the request of any elected official or appointed official.

(10) Members of the Ethics Panel shall not receive any salary or compensation for services.

(t) Right of Appeal

Any decision of the Ethics Panel finding a violation of this chapter may be appealed to the Twelfth Judicial District Court pursuant to NMSA 1978 § 39-3-1.1 (1998, as amended). Should the respondent appeal and wish to have legal representation, it is their responsibility to hire said representation.

(u) Non-Retaliation

The Governing Body does not tolerate retaliation, workforce discrimination, or harassment of any kind against any person who has reported a violation of this chapter. This non-retaliation provision applies whether the complaint is ultimately determined to be unsubstantiated or substantiated. All elected or appointed officials are specifically prohibited from taking any adverse employment action, engaging in workplace discrimination or harassment of any kind, or other retaliatory action against anyone for reporting a claim of violation. Anyone who believes that they have been subject to workplace discrimination or harassment of any kind or that has been retaliated against in violation of this chapter should submit a complaint of unethical conduct to the Ethics Panel by delivering a complaint to the City Attorney's office.

AGENDA REPORT
CITY OF ALAMOGORDO
CITY COMMISSION

Meeting Date: 11/1/2022 **Report Date:** **Report No:** 5.

Submitted By: Rachel Hughs

Subject: Consider, and act upon, the adoption and final publication of Ordinance 1663, repealing Chapter 27 of the Alamogordo Code of Ordinances concerning Vehicles for Hire. *(Rachel Hughs, City Clerk)* **(Roll Call Vote Required)**

Fiscal Impact:
Amount Budgeted:
Fund:

Additional Fiscal Impact:

Recommendation: Adopt the ordinance.

Background:
On October 11, 2022, the Commission approved the ordinance for first publication with a vote of 6-0.

Repealing Chapter 27 as the State regulates vehicles for hire.

New Material ~~Deleted Material~~

ORDINANCE NO. 1663

AN ORDINANCE REPEALING CHAPTER 27 OF THE ALAMOGORDO CODE OF ORDINANCES CONCERNING VEHICLES FOR HIRE

WHEREAS, the City Commission of the City of Alamogordo, New Mexico, acknowledges that Vehicles for Hire are regulated by State Statute; and,

WHEREAS, the City Commission of the City of Alamogordo, New Mexico, recognizes that Vehicle for Hire licenses would be moved under business registrations.

WHEREAS, the City Commission of the City of Alamogordo, New Mexico, considers it necessary to repeal Chapter 27 of the Code of Ordinances.

NOW, THEREFORE, BE IT ORDAINED by the City Commission of the City of Alamogordo, New Mexico, that Chapter 27 of the Code of Ordinances be repealed.

~~Chapter 27 VEHICLES FOR HIRE~~

~~ARTICLE 27-01. IN GENERAL~~

~~27-01-010. Definitions.~~

~~As used in this article:~~

~~*Driver* is any person who operates a vehicle for hire.~~

~~*Limousine* is a vehicle for hire for the transportation of persons for which consideration is paid on an hourly, daily, or destination basis, but not on a mileage or zone basis.~~

~~*Taxicab* is a vehicle for hire for the transportation of persons or property where a consideration is paid on a mileage, zone, or destination basis.~~

~~*Vehicle for hire* is any vehicle and driver carrying passengers or property, for the convenience of the public, and for consideration, but the term does not include ambulances, or vehicles for the transportation of property only which are subject to the provisions of the New Mexico Motor Carrier Act.~~

~~27-01-020. License required.~~

~~It is unlawful to operate any vehicle for hire in the city unless the owner has applied for and obtained a license as required by Chapter 17, Article I-A of this Code, provided, however, that this requirement shall not apply to interstate bus companies or other vehicles for hire which do not transport passengers from one point to another within the city.~~

~~27-01-030. Contents of license application.~~

~~In addition to the normal requirements of a business license application, the applicant for a license for a vehicle for hire shall submit the following information:~~

~~(a) The make, model, license number and vehicle identification number (VIN) of each vehicle to be used for hire;~~

~~(b) The name, age and New Mexico drive's license number of each driver employed;~~

~~(c) The area proposed to be served by the business; and~~

~~(d) A description of the nature of all services offered.~~

~~27-01-060. Bond or insurance.~~

~~(a) The owner or operator of every vehicle for hire shall, before obtaining a license, file with the city clerk either a surety bond or a policy of insurance issued by a company authorized to do business in this state as specified in this section. This bond or policy of insurance shall be maintained and renewed as long as the license is in effect, and failure to do so will result in revocation of the license.~~

~~(b) The bond or policy of insurance shall be conditioned to pay all losses and damages for bodily injury, death, or property damage resulting from the negligent operation, maintenance or use of any vehicle for hire, or for any loss or damage to property of shippers or consignees carried by such vehicle for hire.~~

~~(c) The surety bond or policy of insurance shall not be subject to cancellation, except after ten (10) days notice in writing to the city clerk by the issuing company.~~

~~(d) The minimum limits of liability of the surety bond or policy of insurance are as follows:~~

~~(1) For damage to or destruction of property in a single occurrence, other than cargo$100,000.00~~

~~(2) For bodily injury or death to any person for any number of claims arising out of a single occurrence300,000.00~~

~~(3) All claims arising out of a single occurrence500,000.00~~

~~27-01-070. Identification of vehicles.~~

~~Each vehicle for hire shall be conspicuously identified with the name of the person or company operating it on the exterior of the vehicle, except limousine identification need not be conspicuous and may be on the interior of the vehicle. The name of the driver and the business license for the vehicle shall be posted in the interior of each vehicle.~~

PASSED, APPROVED AND ADOPTED 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:

____
Ashley Smith, City Attorney

AGENDA REPORT
CITY OF ALAMOGORDO
CITY COMMISSION

Meeting Date: 11/1/2022 **Report Date:** 10/24/2022 **Report No:** 6.

Submitted By: Deborah Osborne

Subject: Consider, and act upon, approval for Alamogordo Fire Department to accept a $25,000 stipend award from the New Mexico Department of Homeland Security. *(Richard Adler, Chief, Alamogordo Fire Department)*

Fiscal Impact:
Amount Budgeted: $0.00
Fund: 33

Additional Fiscal Impact: No significant fiscal impact, grant funds.

Recommendation: Accept the $25,000 stipend award.

Background: The NMDHSEM, through the New Mexico Fire Protection Grant, offered municipal fire departments the opportunity to apply for grant funding for stipends for FY23.. Municipal fire departments with volunteer staff were eligible to apply for funding up to $25,000 for the purpose of providing stipends, supplementing recruiting and retention or educational programs for volunteer fire fighters. The Alamogordo Fire Department applied and subsequently received a stipend award of $25,000.

FY'23 Awarded Stipends

Department	County	Stipend Amount
Valencia Co. Admin.	Valencia	$25,000.00
Moriarty	Torrance	$25,000.00
Bayard	Grant	$25,000.00
Torrance Co. Admin	Torrance	$25,000.00
Santa Fe Co. Admin.	Santa Fe	$25,000.00
Colfax County Admin.	Colfax	$25,000.00
Folsom	Union	$25,000.00
Mesilla Fire Admin	Dona Ana	$12,500.00
Elida	Roosevelt	$25,000.00
Sandoval Co. Admin	Sandoval	$25,000.00
DA County Admin	Dona Ana	$25,000.00
Lordsburg	Hidalgo	$25,000.00
Bosque Farms	Valencia	$25,000.00
Alamogordo	Otero	$25,000.00
Questa	Taos	$15,000.00
Taos Co. Admin.	Taos	$24,700.00
Cuba	Sandoval	$25,000.00
Cochiti Lake	Sandoval	$19,000.00
Gallup	McKinley	$25,000.00
San Juan Co. Admin	San Juan	$25,000.00
Cibola County Admin	Cibola	$25,000.00
	Total Stipend Awarded	$496,200.00

AGENDA REPORT
CITY OF ALAMOGORDO
CITY COMMISSION

Meeting Date: 11/1/2022 **Report Date:** 10/24/2022 **Report No:** 7.

Submitted By: Deborah Osborne

Subject: Consider, and act upon, approval of Resolution 2022-45 authorizing the submission of a grant application for the purpose of rebuilding the circulatory roads at the Bonito Lake Recreational Area. *(Debbie Osborne, Grant Coordinator)* **(Roll Call Vote Required)**

Fiscal Impact: $250,000
Amount Budgeted: $0.00
Fund: 109

Additional Fiscal Impact: A $250,000 match is required.

Recommendation: Approve Resolution 2022-45.

Background: The New Mexico State Parks Division is accepting grant applications for the 2022 Land and Water Conservation Fund (LWCF). Grants are available up to the amount of $250,000 to fund the acquisition and development of public outdoor recreation areas. A 50% match is required. The City will submit an application to apply for $250,000 funding with a $250,000 match to rebuild the circulatory roads in the Bonido Lake recreational area. Match funds are available in fund 109, GRT Street Capital. A Resolution is required to support the grant application.

RESOLUTION NO. 2022-45

A RESOLUTION OF THE COMMISSION OF THE CITY OF ALAMOGORDO AUTHORIZING THE SUBMISSION OF A GRANT APPLICATION INCLUDING ALL REQUIRED UNDERSTANDINGS AND ASSURANCES RTO THE NEW MEXICO LAND AND WATER CONSERVATION FUND FOR THE PURPOSE OF REBUILDING CIRCULATORY ROADS AT THE BONITO LAKE RECREATIONAL AREA

WHEREAS, a window of opportunity exists to submit applications for the federally funded Land and Water Conservation Fund, administered by the Energy, Minerals and Natural Resources Department (EMNRD). State Parks Division for the development of public outdoor recreation areas and facilities; and,

WHEREAS, the City of Alamogordo wishes to reopen the Bonito Lake recreational area for the purpose of camping, fishing, and other outdoor activities; and

WHEREAS a survey of the citizens of Alamogordo demonstrated overwhelming support to reopen Bonito Lake Campgrounds; and

WHEREAS, City of Alamogordo commits $250,000 from its Street Capital GRT fund in matching funds along with remaining funds up to the amount of $800,000 to complete this project; and,

NOW, THEREFORE, BE IT RESOLVED by the City Commission of the City of Alamogordo that the application to the Land Water Conservation Fund Grant, including all understanding and assurances, for the purpose of planning, designing and construction of the rebuild of the circulatory roads from the bottom of the dam to West Lake Road Campground to provide adequate access services to the recreational area is hereby supported and endorsed; and,

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

PASSED, APPROVED AND ADOPTED this ______ day of October, 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:

____
Ashley Smith, City Attorney

AGENDA REPORT
CITY OF ALAMOGORDO
CITY COMMISSION

Meeting Date: 11/1/2022 **Report Date:** 10/25/2022 **Report No:** 8.

Submitted By: Deborah Osborne

Subject: Consider, and act upon, acceptance of a grant agreement from the New Mexico Economic Development Department in the amount of $99,000 to repave a section of the walking path on Indian Wells Rd. *(Veronica Ortega, Community Services Director)*

Fiscal Impact: $49,500
Amount Budgeted: $0.00
Fund: 109

Additional Fiscal Impact: Match of $49,500 to be provided from fund 109, GRT Street Capital.

Recommendation: Accept grant agreement.

Background: The New Mexico Economic Development Department offered an opportunity for municipalities to apply for grants up to $99,000 to improve the quality of life for people in our community. Providing safe access to outdoor walking trails is an important way to accomplish this. The trail on Indian Wells Road was in disrepair and in need of significant improvement. The City applied for and subsequently received a grant award of $99,000 for the purpose of repaving the walking trail on Indian Wells Road. Funiding will also permit the installation of covered benches and trash receptacles to be placed along the trail.. A 2:1 match is required. A $49,500 match is available in fund 109, GRT Street Capital..

STATE OF NEW MEXICO
SUBAWARD GRANT AGREEMENT FOR CSFRF

COVER PAGE

<table>
<tr><td colspan="2">State Agency
New Mexico Economic Development Department</td></tr>
<tr><td>Subrecipient Name
City of Alamogordo</td><td>Subaward Period of Performance
Start Date (Effective date of this agreement)

End Date
October 31, 2026</td></tr>
<tr><td colspan="2">Agreement Maximum Amount

$99,000.00</td></tr>
<tr><td colspan="2">Agreement Purpose
This grant invests in conservation-minded shovel-ready projects that are open to the public, increase access to outdoor opportunities, and demonstrate a clear economic benefit to the community through improved quality of live, better public health outcomes, and/or increased tourism.</td></tr>
<tr><td colspan="2">Exhibits
The following are Exhibit and Attachments are included within this Agreement:
1. Exhibit A, Federal Award Information
2. Exhibit B, Scope of Work and Budget
3. Exhibit C, Federal Provisions
4. Exhibit D, Agreement with Subrecipient of CSFRF Funds
5. Exhibit E, Davis-Bacon Act Requirements (If Applicable)
6. Exhibit F, Eligible and Restricted Uses of CSFRF Funds
7. Exhibit F, CSFRF Quarterly Reports</td></tr>
<tr><td colspan="2">Principal Representatives</td></tr>
<tr><td>For State:
Name: Carl Colonius
Agency Name: EDD Outdoor Recreation Div.
Address: 1100 S St. Francis Drive
City, State Zip: Santa Fe, NM 87505
Email: carl.colonius@edd.nm.gov</td><td>For Subrecipient:
Name: Deborah Osborne
Subrecipient Name: City of Alamogordo
Address: 1376 E. Ninth Street
City, State Zip: Alamogordo, NM 88310
Email: dosborne@cl.alamogordo.nm.us</td></tr>
</table>

FEDERAL AWARDS APPLICABLE TO THIS GRANT AWARD

Federal Awarding Office	United States Department of the Treasury
Grant Program	Coronavirus Local Fiscal Recovery Fund
Assistance Listing Number	21.027
Federal Award Number	
Federal Award Date	June 9, 2021
Award End Date	October 31, 2026
Federal Statutory Authority	Title VI of the Social Security Act, Section 602
Total Amount in Federal Award (this is not the amount in the grant agreement)	$1,751,542,835.00

First Amendment to Outdoor Recreation Division
Outdoor Recreation Trails+ Grant

CSFRF SUBAWARD
BETWEEN THE NEW MEXICO
ECONOMIC DEVELOPMENT DEPARTMENT
AND
City of Alamogordo

THIS FIRST AMENDMENT to GRANT AGREEMENT is hereby made and entered into this **19** day of **October**, by and between the New Mexico **Economic Development Department**, hereinafter referred to as the State, and **City of Alamogordo** hereinafter referred to as "Subrecipient."

WHEREAS**,** the U.S. Department of Treasury (hereinafter referred to as "Grantor") has made federal funds available to the State under the Coronavirus State Fiscal Recovery Fund (CSFRF) Program (Assistance Listing Number (ALN) 21.027);

WHEREAS, Recipients under the CSFRF Program are the eligible entities identified in sections 602 and 603 of the Social Security Act as added by section 9901 of the American Rescue Plan Act of 2021 that receive a CSFRF award. Subrecipients under the CSFRF Program are entities that receive a subaward from a recipient to carry out the purposes (program or project) of the CSFRF award on behalf of the recipient;

WHEREAS, Recipients are accountable to Treasury for oversight of their Subrecipients, including ensuring their subrecipients comply with the CSFRF statute, CSFRF Award Terms and Conditions, Treasury's Interim Final Rule, and reporting requirements, as applicable; and,

WHEREAS, this agreement addresses the flow of funds from the Grantor above to the State who will then provide the same referenced subaward funds to the Subrecipient, as legally allowed by the relevant law and regulations, for any approved scope of work as further discussed in Section 2 of this agreement;

WHEREAS, the New Mexico Economic Development Department has established the Outdoor Recreation Trails+ Grant to invest in projects that enhance and protect communities' outdoor recreation opportunities. The Outdoor Recreation Trails+ Grant will award grants of up to either

$99,999 or $500,000, depending on the Tier of award, to nonprofits, tribal, local, and regional governments, and other eligible entities with the purpose of improving access to outdoor recreation within a community, while simultaneously bolstering the outdoor recreation economy in New Mexico.

WHEREAS, the Outdoor Recreation Trails+ Grant encourages and supports New Mexico nonprofits, tribal, local, and regional governments, and other eligible entities to create and/or expand outdoor recreation access and economies throughout the state.

WHEREAS, the assistance provided by this initiative will enhance and protect communities' outdoor recreation opportunities and grow the outdoor economy as a result. The State has allocated **ninety-nine thousand dollars ($99,000.00)** to the Subrecipient.

NOW THEREFORE, the State and the Subrecipient do mutually agree to the following terms and conditions of this agreement:

1. Definitions

a. **“Agreement Funds**” means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by the State under this Agreement.

b. “**Agreement**” means this agreement, including all attached Exhibits, all documents incorporated by reference, all referenced statutes, rules and cited authorities, and any future modifications thereto.

c. “**Award**” means an award by a Recipient to a Subrecipient funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to the Award unless the terms and conditions of the Federal Award specifically indicate otherwise.

d. “**Breach of Agreement**” means the failure of a Party to perform any of its obligations in accordance with this Agreement, in whole or in part or in a timely or satisfactory manner. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against State, or the appointment of a receiver or similar officer for State or any of its property, which is not vacated or fully stayed within 30 days after the institution of such proceeding, shall also constitute a breach.

e. “**Budget**” means the budget for the Work described in Exhibit B.

f. “**Business Day**” means any day in which the State is open and conducting business, but shall not include Saturday, Sunday or any day on which the State observes one of the legal public holidays.

g. “**Effective Date**” means the date on which this Agreement is approved and signed by the New Mexico agency, as shown on the Signature for this Agreement.

h. “**Exhibits**” means the exhibits and attachments included with this Agreement as shown on the Cover Page for this Agreement.

i. “**Federal Award**” means an award of Federal financial assistance or a cost-reimbursement Agreement, under the Federal Acquisition Regulations or by a formula or block grant, by a Federal Awarding Agency to the Recipient. “Federal Award” also means an agreement setting forth the terms and conditions of the Federal Award. The term does not include payments to an Agreement or payments to an individual that is a beneficiary of a Federal program.

j. “**Federal Awarding Agency**” means a Federal agency providing a Federal Award to a Recipient. The US Department of the Treasury is the Federal Awarding Agency for the Federal Award, which is the subject of this Agreement.

k. “**Goods**” means any movable material acquired, produced, or delivered by State as set forth in this Agreement and shall include any movable material acquired, produced, or delivered by the State in connection with the Services.

l. “**Grant Funds**” means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by the State under this Agreement.

m. “**Grantee**” means the State agency shown on the Signature and Cover Page of this Agreement, for the purposes of this Federal Award.

n. “**Incident**” means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access, loss, disclosure, modification, disruption, or destruction of any communications or information resources of the State, which are included as part of the Work. Incidents include, without limitation, (i) successful attempts to gain unauthorized access to a State system or State Records regardless of where such information is located; (ii) unwanted disruption or denial of service; (iii) the unauthorized use of a State system for the processing or storage of data; or (iv) changes to State system hardware, firmware, or software characteristics without the State’s knowledge, instruction, or consent.

o. “**Initial Term**” means the time period defined in the agreement.

p. “**IPRA**” means the Inspection of Public Records Act, a New Mexico state law that provides the public and media access to public information. The law requires open access to almost all public records in state and local government, with few exceptions

q. “**Matching Funds**” means the funds provided the State as a match required to receive the Grant Funds.

r. “**Party**” means the State or Grantee, and “Parties” means both the State and Subrecipient.

s. “**PCI**” means payment card information including any data related to credit card holders’ names, credit card numbers, or other credit card information as may be protected by state or federal law.

t. “**PHI**” means any protected health information, including, without limitation any information whether oral or recorded in any form or medium: **(i)** that relates to the past, present, or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and **(ii)** that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual. PHI includes, but is not limited to, any information defined as Individually Identifiable Health Information by the federal Health Insurance Portability and Accountability Act.

u. “**PII**” means personally identifiable information including, without limitation, any information maintained by the State about an individual that can be used to distinguish or trace an individual’s identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records; and any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information.

v. "**Services**" means the services to be performed by Subrecipient as set forth in this Agreement and shall include any services to be rendered by Subrecipient in connection with the Goods.

w. "**State Confidential Information**" means any and all State Records not subject to disclosure under IPRA. State Confidential Information shall include, but is not limited to, PII, PHI, PCI, Tax Information, CJI, and State personnel records not subject to disclosure under IPRA. State Confidential Information shall not include information or data concerning individuals that is not deemed confidential but nevertheless belongs to the State, which has been communicated, furnished, or disclosed by the State to Subrecipient which (i) is subject to disclosure pursuant to IPRA; (ii) is already known to Subrecipient without restrictions at the time of its disclosure to Subrecipient; (iii) is or subsequently becomes publicly available without breach of any obligation owed by Subrecipient to the State; (iv) is disclosed to Subrecipient, without confidentiality obligations, by a third party who has the right to disclose such information; or (v) was independently developed without reliance on any State Confidential Information.

x. "**State Fiscal Year**" means a 12-month period beginning on July 1 of each calendar year and ending on June 30 of the following calendar year. If a single calendar year follows the term, then it means the State Fiscal Year ending in that calendar year.

y. "**State Records**" means any and all State data, information, and records, regardless of physical form, including, but not limited to, information subject to disclosure under IPRA.

z. "**Subcontractor**" means third parties, if any, engaged by Subrecipients to aid in performance of the Work.

aa. "**Tax Information**" means federal and State of New Mexico tax information including, without limitation, federal and State tax returns, return information, and such other tax-related information as may be protected by federal and State law and regulation. Tax Information includes, but is not limited to all information defined as federal tax information in Internal Revenue Service Publication 1075.

bb. "**Uniform Guidance**" means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

cc. "**Work Product**" means the tangible and intangible results of the Work, whether finished or unfinished, including drafts. Work Product includes, but is not limited to, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, information, and any other results of the Work. "Work Product" does not include any material that was developed prior to the Effective Date that is used, without modification, in the performance of the Work.

dd. “**Work**” means the Goods delivered and Services performed pursuant to this Agreement.

ee. Any other term used in this Agreement that is defined in an Exhibit shall be construed and interpreted as defined in that Exhibit.

2. Scope of Work

The Grantor has provided funds, through its CSFRF Program, to the State who is then providing this same funding to the Subrecipient. Information related to the federal award is attached as Exhibit A. The Subrecipient shall perform the necessary tasks required in order to accomplish the objectives of the Grantor’s Program which have been agreed to by the State. This includes complying with all applicable federal, state or local laws, regulations and administrative policies as they relate to the Subrecipient’s specific approved project including but are not limited to the references above as well as the following:

a. Subrecipient will comply with 31 CFR Part 35 Subpart A – Coronavirus State and Local Fiscal Recovery Funds.

b. Subrecipient will comply with Title 2, Subtitle A, Chapter II, Part 200 – Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards as well as any specific federal departmental grant requirement in other sections of the CFR.

c. Subrecipient will adhere to both the Federal Procurement Laws contained in 2 CFR Part 200.317 to 200.326 as well as the State Procurement Laws for Political Subdivisions contained in the New Mexico Procurement Code.

d. Subrecipient will adhere to the requirements of the Grantor’s CSFRF Program.

e. Subrecipient will adhere to the Scope of Work and Budget in Exhibit B.

f. Subrecipient will comply with the Assurances for Non-Construction Programs as outlined in Standard Form 424B (Rev. 7-97) where applicable.

g. Subrecipient will comply with the Assurances for Construction Programs as outlined in Standard Form 424D (Rev. 7-97) where applicable.

h. Subrecipient will incorporate, where applicable, the contractual provision requirements outlined in 2 CFR Part 200.326.

i. Subrecipient will comply, when applicable, with any applicable National Policy Requirements for federal grants which is further discussed in Section 7 of this agreement.

j. Subrecipient will not pay any contractor who is listed by the federal government as debarred or suspended which is further discussed in Section 7 of this agreement. Subrecipient agrees to alert the State immediately if a contractor working for the Subrecipient becomes debarred or suspended.

k. Subrecipient will fully cooperate at all times with the State as the project manager who is ultimately accountable to the Grantor for all funds related to this project.

Pursuant to information submitted to the State for inclusion in the Grantor's CSFRF Program, the Subrecipient shall:

a. Properly procure and complete the project as described in Exhibit B, Scope of Work and Budget.
   (1) Any and all expenses associated with the project are the sole responsibility of the Subrecipient.
   (2) The ownership of any property furnished hereunder will be the property of the Subrecipient.
b. Have the sole responsibility to maintain possession of the said property, maintain the property, repair the property when needed and maintain any applicable insurance amounts.
   (1) Any future costs related to these requirements remain the sole responsibility of the Subrecipient.

In compliance with the above, the Subrecipient agrees to notify the State and Grantor, in writing, and request the preferred method of disposition for any property or equipment purchased with federal funds if said property or equipment is no longer of use to the Subrecipient. In addition, if an annual inventory is requested by the State, then the Subrecipient will provide prompt access to all inventory records.

3. Term of Agreement

The terms of this agreement shall become effective upon execution of this agreement and shall continue for a period of five (5) years after closeout of the grant program. Final reports must be received on or before **24 months after signing of the grant agreement.**

If this agreement approaches the end of its term, the State, with written notice to the Subrecipient, may unilaterally extend the term for a period of no longer than two months. The provision of the notice shall remain in effect until the end of the extended term, upon the execution of a replacement agreement, or modification of the agreement.

4. Payment Terms of Grant Funding

a. Maximum Amount

The maximum budget for the scope of work identified in Section 1 above:

$99,000.00

b. Payment Procedures

   (1) The State shall pay the Subrecipient in the amounts and in accordance with the schedule and other conditions set forth in Exhibit B.

(2) Subrecipient shall initiate payment requests by invoice to the State, in a form and manner approved by the State.

(3) The State shall pay each invoice within 45 days following the State's receipt of that invoice, so long as the amount invoiced correctly represents Work completed by the Subrecipient and previously accepted by the State during the term that the invoice covers. If the State determines that the amount of any invoice is not correct, then Subrecipient shall make all changes necessary to correct that invoice.

(4) The acceptance of an invoice shall not constitute acceptance of any Work performed or deliverables provided under this Agreement.

c. Questioned Costs

(1) Any questioned costs which may occur at any point in this process (including the five (5) year period after grant closeout by the federal Grantor) will be the sole responsibility of the Subrecipient with respect to any activity covered by this agreement.

If this agreement extends beyond the current fiscal year and notwithstanding anything to the contrary and when applicable, both parties acknowledge and agree that pursuant to the applicable state law, this agreement is subject to an annual appropriation dependency requirement to the effect that the renewal of this agreement is contingent upon the appropriation of funds by either party to fulfill any future payment requirements of this agreement. If either party fails to appropriate sufficient monies to provide for any future payment requirements under this agreement, this agreement shall terminate on the last day of the last fiscal year for which funds were appropriated.

5. Reporting, Monitoring, and Review

a. Requirements

The Subrecipient is required to participate in monitoring and review activities necessary to assess the work performed under the Subaward and determine whether the Subrecipient has timely achieved the Scope of Work stated in Exhibit B to this Subaward. The Subrecipient shall submit, a written report specifying progress made for each specified performance measure and standard in this Agreement. The ongoing monitoring of the Subrecipient will reflect its assessed risk and include monitoring, identification of deficiencies, and follow-up to ensure appropriate remediation.

b. Risk Assessment

The risk assessment may include factors such as prior experience in managing Federal funds, previous audits, personnel, and policies or procedures for award execution and oversight.

c. Monitoring

Monitoring and review activities will be detailed in a Monitoring Plan based on the State's risk assessment of the Subrecipient and will be provided to the Subrecipient. The Monitoring Plan may include, but not be limited to, the Subrecipient's technical progress compared to the intended milestones and deliverables; the Subrecipient's actual expenditures compared to the approved budget, review of Subrecipient's reimbursement requests including detailed backup documentation, or other subject matter specified by the State.

d. Litigation Reporting

If Subrecipient is served with a pleading or other document in connection with an action before a court or other administrative decision making body, and such pleading or document relates to this Agreement or may affect Subrecipient's ability to perform its obligations under this Agreement, Subrecipient shall, within ten days after being served, notify the State of such action and deliver copies of such pleading or document to the State's Principal Representative identified on the Cover Page for this Agreement

e. Performance and Final Status

Subrecipient shall submit all financial, performance and other reports required in the 12- and 24-month status updates to the State no later than 45 calendar days after the end of the Initial Term if no Extension Terms are exercised, or the final Extension Term exercised by the State, containing an evaluation and review of Subrecipient's performance and the final status of Subrecipient's obligations hereunder.

f. Violations Reporting

Subrecipient shall disclose, in a timely manner, in writing to the State and the Federal Awarding Agency, all violations of federal or State criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal Award. The State or the Federal Awarding Agency may impose any penalties for noncompliance allowed under 2 CFR Part 180 and 31 U.S.C. 3321, which may include, without limitation, suspension or debarment.

g. Inspection

Subrecipient shall permit the State, the federal government, and any other duly authorized agent of a governmental agency to audit, inspect, examine, excerpt, copy and transcribe Subrecipient Records during the Record Retention Period. Subrecipient shall make Subrecipient Records available during normal business hours at Subrecipient's office or place of business, or at other mutually agreed upon times or locations, upon no fewer than two Business Days' notice from the State, unless the State determines that a shorter period of notice, or no notice, is necessary to protect the interests of the State.

h. Final Audit Report

Subrecipient shall promptly submit to the State a copy of any final audit report of an audit performed on Subrecipient's records that relates to or affects this Agreement or the Work, whether the audit is conducted by Subrecipient or a third party. Additionally, if Subrecipient is required to perform a single audit under 2 CFR 200.501, et seq., then Subrecipient shall submit a copy of the results of that audit to the State within the same timelines as the submission to the federal government.

6. Amendments and Assignments

If there is a need to review or revise this agreement, the requesting party shall submit a written amendment to the other party, with the understanding that no amendment to this agreement shall be valid unless it is agreed and signed by both parties. This agreement shall not be assignable by either party without written consent of the other, except for assignment resulting from merger, consolidation, or reorganization of the assigning party.

7. Records, Audits, and Other Grant Compliance Issues

It is understood that this agreement may be utilized as part of the American Rescue Plan Act (Coronavirus State and Local Fiscal Relief Fund – ALN 21.027) and therefore both parties agree to maintain accounts and records, including personnel, property, and financial records, adequately to identify and account for all costs pertaining to this agreement and to ensure full compliance with the requirements of the above program. The Subrecipient will comply with all applicable federal law, regulations, executive orders, grant policies, procedures, and directives. Even though federal funding may be available, the Federal Government is not a party to this agreement and is not subject to any obligations or liabilities to the State, Subrecipient, or any other party pertaining to any matter resulting from the agreement.

a. Work Product Information

(1) The Subrecipient may receive from the State work product information that the State utilizes. The Subrecipient assumes sole responsibility for verification of the accuracy of all information and for legal compliance with all rules and instructions required herein. The Subrecipient further acknowledges that the State makes and assumes no representations or warranties with regard to the work product information. Work product information may include, but is not limited to, procurement policies, procurement forms, contractor insurance requirements, various standard contracts, specific grant program forms or other relevant documents.

(2) With respect to the Subrecipient's use of any work product transmitted by or originally created by the State, the Subrecipient acknowledges it is the Subrecipient's decision to act accordingly. The Subrecipient has the option to either adopt such product as the Subrecipient's own or the Subrecipient may utilize the following other options available to the Subrecipient:

i. Modify the State's work product appropriate to the Subrecipient's own needs;

ii. Create and adopt the Subrecipient's own work product separate from the State's work products; or,

iii. Adopt a work product created by other State or Federal agencies when applicable to the Subrecipient's needs.

(3) If the Subrecipient utilizes any of the State's work products in any way, then the Subrecipient acknowledges that the State makes no representations or warranties with

regard to the same.

b. Audits

For audit purposes, all records will be made available by both parties to any authorized representative of either party and said records will be maintained and retained for five (5) years after closeout of the grant program. If any confidential information is obtained during the course of this agreement, both parties agree not to release that information without the approval of the other party unless instructed otherwise by court order, grantor, auditor, public information request or as required by law.

c. Records

The State and Subrecipient agree that all records shall be made available to either party at no additional charge for such information. The Subrecipient also agrees to provide the State, the Government Accountability Office (GAO), the Treasury's Office of Inspector General (OIG), Pandemic Relief Accountability Committee (PRAC), or any of their authorized representatives access to any books, documents, papers, and records of the Subrecipient which are directly pertinent to this agreement for the purposes of making audits, examinations, excerpts, and transcriptions. The Subrecipient agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed at no additional charge.

In compliance with the Grantor and national policy requirements, including the above referenced federal grant requirements, both parties agree to adhere to the following regulations, where applicable:

(a) **Federally Required Contractual Provisions**:

(1) **Administrative, Contractual or Legal Remedies** are required in all contracts in excess of the simplified acquisition threshold amount that are funded with federal funds and are addressed in various sections of this agreement;

(2) **Termination Provision** requires all contracts in excess of $10,000 to contain a provision for termination of the contract for cause or convenience and this provision is addressed in Section 8 of this agreement;

(3) For all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3, **Equal Employment Opportunity**, including Executive Order 11246 which was further amended by Executive Order 11375, which requires equal opportunity for all persons, without regard to race, color, religion, sex or national origin, employed or seeking employment with government contractors or with contractors performing under federally assisted construction contracts (See Exhibit C);

(4) For all applicable contracts in excess of $100,000 that involve the employment of mechanics or laborers, **Contract Work Hours and Safety Standards Act** which prohibits certain unsanitary, hazardous or dangerous working conditions and requires

that wages of every mechanic and laborer to be on the basis of a standard work week of forty hours with any work in excess of forty hours per week to be compensated at a rate of not less than one and one-half times the basic rate of pay (See Exhibit C);

(5) For all contracts that meet the definition of "funding agreement" under 37 CFR Part 401.2(a) and involve a contract with a small business firm or nonprofit organization regarding the assignment or performance of experimental, developmental or research work must comply with the **Rights to Inventions Made Under a Contract or Agreement** contained in 37 CFR Part 401 (See Exhibit C);

(6) All contracts, subcontracts and sub-grants in excess of $150,000 must contain a provision which requires compliance with all applicable standards, orders or regulations issued pursuant to the **Clean Air Act** and the **Federal Water Pollution Control Act** (See Exhibit C);

(7) **Debarment and Suspension (Executive Orders 12549 and 12689 and 2 CFR Part 180)** which prohibit the contracting with any party listed on the "System for Award Management" (SAM), formerly identified as the "Excluded Parties List System" (EPLS.gov), which identifies all parties that have active exclusions (i.e., suspensions, debarments) imposed by a federal agency (See Exhibit C);

(8) **Byrd Anti-Lobbying Prohibition (31 U.S.C. 1352)** prohibits the use of federal funds to pay any person or organization for influencing or attempting in influence anyone with any federal contract, grant or other award covered by 31 U.S.C. 1352 and also requires that Contractors that apply or bid for an award exceeding $100,000 where federal funds are used must file the required certification stating that the parties will not and have not used federal funds to pay any person or organization for influencing or attempting to influence anyone with any federal contract, grant, or other award covered by 31 U.S.C. 1352 (See Exhibit C);

(9) For all construction contracts in excess of $2,000 and required by federal grant regulations, the **Davis Bacon Act** which requires payments of wages for laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor and said wage payments will be made at least weekly (See Exhibit D);

(10) **Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment** wherein 2 CFR Part 200.216 prohibits use of federal grant or loan funds to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);

(11) **Domestic Preferences for Procurements** for when federal funds are utilized, and where appropriate and to the extent consistent with other laws and regulations, 2 CFR Part 200.322 allows a federal award to provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products); and,

(12) **Procurement of Recovered Materials** as required by 2 CFR Part 200.323 which requires procurements in excess of $10,000 to contain the highest percentage of recovered materials practicable while consistent with maintaining a satisfactory level of competition.

(b) **National Policy Requirements**:

(1) **Civil Rights Act of 1964**, including Title VI, which states that no person shall on the grounds of race, color or national origin shall be excluded from participation in, be refused the benefits of, or be otherwise subjected to discrimination under any program or activity receiving federal financial assistance;

(2) **Age Discrimination Act of 1975** which prohibits discrimination based on age in programs or activities receiving federal financial assistance;

(3) **Americans with Disabilities Act of 1990**, with respect to building construction or alteration, prohibits discrimination based on a disability defined as a physical or mental impairment that substantially limits a major life activity;

(4) **Section 504 of the Rehabilitation Act of 1973,** if specifically required by the federal agency, which prohibits the exclusion of an otherwise qualified individual because of a disability in programs receiving federal financial assistance including program accessibility, accessible new construction and alterations, reasonable accommodations and effective communication with hearing and visually disabled (this requirement may vary with each federal agency);

(5) For all construction or repair contracts, **Copeland "Anti-Kickback" Act** which requires all contracts and sub-grants for construction or repair to contain a provision that prohibits a contractor or sub-contractor from inducing, by any means, any person employed in the construction, completion or repairs of public work to give up any part of the compensation to which he is otherwise entitled;

(6) **National Environmental Policy Act and National Historic Preservation Act** which prohibit any activities that will have an adverse impact on the environment and regulate activity on property or structures that are deemed historic;

(7) **Energy Policy and Conservation Act** which require the contractors to comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan;

(8) **Reporting Provision** requires that all contracts should include a requirement that the Subrecipient assist the State, when applicable, with any awarding agency requirements and regulations pertaining to reporting;

(9) **Record Retention Provision** requires that any contract executed must include a provision that all required records will be maintained by the contractor/firm for a minimum period of three (3) years after the State formally closes out each federal program (State and Subrecipient grant managers should verify the three (3) year record retention period with each respective grant agency to ensure that a longer period is not required);

(10) **2013 National Defense Authorization Act (41 United States Code (U.S.C.) 4712, Pilot Program for Enhancement of Recipient and Subrecipient Employee Whistleblower Protection)** subjects any subawards and contracts over the federal simplified acquisition threshold to the provisions of the above act regarding rights and remedies for employee whistleblower protections;

(11) **National Flood Insurance Act of 1968 and Flood Disaster Protection Act of 1973** which require recipients of federal grants that are acquiring, constructing or repairing property in a special flood hazard area, and with an estimated cost in excess of $10,000, to purchase flood insurance;

(12) **Wild and Scenic Rivers Act of 1968** which protects components or potential components of the national wild and scenic rivers system;

(13) **Resource Conservation and Recovery Act** which requires proper handling and disposal of solid waste;

(14) **Toxic Substance Control Act** which places restrictions on chemicals that pose unreasonable risks, such as surfaces that could be covered with lead-based paint;

(15) **Federal Agency Seal(s), Logos, Crests, or Reproductions of Flags or Likeness of Federal Agency Officials** are prohibited from being utilized without specific federal agency pre-approval;

(16) **False Claims Act and 32 U.S.C. Chapter 38 (Administrative Remedies)** which prohibits the submission of false or fraudulent claims for payment to the federal government identifying administrative remedies for false claims and statements made which the CONTRACTOR herein acknowledges; and,

(17) **Section 603 Title VI of the Social Security Act** which establishes the Coronavirus State and Local Fiscal Recovery Fund and identifies eligible and ineligible uses for the Fund monies (See Exhibit E).

In compliance with Section 7(a)(7) above, the Subrecipient agrees to verify that all contractors or subcontractors employed are not parties listed as active exclusions (i.e., suspensions, debarments) on the "System for Award Management" (SAM) for parties debarred, suspended or otherwise excluded from contracting on any projects involving federal funds. Subrecipient agrees to require the contractor to provide immediate notice, but in no case later than three (3) business days, after being notified that the contractor, or any subcontractor, has been added to the SAM or otherwise been debarred from contracting on any projects involving federal funds.

In no event shall the Subrecipient allow any contractor to utilize a subcontractor at any time during the duration of this agreement who has been debarred from contracting on any projects involving federal funds. If the contractor is prohibited in any way from contracting on any projects involving federal funds at any time during the duration of this agreement, then both the Subrecipient and the State must be notified. the State may, at its sole discretion, immediately implement the termination provisions discussed in Section 8 below if the Subrecipient decides to continue with the project using a "debarred" or "active exclusion" contractor or subcontractor.

8. Liability and Indemnity

a. Liability

This agreement is intended for the benefit of the State and the Subrecipient and does not confer any rights upon any other third parties. All rights by and between the State and the Subrecipient are limited to the actions outlined in the applicable local, state and federal laws, regulations and policies.

b. Indemnity

The Subrecipient will indemnify, defend, and hold harmless the State, including the State's employees and agents, from and against any and all claims or liabilities arising from the fault of the Subrecipient, its employees or agents in carrying out the Subrecipient's duties and obligations under the terms of this agreement. This section will survive the termination of this agreement. In the event that either party takes any action to enforce this mutual indemnity provision, the prevailing party shall be entitled to recover reasonable attorney's fees and costs arising as a result thereof.

9. Insurance

Subrecipient shall obtain and maintain, and ensure that each Subcontractor shall obtain and maintain, insurance as specified in this section at all times during the term of this Agreement. All insurance policies required by this Agreement that are not provided through self-insurance shall be issued by insurance companies as approved by the State.

A. Workers' Compensation

Workers' compensation insurance as required by state statute, and employers' liability insurance covering all Subrecipient or Subcontractor employees acting within the course and scope of their employment.

B. General Liability

Commercial general liability insurance covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:

i. $1,000,000 each occurrence;

ii. $1,000,000 general aggregate;

iii. $1,000,000 products and completed operations aggregate; and

iv. $50,000 any one fire.

C. Automobile Liability

Automobile liability insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit of $1,000,000 each accident combined single limit.

D. Cyber/Network Security and Privacy Liability

Liability insurance covering civil, regulatory, and statutory damages, contractual damages, data breach management exposure, and any loss of income or extra expense as a result of actual or alleged breach, violation, or infringement of right to privacy, consumer data protection law, confidentiality or other legal protection for personal information, as well as State Confidential Information with minimum limits as follows:

i. $1,000,000 each occurrence; and

ii. $2,000,000 general aggregate.

E. Professional Liability Insurance

Professional liability insurance covering any damages caused by an error, omission or any negligent act with minimum limits as follows:

i. $1,000,000 each occurrence; and

ii. $1,000,000 general aggregate.

F. Crime Insurance

Crime insurance including employee dishonesty coverage with minimum limits as follows:

i. $1,000,000 each occurrence; and

ii. $1,000,000 general aggregate.

G. Additional Insured

The State shall be named as additional insured on all commercial general liability policies (leases and construction Agreements require additional insured coverage for completed operations) required of Subrecipient and Subcontractors.

H. Primacy of Coverage

Coverage required of Subrecipient and each Subcontractor shall be primary and noncontributory over any insurance or self-insurance program carried by Subrecipient or the State.

I. Cancellation

All commercial insurance policies shall include provisions preventing cancellation or non-renewal, except for cancellation based on non-payment of premiums, without at least 30 days prior notice to Subrecipient.

J. Subrogation Waiver

All commercial insurance policies secured or maintained by Subrecipient or its Subcontractors in relation to this Agreement shall include clauses stating that each carrier shall waive all rights of recovery under subrogation or otherwise against Subrecipient or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

K. Certificates

For each commercial insurance plan provided by Subrecipient under this Agreement, Subrecipient shall provide to the State certificates evidencing Subrecipient's insurance coverage required in this Agreement within seven Business Days following the Effective Date. Subrecipient shall provide to the State certificates evidencing Subcontractor insurance coverage required under this Agreement within seven Business Days following the Effective Date, except that, if Subrecipient's Subcontractor is not in effect as of the Effective Date, Subrecipient shall provide to the State certificates showing Subcontractor insurance coverage required under this Agreement within seven Business Days following Subrecipient's execution of the Subcontractor. No later than 15 days before the expiration date of Subrecipient's or any Subcontractor's coverage, Subrecipient shall deliver to the State certificates of insurance evidencing renewals of coverage. At any other time during the term of this Agreement, upon request by the State, Subrecipient shall, within seven Business Days following the request by the State, supply to the State evidence satisfactory to the State of compliance with the provisions of this section.

10. Breach

In the event of a Breach of Agreement, the aggrieved Party shall give written notice of Breach of Agreement to the other Party. If the notified Party does not cure the breach, at its sole expense, within 30 days after the delivery of written notice, the Party may exercise any of the remedies as described in §11 for that Party. Notwithstanding any provision of this Agreement to the contrary, the State, in its discretion, need not provide notice or a cure period and may immediately terminate this Agreement in whole or in part or institute any other remedy in this Agreement in order to protect the public interest of the State.

11. Remedies

a. State's Remedies

If Subrecipient is in breach under any provision of this Agreement and fails to cure such breach, the State, following the notice and cure period set forth in **§10,** shall have all of the remedies listed in this section in addition to all other remedies set forth in this Agreement or at law. The State may exercise any or all of the remedies available to it, in its discretion, concurrently or consecutively.

i. Termination for Breach

In the event of Subrecipient's uncured breach, the State may terminate this entire Agreement or any part of this Agreement. Additionally, if Subrecipient fails to comply with any terms of the Federal Award, then the State may, in its discretion or at the direction of a Federal Awarding Agency, terminate this entire Agreement or any part of this Agreement. Subrecipient shall continue performance of this Agreement to the extent not terminated, if any.

1. Obligations and Rights

To the extent specified in any termination notice, Subrecipient shall not incur further obligations or render further performance past the effective date of such notice, and shall terminate outstanding orders and Subcontractors with third parties. However, Subrecipient shall complete and deliver to the State all Work not cancelled by the termination notice, and may incur obligations as necessary to do so within this Agreement's terms. At the request of the State, Subrecipient shall assign to the State all of Subrecipient's rights, title, and interest in and to such terminated orders or Subcontractors. Upon termination, Subrecipient shall take timely, reasonable and necessary action to protect and preserve property in the possession of Subrecipient but in which the State has an interest. At the State's request, Subrecipient shall return materials owned by the State in Subrecipient's possession at the time of any termination. Subrecipient shall deliver all completed Work Product and all Work Product that was in the process of completion to the State at the State's request.

2. Payments

Notwithstanding anything to the contrary, the State shall only pay Subrecipient for accepted Work received as of the date of termination. If, after termination by the State, the State agrees that Subrecipient was not in breach or that Subrecipient's action or inaction was excusable.

3. Damages and Withholding

Notwithstanding any other remedial action by the State, Subrecipient shall remain liable to the State for any damages sustained by the State in connection with any breach by Subrecipient, and the State may withhold payment to Subrecipient for the purpose of mitigating the State's damages until such time as the exact amount of damages due to the State from Subrecipient is determined. The State may withhold any amount that may be due Subrecipient as the State deems necessary to protect the State against loss including, without limitation, loss as a result of outstanding liens and excess costs incurred by the State in procuring from third parties replacement Work as cover.

ii. Remedies Not Involving Termination

The State, in its discretion, may exercise one or more of the following additional remedies:

1. Suspend Performance

Suspend Subrecipient's performance with respect to all or any portion of the Work pending corrective action as specified by the State without entitling Subrecipient to an adjustment in price or cost or an adjustment in the performance schedule. Subrecipient shall promptly cease performing Work and incurring costs in accordance with the State's directive, and the State shall not be liable for costs incurred by Subrecipient after the suspension of performance.

2. Withhold Payment

Withhold payment to Subrecipient until Subrecipient corrects its Work.

3. Deny Payment

Deny payment for Work not performed, or that due to Subrecipient's actions or inactions, cannot be performed or if they were performed are reasonably of no value to the state; provided, that any denial of payment shall be equal to the value of the obligations not performed.

4. Removal

Demand immediate removal of any of Subrecipient's employees, agents, or Subcontractors from the Work whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable or whose continued relation to this Agreement is deemed by the State to be contrary to the public interest or the State's best interest.

5. Intellectual Property

If any Work infringes, or if the State in its sole discretion determines that any Work is likely to infringe, a patent, copyright, trademark, trade secret or other intellectual property right, Subrecipient shall, as approved by the State **(i)** secure that right to use such Work for the State and Subrecipient; **(ii)** replace the Work with noninfringing Work or modify the Work so that it becomes noninfringing; or, **(iii)** remove any infringing Work and refund the amount paid for such Work to the State.

b. Subrecipient's Remedies

If the State is in breach of any provision of this Agreement and does not cure such breach, Subrecipient, following the notice and cure period in **§10** and the dispute resolution process in **§12** shall have all remedies available at law and equity.

12. Termination of Agreement and Dispute Resolution

a. Termination

While both parties agree to negotiate all contractual disputes in good faith, the State reserves the right to terminate this agreement at any time upon written notice of termination or if the Subrecipient has failed to comply with the terms of this agreement, the grant itself or any applicable law and regulation. All questioned costs are the sole responsibility of the Subrecipient.

b. Dispute Resolution

If the parties are unable to independently and satisfactorily resolve any disagreement, then both parties agree that any contractual disagreement will be resolved under the jurisdiction of the New Mexico and the exclusive venue shall be in the City and County of Santa Fe. In the event that court action is necessary then the parties agree that whoever prevails in the litigation is entitled to reasonable attorney’s fees and costs as fixed by the Court.

13. Conflicts of Interest

a. Actual Conflicts of Interest

Subrecipient shall not engage in any business or activities, or maintain any relationships that conflict in any way with the full performance of the obligations of Subrecipient under this Agreement. Such a conflict of interest would arise when a Subrecipient or Subcontractor’s employee, officer or agent were to offer or provide any tangible personal benefit to an employee of the State, or any member of his or her immediate family or his or her partner, related to the award of, entry into or management or oversight of this Agreement.

b. Apparent Conflicts of Interest

Subrecipient acknowledges that, with respect to this Agreement, even the appearance of a conflict of interest shall be harmful to the State’s interests. Absent the State’s prior written approval, Subrecipient shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Subrecipient’s obligations under this Agreement.

c. Disclosure to the State

If a conflict or the appearance of a conflict arises, or if Subrecipient is uncertain whether a conflict or the appearance of a conflict has arisen, Subrecipient shall submit to the State a disclosure statement setting forth the relevant details for the State’s consideration. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the actual or apparent conflict constitutes a breach of this Agreement.

14. Notices and Representatives

Each individual identified as a Principal Representative on the Cover Page for this Agreement shall be the principal representative of the designating Party. All notices required or permitted to be given under this Agreement shall be in writing, and shall be delivered:

a. by hand with receipt required,

b. by certified or registered mail to such Party's principal representative at the address set forth below or

c. as an email with read receipt requested to the principal representative at the email address, if any, set forth on the Cover Page for this Agreement

If a Party delivers a notice to another through email and the email is undeliverable, then, unless the Party has been provided with an alternate email contact, the Party delivering the notice shall deliver the notice by hand with receipt required or by certified or registered mail to such Party's principal representative at the address set forth on the Cover Page for this Agreement. Either Party may change its principal representative or principal representative contact information or may designate specific other individuals to receive certain types of notices in addition to or in lieu of a principal representative, by notice submitted in accordance with this section without a formal amendment to this Agreement. Unless otherwise provided in this Agreement, notices shall be effective upon delivery of the written notice.

15. Rights in Work Product and Other Information

a. Work Product

i. Copyrights

To the extent that the Work Product (or any portion of the Work Product) would not be considered works made for hire under applicable law, Subrecipient hereby assigns to the State, the entire right, title, and interest in and to copyrights in all Work Product and all works based upon, derived from, or incorporating the Work Product; all copyright applications, registrations, extensions, or renewals relating to all Work Product and all works based upon, derived from, or incorporating the Work Product; and all moral rights or similar rights with respect to the Work Product throughout the world. To the extent that Subrecipient cannot make any of the assignments required by this section, Subrecipient hereby grants to the State a perpetual, irrevocable, royalty-free license to use, modify, copy, publish, display, perform, transfer, distribute, sell, and create derivative works of the Work Product and all works based upon, derived from, or incorporating the Work Product by all means and methods and in any format now known or invented in the future. The State may assign and license its rights under this license.

ii. Patents

In addition, Subrecipient grants to the State (and to recipients of Work Product distributed by or on behalf of the State) a perpetual, worldwide, no-charge, royalty-free, irrevocable patent license to make, have made, use, distribute, sell, offer for sale, import, transfer, and otherwise utilize, operate, modify and propagate the contents of the Work Product. Such license applies only to those patent claims licensable by Subrecipient that are necessarily infringed by the Work Product alone, or by the combination of the Work Product with anything else used by the State.

iii. Assignments and Assistance

Whether or not Subrecipient is under Agreement with the State at the time, Subrecipient shall execute applications, assignments, and other documents, and shall render all other reasonable assistance requested by the State, to enable the State to secure patents, copyrights, licenses and other intellectual property rights related to the Work Product. The Parties intend the Work Product to be works made for hire. Subrecipient assigns to the State and its successors and assigns, the entire right, title, and interest in and to all causes of action, either in law or in equity, for past, present, or future infringement of intellectual property rights related to the Work Product and all works based on, derived from, or incorporating the Work Product.

b. Exclusive Property of the State

Except to the extent specifically provided elsewhere in this Agreement, any pre-existing State Records, State software, research, reports, studies, photographs, negatives or other documents, drawings, models, materials, data and information shall be the exclusive property of the State (collectively, “State Materials”). Subrecipient shall not use, willingly allow, cause or permit Work Product or State Materials to be used for any purpose other than the performance of Subrecipient’s obligations in this Agreement without the prior written consent of the State. Upon termination of this Agreement for any reason, Subrecipient shall provide all Work Product and State Materials to the State in a form and manner as directed by the State.

c. Exclusive Property of Subrecipient

Subrecipient retains the exclusive rights, title, and ownership to any and all pre-existing materials owned or licensed to Subrecipient including, but not limited to, all pre-existing software, licensed products, associated source code, machine code, text images, audio and/or video, and third-party materials, delivered by Subrecipient under this Agreement, whether incorporated in a Deliverable or necessary to use a Deliverable (collectively, “Subrecipient Property”). Subrecipient Property shall be licensed to the State as set forth in this Agreement or a State approved license agreement: (i) entered into as exhibits to this Agreement, (ii) obtained by the State from the applicable third-party vendor, or (iii) in the case of open source software, the license terms set forth in the applicable open source license agreement.

16. General Provisions

a. Assignment

Subrecipient’s rights and obligations under this Agreement are personal and may not be transferred or assigned without the prior, written consent of the State. Any attempt at assignment or transfer without such consent shall be void. Any assignment or transfer of Subrecipient’s rights and obligations approved by the State shall be subject to the provisions of this Agreement.

b. Subcontractors

Subrecipient shall not enter into any subgrant or Subcontract in connection with its obligations under this Agreement without the prior, written approval of the State. Subrecipient shall submit to the State a copy of each such subgrant or Subcontract upon request by the State. All subgrants and Subcontracts entered into by Subrecipient in connection with this Agreement shall comply with all applicable federal and state laws and regulations, shall provide that they are governed by the laws of the State of New Mexico, and shall be subject to all provisions of this Agreement. If the entity with whom Subrecipient enters into a Subcontract or subgrant would also be considered a Subrecipient, then the Subcontract or subgrant entered into by Subrecipient shall also contain provisions permitting both Subrecipient and the State to perform all monitoring of that Subcontract in accordance with the Uniform Guidance.

c. Binding Effect

Except as otherwise provided, all provisions of this Agreement, including the benefits and burdens, shall extend to and be binding upon the Parties' respective successors and assigns.

d. Authority

Each Party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such Party's obligations have been duly authorized.

e. Captions and References

The captions and headings in this Agreement are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions. All references in this Agreement to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

f. Counterparts

This Agreement may be executed in multiple, identical, original counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

g. Entire Understanding

This Agreement represents the complete integration of all understandings between the Parties related to the Work, and all prior representations and understandings related to the Work, oral or written, are merged into this Agreement. Prior or contemporaneous additions, deletions, or other changes to this Agreement shall not have any force or effect whatsoever, unless embodied herein.

h. Digital Signatures

If any signatory signs this agreement using a digital signature in accordance with the State, Grant and Purchase Order Policies regarding the use of digital signatures issued under the State Fiscal Rules, then any agreement or consent to use digital signatures within the electronic system through which that signatory signed shall be incorporated into this Agreement by reference.

i. Modification

Except as otherwise provided in this Agreement, any modification to this Agreement shall only be effective if agreed to in a formal amendment to this Agreement, properly executed and approved in accordance with applicable New Mexico law and State Fiscal Rules. Modifications permitted under this Agreement, other than Agreement amendments, shall conform to the policies issued by the State.

j. Statutes, Regulations, Fiscal Rules, and Other Authority

Any reference in this Agreement to a statute, regulation, fiscal policy or other authority shall be interpreted to refer to such authority then current, as may have been changed or amended since the Effective Date of this Agreement.

k. External Terms and Conditions

Notwithstanding anything to the contrary herein, the State shall not be subject to any provision included in any terms, conditions, or agreements appearing on Subrecipient's or a Subcontractor's website or any provision incorporated into any click-through or online agreements related to the Work unless that provision is specifically referenced in this Agreement.

l. Severability

The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect, provided that the Parties can continue to perform their obligations under this Agreement in accordance with the intent of this Agreement.

m. Survival of Certain Agreement Terms

Any provision of this Agreement that imposes an obligation on a Party after termination or expiration of this Agreement shall survive the termination or expiration of this Agreement and shall be enforceable by the other Party.

n. Third Party Beneficiaries

Except for the Parties' respective successors and assigns described in **§ 17.A,** this Agreement does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Agreement and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Agreement are incidental to this Agreement, and do not create any rights for such third parties.

o. Waiver

A Party's failure or delay in exercising any right, power, or privilege under this Agreement, whether explicit or by lack of enforcement, shall not operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege preclude any other or further exercise of such right, power, or privilege.

p. Standard and Manner of Performance

Subrecipient shall perform its obligations under this Agreement in accordance with the highest standards of care, skill and diligence in Subrecipient's industry, trade, or profession.

q. Licenses, Permits, and Other Authorizations

Subrecipient shall secure, prior to the Effective Date, and maintain at all times during the term of this Agreement, at its sole expense, all licenses, certifications, permits, and other authorizations required to perform its obligations under this Agreement, and shall ensure that all employees, agents and Subcontractors secure and maintain at all times during the term of their employment, agency or Subcontractor, all license, certifications, permits and other authorizations required to perform their obligations in relation to this Agreement.

r. Compliance with State and Federal Law, Regulations, and Executive Orders

Subrecipient shall comply with all State and Federal law, regulations, executive orders, State and Federal Awarding Agency policies, procedures, directives, and reporting requirements at all times during the term of this Grant.

17. Severability, Entire Agreement and Captions

This agreement shall be governed by and construed in accordance with the laws of the State of New Mexico. If any provision of this agreement is held invalid, void or unenforceable under any law or regulation or by a court of competent jurisdiction, such provision will be deemed amended in a manner which renders it valid, or if it cannot be so amended, it will be deemed to be deleted. Such amendment or deletion will not affect the validity of any other provision of this agreement. This agreement, any CSLRF Grant Program documentation, any attached documents, and any referenced documents represent the entire agreement between the State and the Subrecipient and supersede all prior negotiations, representations or agreements, either written or oral. In the event of a conflict between this agreement and other documents, the terms of this agreement shall control.

Each paragraph of this agreement has been supplied with a caption to serve only as a guide to the contents. The caption does not control the meaning of any paragraph or in any way determine its interpretation.

IN WITNESS WHEREOF, the Grantor and the Subrecipient do hereby execute this Agreement as of the date of signature by the Grantor below.

Subrecipient	**The State of New Mexico**
Legal Name of the Subrecipient City of Alamogordo ________________________________ By: Name & Title of the Person Signing for the Agency Date:_____________________	Economic Development Department Alicia J. Keyes Cabinet Secretary Or Designee ________________________________ By: Alicia J. Keyes, Cabinet Secretary, or designee Date:_____________________

EXHIBIT A

FEDERAL AWARD INFORMATION

In accordance with the Code of Federal Regulations (CFR), 2 CFR Section 200.331 requires that the following information be provided to any Subrecipient of a federal award:

Federal Award Identification: Coronavirus State and Local Fiscal Recovery Funds

Subrecipient Name: **City of Alamogordo**

Federal Award Identification Number: Coronavirus State and Local Fiscal Recovery Funds

Subaward Period of Performance (Start and End Date): Effective Date of this Agreement and October 31, 2026

Amount of Federal Funds Obligated to Subrecipient: $99,000.00

Federal Award Project Description (in accordance with Federal Funding Accountability and Transparency Act (FFATA): Coronavirus State and Local Fiscal Recovery Funds

Name of Federal Awarding Agency: U.S. Department of the Treasury

Name of Pass-Through Entity and Contact Information: **[______]**

Assistance Listing Number (ALN): 21.027

SCOPE OF WORK AND BUDGET

ARTICLE I – SCOPE OF WORK

A. The Subrecipient agrees that it will implement, in all respects, the activities outlined in the Subrecipient's proposal, as outlined in the Submittable grant application, as approved and awarded by the State. The Subrecipient shall provide all the necessary qualified personnel, materials, and facilities to implement the activities described herein, other than those acquired with funds from this grant.

B. The Subrecipient agrees to make no material change in the Project Description herein described without first submitting a written request to the State and obtaining the State's written approval of the proposed change.

C. The Subrecipient agrees that funds distributed under this Agreement shall not be used for purposes other than those specified in the Submittable grant application. Any funds found to be expended for non-permitted purposes shall be repaid to the State. Unauthorized use of grant funds may also subject the Subrecipient to penalties as permitted by state or federal law.

D. The Subrecipient agrees to provide two status reports: The first 12 months after the start date of the grant and the second at the end of the grant cycle, or 24 months after the start of the grant, as determined by the State. The final report is due within thirty (30) days of **24 months after signing of this grant agreement.**

E. The Subrecipient agrees to accommodate in-person site visits and phone calls from the State as part of regular status updates throughout the length of this grant agreement.

Significant Changes to Scope of Work

The Subrecipient is required to notify and seek written approval of the State in advance of any proposed changes to the scope of work under this Subaward (i.e., significant changes to the statement of project objectives or the schedule of technical milestones and deliverables). Such changes may require the State to re-evaluate the eligibility of the work under this Subaward.

ARTICLE II- LENGTH OF AGREEMENT

A. This Agreement shall not become effective until approved by the Department of Finance and Administration, and shall terminate on or before **24 months after signing of the grant agreement.**

B. In the event that, due to unforeseen circumstances, it becomes apparent that the work under this Grant Agreement cannot be brought to full completion within the time period set forth in Paragraph A of this Article II, the Subrecipient shall notify the State in writing at least thirty (30) days prior to the termination date of this Agreement. Subrecipient and the State shall review the work accomplished and shall determine whether to amend this Grant Agreement to provide additional time for completion.

ARTICLE III – PROJECT DELIVERABLES

A. **Due Date for Subrecipient to Sign/Return Grant Agreement Copies** –The Subrecipient will receive a copy of grant agreement electronically shall be required to sign and return and electronic copy to the State. Failure by the State to sign and return the grant agreement copies by the required due date may result in forfeiture of the grant award.

B. **Due Date for Subrecipient to Submit Invoice for Payment to State** The State will notify the Subrecipient when the grant agreement has been fully executed which shall not be unreasonably delayed. The funds must be expended as outlined in the grant application. Upon notification by State that any required deliverables have been accepted, Subrecipient may request payment for the grant award by submitting an invoice for advance payment. Failure by the Subrecipient to submit the invoice by the required due date may result in forfeiture of the grant award.

C. **Status Updates**

- The Subrecipient will provide the State with two status updates – one at the halfway point and at the end of the grant agreement. The State will provide an online template for these reports in the form of a survey. These updates will include information about progress on the milestones and other information as requested.

- The Subrecipient is expected to accommodate in-person site visits and phone calls by the State throughout the length of the grant.

D. **Final Report**

- Upon completion of the Scope of Work, Applicant must submit a final report to the State. Final reports must be received on or before **24 months after signing of the grant agreement.** A template for this report and specifics about the information to be included will be sent to all subrecipients electronically. Failure to submit this report by the requested deadline may make the Subrecipient ineligible for future funding from this program.

- Subrecipient will provide State with documentation to support the costs and outcomes identified in the scope of work.

E. If deliverables include the creation of jobs; Subrecipient shall provide the State with a copy of all information reported to the New Mexico Department of Workforce Solutions which proves such job creation.

ARTICLE IV – CONSIDERATION AND METHOD OF PAYMENT

A. In consideration of the Subrecipient's award, 100 percent of the total awarded funds will be paid upon the start date of the grant. The State shall pay to the Subrecipient a sum not to exceed **ninety-nine thousand dollars ($99,000.00).** The funds are to be expended in accordance with the budget breakdown as specified in the Submittable grant application. It is understood and agreed that the Subrecipient's expenditure of these monies shall not deviate materially from the line items of said budget without the prior written approval of the State.

B. It is understood and agreed that should any portion of the funds approved and paid hereunder by the State to the Subrecipient for the purpose designated herein that remain unexpended after all conditions of this Agreement have been satisfied shall revert to the State for disposition.

FEDERAL PROVISIONS

1. APPLICABILITY OF PROVISIONS.

1.1. The Grant to which these Federal Provisions are attached has been funded, in whole or in part, with an Award of Federal funds. In the event of a conflict between the provisions of these Federal Provisions, the Special Provisions, the body of the Grant, or any attachments or exhibits incorporated into and made a part of the Grant, the provisions of these Federal Provisions shall control.

1.2. The State of New Mexico is accountable to Treasury for oversight of their subrecipients, including ensuring their subrecipients comply with the CSFRF statute, CSFRF Award Terms and Conditions, Treasury's Final Rule, and reporting requirements, as applicable.

1.3. Additionally, any subrecipient that issues a subaward to another entity (2nd tier subrecipient), must hold the 2nd tier subrecipient accountable to these provisions and adhere to reporting requirements.

1.4. These Federal Provisions are subject to the Award as defined in §2 of these Federal Provisions, as may be revised pursuant to ongoing guidance from the relevant Federal or State of New Mexico agency or institutions of higher education.

2. DEFINITIONS.

2.1. For the purposes of these Federal Provisions, the following terms shall have the meanings ascribed to them below.

2.1.1. "Award" means an award of Federal financial assistance, and the Grant setting forth the terms and conditions of that financial assistance, that a non-Federal Entity receives or administers.

2.1.2. "Entity" means:

2.1.2.1. a Non-Federal Entity;

2.1.2.2. a foreign public entity;

2.1.2.3. a foreign organization;

2.1.2.4. a non-profit organization;

2.1.2.5. a domestic for-profit organization (for 2 CFR parts 25 and 170 only);

2.1.2.6. a foreign non-profit organization (only for 2 CFR part 170) only);

2.1.2.7. a Federal agency, but only as a Subrecipient under an Award or Subaward to a non-Federal entity (or 2 CFR 200.1); or

2.1.2.8. a foreign for-profit organization (for 2 CFR part 170 only).

2.1.3. "Executive" means an officer, managing partner or any other employee in a management position.

2.1.4. "Expenditure Category (EC)" means the category of eligible uses as defined by the US Department of Treasury in "Appendix 1 of the Compliance and Reporting Guidance, State and Local Fiscal Recovery Funds" report available at www.treasury.gov.

2.1.5. "Federal Awarding Agency" means a Federal agency providing a Federal Award to a Recipient as described in 2 CFR 200.1

2.1.6. "Grant" means the Grant to which these Federal Provisions are attached.

2.1.7. "Grantee" means the state identified as such in the Grant to which these Federal Provisions are attached.

2.1.8. "Non-Federal Entity means a State, local government, Indian tribe, institution of higher education, or nonprofit organization that carries out a Federal Award as a Recipient or a Subrecipient.

2.1.9. "Nonprofit Organization" means any corporation, trust, association, cooperative, or other organization, not including IHEs, that:

2.1.9.1. Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;

2.1.9.2. Is not organized primarily for profit; and

2.1.9.3. Uses net proceeds to maintain, improve, or expand the operations of the organization.

2.1.10. "OMB" means the Executive Office of the President, Office of Management and Budget.

2.1.11. "Pass-through Entity" means a non-Federal Entity that provides a Subaward to a Subrecipient to carry out part of a Federal program.

2.1.12. "Prime Recipient" means the New Mexico State agency or institution of higher education identified as the Grantor in the Grant to which these Federal Provisions are attached.

2.1.13. "Subaward" means an award by a Prime Recipient to a Subrecipient funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to the Subaward unless the terms and conditions of the Federal Award specifically indicate otherwise in accordance with 2 CFR 200.101. The term does not include payments to a Contractor or payments to an individual that is a beneficiary of a Federal program.

2.1.14. "Subrecipient" or "Subgrantee" means a non-Federal Entity (or a Federal agency under an Award or Subaward to a non-Federal Entity) receiving Federal funds through a Prime Recipient to support the performance of the Federal project or program for which the Federal funds were awarded. A Subrecipient is subject to the terms and conditions of the Federal Award to the Prime Recipient, including program compliance requirements. The term does not include an individual who is a beneficiary of a federal program.

2.1.15. "System for Award Management (SAM)" means the Federal repository into which an Entity must enter the information required under the Transparency Act, which may be found at http://www.sam.gov. "Total Compensation" means the cash and noncash dollar value earned by an Executive during the Prime Recipient's or Subrecipient's preceding fiscal year (see 48 CFR 52.204-10, as prescribed in 48 CFR 4.1403(a)) and includes the following:

2.1.15.1. Salary and bonus;

2.1.15.2. Awards of stock, stock options, and stock appreciation rights, using the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2005) (FAS 123R), Shared Based Payments;

2.1.15.3. Earnings for services under non-equity incentive plans, not including group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of Executives and are available generally to all salaried employees;

2.1.15.4. Change in present value of defined benefit and actuarial pension plans;

2.1.15.5. Above-market earnings on deferred compensation which is not tax-qualified;

2.1.15.6. Other compensation, if the aggregate value of all such other compensation (e.g., severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the Executive exceeds $10,000.

2.1.16. "Transparency Act" means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252.

2.1.17. "Uniform Guidance" means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. The terms and conditions of the Uniform Guidance flow down to Awards to Subrecipients unless the Uniform Guidance or the terms and conditions of the Federal Award specifically indicate otherwise.

2.1.18. "Unique Entity ID Number" means the twelve-character alphanumeric ID assigned to an entity by SAM.gov to uniquely identify a business entity. Information on UEIs can be found at: sam.gov/content/duns-uei

3. COMPLIANCE.

3.1. Subrecipient shall comply with all applicable provisions of the Transparency Act and the regulations issued pursuant thereto, all applicable provisions of the Uniform Guidance, and all applicable Federal Laws and regulations required by this Federal Award. Any revisions to such provisions or regulations shall automatically become a part of these Federal Provisions, without the necessity of either party executing any further instrument. The State of New Mexico, at its discretion, may provide written notification to Subrecipient of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.

3.2. Per US Treasury Final Award requirements, State programs or services must not include terms or conditions that undermine efforts to stop COVID-19 or discourage compliance with recommendations and CDC guidelines.

4. SYSTEM FOR AWARD MANAGEMENT (SAM) AND UNIQUE ENTITY IDENTIFIER (UEI) REQUIREMENTS.

4.1. SAM. Subrecipient shall maintain the currency of its information in SAM until the Subrecipient submits the final financial report required under the Award or receives final payment, whichever is later. Subrecipient shall review and update SAM information at least annually after the initial registration, and more frequently if required by changes in its information.

4.2. UEI. Subrecipient shall provide its UEI number to its State, and shall update Subrecipient's information in SAM at least annually after the initial registration, and more frequently if required by changes in Subrecipient's information.

5. TOTAL COMPENSATION.

5.1. Subrecipient shall include Total Compensation in SAM for each of its five most highly compensated Executives for the preceding fiscal year if:

5.1.1. The total Federal funding authorized to date under the Award is $30,000 or more; and

5.1.2. In the preceding fiscal year, Subrecipient received:

5.1.2.1. 80% or more of its annual gross revenues from Federal procurement Agreements and Subcontractors and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and

5.1.2.2. $30,000,000 or more in annual gross revenues from Federal procurement Agreements and Subcontractors and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and

5.1.2.3. 5.1.2.3 The public does not have access to information about the compensation of such Executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d) or § 6104 of the Internal Revenue Code of 1986.

6. REPORTING.

6.1. Subrecipient shall report data elements to SAM and to the State as required in this Exhibit. No direct payment shall be made to Subrecipient for providing any reports required under these Federal Provisions and the cost of producing such reports shall be included in the Grant price. The reporting requirements in this Exhibit are based on guidance from the OMB, and as such are subject to change at any time by OMB. Any such changes shall be automatically incorporated into this Grant and shall become part of Subrecipient's obligations under this Grant.

7. EFFECTIVE DATE AND DOLLAR THRESHOLD FOR FEDERAL REPORTING.

7.1. Reporting requirements in §8 below apply to new Awards as of October 1, 2010, if the initial award is $30,000 or more. If the initial Award is below $30,000 but subsequent Award modifications result in a total Award of $30,000 or more, the Award is subject to the reporting requirements as of the date the Award exceeds $30,000. If the initial Award is $30,000 or more, but funding is subsequently de-obligated such that the total award amount falls below $30,000, the Award shall continue to be subject to the reporting requirements. If the total award is below $30,000 no reporting required; if more than $30,000 and less than $50,000 then FFATA reporting is required; and, $50,000 and above CSFRF reporting is required.

7.2. The procurement standards in §9 below are applicable to new Awards made by the State as of December 26, 2015. The standards set forth in §11 below are applicable to audits of fiscal years beginning on or after December 26, 2014.

8. SUBRECIPIENT REPORTING REQUIREMENTS.

8.1. Subrecipient shall report as set forth below.

8.1.1. Subrecipient shall use the CSFRF Subrecipient Quarterly Report Workbook as referenced in Exhibit F to report to the State Agency within ten (10) days following each quarter ended September, December, March and June. Additional information on specific requirements are detailed in the CSFRF Subrecipient Quarterly Report Workbooks and "Compliance and Reporting Guidance, State and Local Fiscal Recovery Funds" report available at www.treasury.gov.

EC 1 – Public Health

All Public Health Projects

a) Description of structure and objectives
b) Description of relation to COVID-19
c) Identification of impacted and/or disproportionately impacted communities
d) Capital Expenditures
    i. Presence of capital expenditure in project
    ii. Total projected capital expenditure
    iii. Type of capital expenditure
    iv. Written justification
    v. Labor reporting

COVID-19 Interventions and Mental Health (1.4, 1.11, 1.12, 1.13)

a) Amount of total project used for evidence-based programs
b) Evaluation plan description

COVID-19 Small Business Economic Assistance (1.8)

a) Number of small businesses served

COVID-19 Assistance to Non-Profits (1.9)

a) Number of non-profits served

COVID-19 Aid to Travel, Tourism, and Hospitality or Other Impacted Industries (1.10)

a) Sector of employer

b) Purpose of funds

<u>EC 2 – Negative Economic Impacts</u>

All Negative Economic Impacts Projects

a) Description of project structure and objectives
b) Description of project's response to COVID-19
c) Identification of impacted and/or disproportionately impacted communities
d) Amount of total project used for evidence-based programs and description of evaluation plan *(not required for 2.5, 2.8, 2.21-2.24, 2.27-2.29, 2.31, 2.34-2.36)*
e) Number of workers enrolled in sectoral job training programs
f) Number of workers completing sectoral job training programs
g) Number of people participating in summer youth employment programs
h) Capital Expenditures
    i. Presence of capital expenditure in project
    ii. Total projected capital expenditure
    iii. Type of capital expenditure
    iv. Written justification
    v. Labor reporting

Household Assistance (2.1-2.8)

a) Number of households served
b) Number of people or households receiving eviction prevention services (2.2 & 2.5 only) *(Federal guidance may change this requirement in July 2022)*
c) Number of affordable housing units preserved or developed (2.2 & 2.5 only) *(Federal guidance may change this requirement in July 2022)*

Healthy Childhood Environments (2.11-2.13)

a) Number of children served by childcare and early learning *(Federal guidance may change this requirement in July 2022)*
b) Number of families served by home visiting *(Federal guidance may change this requirement in July 2022)*

Education Assistance (2.14, 2.24-2.27)

a) National Center for Education Statistics ("NCES") School ID or NCES District ID
b) Number of students participating in evidence-based programs *(Federal guidance may change this requirement in July 2022)*

Housing Support (2.15, 2.16, 2.18)

a) Number of people or households receiving eviction prevention services *(Federal guidance may change this requirement in July 2022)*
b) Number of affordable housing units preserved or developed *(Federal guidance may change this requirement in July 2022)*

Small Business Economic Assistance (2.29-2.33)

a) Number of small businesses served

Assistance to Non-Profits (2.34)

a) Number of non-profits served

Aid to Travel, Tourism, and Hospitality or Other Impacted Industries (2.35-2.36)

a) Sector of employer
b) Purpose of funds
c) If other than travel, tourism and hospitality (2.36) – description of hardship

<u>EC 3 – Public Health – Negative Economic Impact: Public Sector Capacity</u>

Payroll for Public Health and Safety Employees (EC 3.1)

a) Number of government FTEs responding to COVID-19

Rehiring Public Sector Staff (EC 3.2)

a) Number of FTEs rehired by governments

<u>EC 4 – Premium Pay</u>

All Premium Pay Projects

a) List of sectors designated as critical by the chief executive of the jurisdiction, if beyond those listed in the final rule
b) Numbers of workers served
c) Employer sector for all subawards to third-party employers
d) Written narrative justification of how premium pay is responsive to essential work during the public health emergency for non-exempt workers or those making over 150 percent of the state/county's average annual wage
e) Number of workers to be served with premium pay in K-12 schools

<u>EC 5 – Infrastructure Projects</u>

All Infrastructure Projects

a) Projected/actual construction start date (month/year)
b) Projected/actual initiation of operations date (month/year)
c) Location (for broadband, geospatial data of locations to be served)
d) Projects over $10 million
    i. Prevailing wage certification or detailed project employment and local impact report
    ii. Project labor agreement certification or project workforce continuity plan
    iii. Prioritization of local hires
    iv. Community benefit agreement description, if applicable

Water and sewer projects (EC 5.1-5.18)

a) National Pollutant Discharge Elimination System (NPDES) Permit Number (if applicable; for projects aligned with the Clean Water State Revolving Fund)
b) Public Water System (PWS) ID number (if applicable; for projects aligned with the Drinking Water State Revolving Fund)
c) Median Household Income of service area
d) Lowest Quintile Income of the service area

Broadband projects (EC 5.19-5.21)

a) Confirm that the project is designed to, upon completion, reliably meet or exceed symmetrical 100 Mbps download and upload speeds.

i. If the project is not designed to reliably meet or exceed symmetrical 100 Mbps download and upload speeds, explain why not, and

ii. Confirm that the project is designed to, upon completion, meet or exceed 100 Mbps download speed and between at least 20 Mbps and 100 Mbps upload speed, and be scalable to a minimum of 100 Mbps download speed and 100 Mbps upload speed.

b) Additional programmatic data will be required for broadband projects and will be defined in a subsequent version of the US Treasury Reporting Guidance, including, but not limited to *(Federal guidance may change this requirement in July 2022)*:

i. Number of households (broken out by households on Tribal lands and those not on Tribal lands) that have gained increased access to broadband meeting the minimum speed standards in areas that previously lacked access to service of at least 25 Mbps download and 3 Mbps upload, with the number of households with access to minimum speed standard of reliable 100 Mbps symmetrical upload and download and number of households with access to minimum speed standard of reliable 100 Mbps download and 20 Mbps upload

ii. Number of institutions and businesses (broken out by institutions on Tribal lands and those not on Tribal lands) that have projected increased access to broadband meeting the minimum speed standards in areas that previously lacked access to service of at least 25 Mbps download and 3 Mbps upload, in each of the following categories: business, small business, elementary school, secondary school, higher education institution, library, healthcare facility, and public safety organization, with the number of each type of institution with access to the minimum speed standard of reliable 100 Mbps symmetrical upload and download; and number of each type of institution with access to the minimum speed standard of reliable 100 Mbps download and 20 Mbps upload.

iii. Narrative identifying speeds/pricing tiers to be offered, including the speed/pricing of its affordability offering, technology to be deployed, miles of fiber, cost per mile, cost per passing, number of households (broken out by households on Tribal lands and those not on Tribal lands) projected to have increased access to broadband meeting the minimum speed standards in areas that previously lacked access to service of at least 25 Mbps download and 3 Mbps upload, number of households with access to minimum speed standard of reliable 100 Mbps symmetrical upload and download, number of households with access to minimum speed standard of reliable 100 Mbps download and 20 Mbps upload, and number of institutions and businesses (broken out by institutions on Tribal lands and those not on Tribal lands) projected to have increased access to broadband meeting the minimum speed standards in areas that previously lacked access to service of at least 25 Mbps download and 3 Mbps upload, in each of the following categories: business, small business, elementary school, secondary school, higher education institution, library, healthcare facility, and public safety organization. Specify the number of each type of institution with access to the minimum speed standard of reliable 100 Mbps symmetrical upload and download; and the number of each type of institution with access to the minimum speed standard of reliable 100 Mbps download and 20 Mbps upload.

All Expenditure Categories

a) Program income earned and expended to cover eligible project costs

8.1.2. A Subrecipient shall report the following data elements to the State no later than five (5) days after the end of the month following the month in which the Subaward was made.

8.1.2.1. Subrecipient UEI Number;

8.1.2.2. Subrecipient UEI Number if more than one electronic funds transfer (EFT) account;

8.1.2.3. Subrecipient parent's organization UEI Number;

8.1.2.4. Subrecipient's address, including: Street Address, City, State, Country, Zip + 4, and Congressional District;

8.1.2.5. Subrecipient's top 5 most highly compensated Executives if the criteria in §4 above are met; and

8.1.2.6. Subrecipient's Total Compensation of top 5 most highly compensated Executives if the criteria in §4 above met.

8.1.3. To Prime Recipient. A Subrecipient shall report to its State, the following data elements:

8.1.3.1. Subrecipient's UEI Number as registered in SAM.

8.1.3.2. Primary Place of Performance Information, including: Street Address, City, State, Country, Zip code + 4, and Congressional District.

8.1.3.3. Narrative identifying methodology for serving disadvantaged communities. See the "Project Demographic Distribution" section in the "Compliance and Reporting Guidance, State and Local Fiscal Recovery Funds" report available at www.treasury.gov. This requirement is applicable to all projects in Expenditure Categories 1 and 2.

8.1.3.4. Narrative identifying funds allocated towards evidenced-based interventions and the evidence base. See the “Use of Evidence” section in the “Compliance and Reporting Guidance, State and Local Fiscal Recovery Funds” report available at www.treasury.gov. See section 8.1.1 for relevant Expenditure Categories.

8.1.3.5. Narrative describing the structure and objectives of the assistance program and in what manner the aid responds to the public health and negative economic impacts of COVID-19. This requirement is applicable to Expenditure Categories 1 and 2. For aid to travel, tourism, and hospitality or other impacted industries (EC 2.11-2.12), also provide the sector of employer, purpose of funds, and if not travel, tourism and hospitality a description of the pandemic impact on the industry.

8.1.3.6. Narrative identifying the sector served and designated as critical to the health and well-being of residents by the chief executive of the jurisdiction and the number of workers expected to be served. For groups of workers (e.g., an operating unit, a classification of worker, etc.) or, to the extent applicable, individual workers, other than those where the eligible worker receiving premium pay is earning (with the premium pay included) below 150 percent of their residing state or county’s average annual wage for all occupations, as defined by the Bureau of Labor Statistics Occupational Employement and Wage Statistics, whichever is higher, OR the eligible worker reciving premium pay is not exempt from the Fair Labor Standards Act overtime provisions, include justification of how the premium pay or grant is responsive to workers performing essential work during the public health emergency. This could include a description of the essential workers' duties, health or financial risks faced due to COVID-19 but should not include personally identifiable information. This requirement applies to EC 4.1, and 4.2.

8.1.3.7. For infrastructure projects (EC 5) or capital expenditures in any expenditure category, narrative identifying the projected construction start date (month/year), projected initiation of operations date (month/year), and location (for broadband, geospatial location data).

8.1.3.7.1. For projects over $10 million:

8.1.3.7.1.1. Certification that all laborers and mechanics employed by Contractors and Subcontractors in the performance of such project are paid wages at rates not less than those prevailing, as determined by the U.S. Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (commonly known as the "Davis-Bacon Act"), for the corresponding classes of laborers and mechanics employed on projects of a character similar to the Agreement work in the civil subdivision of the State (or the District of Columbia) in which the work is to be performed, or by the appropriate State entity pursuant to a corollary State prevailing-wage-in-construction law (commonly known as "baby Davis-Bacon Acts"). If such certification is not provided, a recipient must provide a project employment and local impact report detailing (1) the number of employees of Contractors and sub-contractors working on the project; (2) the number of employees on the project hired directly and hired through a third party; (3) the wages and benefits of workers on the project by classification; and (4) whether those wages are at rates less than those prevailing. Recipients must maintain sufficient records to substantiate this information upon request.

8.1.3.7.1.2. A Subrecipient may provide a certification that a project includes a project labor agreement, meaning a pre-hire collective bargaining agreement consistent with section 8(f) of the National Labor Relations Act (29 U.S.C. 158(f)). If the recipient does not provide such certification, the recipient must provide a project workforce continuity plan, detailing: (1) how the Subrecipient will ensure the project has ready access to a sufficient supply of appropriately skilled and unskilled labor to ensure high-quality construction throughout the life of the project; (2) how the Subrecipient will minimize risks of labor disputes and disruptions that would jeopardize timeliness and cost-effectiveness of the project; and (3) how the Subrecipient will provide a safe and healthy workplace that avoids delays and costs associated with workplace illnesses, injuries, and fatalities; (4) whether workers on the project will receive wages and benefits that will secure an appropriately skilled workforce in the context of the local or regional labor market; and (5) whether the project has completed a project labor agreement.

8.1.3.7.1.3. Whether the project prioritizes local hires.

8.1.3.7.1.4. Whether the project has a Community Benefit Agreement, with a description of any such agreement.

8.1.4. Subrecipient also agrees to comply with any reporting requirements established by the US Treasury, Governor’s Office and the applicable State agency. The State of New Mexico may need additional reporting requirements after this agreement is executed. If there are additional reporting requirements, the State will provide notice of such additional reporting requirements via Exhibit G – CSFRF Reporting Modification Form.

9. PROCUREMENT STANDARDS.

9.1. Procurement Procedures. A Subrecipient shall use its own documented procurement procedures which reflect applicable State, local, and Tribal laws and applicable regulations, provided that the procurements conform to applicable Federal law and the standards identified in the Uniform Guidance, including without limitation, 2 CFR 200.318 through 200.327 thereof.

9.2. Domestic preference for procurements (2 CFR 200.322). As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all Agreements and purchase orders for work or products under this award.

9.3. Procurement of Recovered Materials. If a Subrecipient is a State Agency or an agency of a political subdivision of the State, its Contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247, that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

10. ACCESS TO RECORDS.

10.1. A Subrecipient shall permit Prime Recipient and its auditors to have access to Subrecipient's records and financial statements as necessary for Recipient to meet the requirements of 2 CFR 200.332 (Requirements for pass-through entities), 2 CFR 200.300 (Statutory and national policy requirements) through 2 CFR 200.309 (Period of performance), and Subpart F-Audit Requirements of the Uniform Guidance.

11. SINGLE AUDIT REQUIREMENTS.

11.1. If a Subrecipient expends $750,000 or more in Federal Awards during the Subrecipient's fiscal year, the Subrecipient shall procure or arrange for a single or program-specific audit conducted for that year in accordance with the provisions of Subpart F-Audit Requirements of the Uniform Guidance, issued pursuant to the Single Audit Act Amendments of 1996, (31 U.S.C. 7501-7507). 2 CFR 200.501.

11.1.1. Election. A Subrecipient shall have a single audit conducted in accordance with Uniform Guidance 2 CFR 200.514 (Scope of audit), except when it elects to have a program-specific audit conducted in accordance with 2 CFR 200.507 (Program-specific audits). The Subrecipient may elect to have a program-specific audit if Subrecipient expends Federal Awards under only one Federal program (excluding research and development) and the Federal program's statutes, regulations, or the terms and conditions of the Federal award do not require a financial statement audit of Prime Recipient. A program-specific audit may not be elected for research and development unless all of the Federal Awards expended were received from Recipient and Recipient approves in advance a program-specific audit.

11.1.2. Exemption. If a Subrecipient expends less than $750,000 in Federal Awards during its fiscal year, the Subrecipient shall be exempt from Federal audit requirements for that year, except as noted in 2 CFR 200.503 (Relation to other audit requirements), but records shall be available for review or audit by appropriate officials of the Federal agency, the State, and the Government Accountability Office.

11.1.3. Subrecipient Compliance Responsibility. A Subrecipient shall procure or otherwise arrange for the audit required by Subpart F of the Uniform Guidance and ensure it is properly performed and submitted when due in accordance with the Uniform Guidance. Subrecipient shall prepare appropriate financial statements, including the schedule of expenditures of Federal awards in accordance with 2 CFR 200.510 (Financial statements) and provide the auditor with access to personnel, accounts, books, records, supporting documentation, and other information as needed for the auditor to perform the audit required by Uniform Guidance Subpart F-Audit Requirements.

12. GRANT PROVISIONS FOR SUBRECIPIENT AGREEMENTS.

12.1. In addition to other provisions required by the Federal Awarding Agency or the State, Subrecipients shall comply with the following provisions. Subrecipients shall include all of the following applicable provisions in all Subcontractors entered into by it pursuant to this Grant.

12.1.1. [Applicable to federally assisted construction Agreements.] **Equal Employment Opportunity**. Except as otherwise provided under 41 CFR Part 60, all Agreements that meet the definition of "federally assisted construction Agreement" in 41 CFR Part 60-1.3 shall include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, Office of Federal Agreement Compliance Programs, Equal Employment Opportunity, Department of Labor.

12.1.2. [Applicable to on-site employees working on government-funded construction, alteration and repair projects.] **Davis-Bacon Act**. Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). See Exhibit E.

12.1.3. **<u>Rights to Inventions Made Under a grant or agreement</u>**. If the Federal Award meets the definition of "funding agreement" under 37 CFR 401.2 (a) and the Prime Recipient or Subrecipient wishes to enter into an Agreement with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the Prime Recipient or Subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Agreements and Cooperative Agreements," and any implementing regulations issued by the Federal Awarding Agency.

12.1.4. **<u>Clean Air Act</u>** (42 U.S.C. 7401-7671q.) and the **<u>Federal Water Pollution Control Act</u>** (33 U.S.C. 1251-1387), as amended. Agreements and subgrants of amounts in excess of $150,000 must contain a provision that requires the non-Federal awardees to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal Awarding Agency and the Regional Office of the Environmental Protection Agency (EPA).

12.1.5. **<u>Debarment and Suspension</u>** (Executive Orders 12549 and 12689). A Agreement award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in SAM, in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

12.1.6. **<u>Byrd Anti-Lobbying Amendment</u>** (31 U.S.C. 1352). Contractors that apply or bid for an award exceeding $100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal Agreement, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

12.1.7. **<u>Never Agreement with the enemy</u>** (2 CFR 200.215). Federal awarding agencies and recipients are subject to the regulations implementing "Never Agreement with the enemy" in 2 CFR part 183. The regulations in 2 CFR part 183 affect covered Agreements, grants and cooperative agreements that are expected to exceed $50,000 within the period of performance, are performed outside the United States and its territories, and are in support of a contingency operation in which members of the Armed Forces are actively engaged in hostilities.

12.1.8. **<u>Prohibition on certain telecommunications and video surveillance services or equipment</u>** (2 CFR 200.216). The State is prohibited from obligating or expending loan or grant funds on certain telecommunications and video surveillance services or equipment pursuant to 2 CFR 200.216.

12.1.9. **<u>Title VI of the Civil Rights Act</u>**. The Subgrantee, Contractor, Subcontractor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this Agreement (or agreement). Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S. C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CRF Part 22, and herein incorporated by reference and made part of this Agreement or agreement.

13. CERTIFICATIONS.

13.1. Subrecipient Certification. Subrecipient shall sign a "State of New Mexico Agreement with Recipient of Federal Recovery Funds" Certification Form in Exhibit E and submit to State Agency with signed grant agreement.

13.2. Unless prohibited by Federal statutes or regulations, the State may require Subrecipient to submit certifications and representations required by Federal statutes or regulations on an annual basis. 2 CFR 200.208. Submission may be required more frequently if Subrecipient fails to meet a requirement of the Federal award. Subrecipient shall certify in writing to the State at the end of the Award that the project or activity was completed or the level of effort was expended. 2 CFR 200.201(3). If the required level of activity or effort was not carried out, the amount of the Award must be adjusted.

14. EXEMPTIONS.

14.1. These Federal Provisions do not apply to an individual who receives an Award as a natural person, unrelated to any business or non-profit organization he or she may own or operate in his or her name.

14.2. A Subrecipient with gross income from all sources of less than $300,000 in the previous tax year is exempt from the requirements to report Subawards and the Total Compensation of its most highly compensated Executives.

EVENT OF DEFAULT AND TERMINATION.

14.3. Failure to comply with these Federal Provisions shall constitute an event of default under the Grant and the State of New Mexico may terminate the Grant upon 30 days prior written notice if the default remains uncured five calendar days following the termination of the 30-day notice period. This remedy will be in addition to any other remedy available to the State of New Mexico under the Grant, at law or in equity.

14.4. Termination (2 CFR 200.340). The Federal Award may be terminated in whole or in part as follows:

14.4.1. By the Federal Awarding Agency or Pass-through Entity, if a Non-Federal Entity fails to comply with the terms and conditions of a Federal Award;

14.4.2. By the Federal awarding agency or Pass-through Entity, to the greatest extent authorized by law, if an award no longer effectuates the program goals or agency priorities;

14.4.3. By the Federal awarding agency or Pass-through Entity with the consent of the Non-Federal Entity, in which case the two parties must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated;

14.4.4. By the Non-Federal Entity upon sending to the Federal Awarding Agency or Pass-through Entity written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Federal Awarding Agency or Pass-through Entity determines in the case of partial termination that the reduced or modified portion of the Federal Award or Subaward will not accomplish the purposes for which the Federal Award was made, the Federal Awarding Agency or Pass-through Entity may terminate the Federal Award in its entirety; or

14.4.5. By the Federal Awarding Agency or Pass-through Entity pursuant to termination provisions included in the Federal Award.

AGREEMENT WITH SUBRECIPIENT OF FEDERAL RECOVERY FUNDS

Section 602(b) of the Social Security Act (the Act), as added by section 9901 of the American Rescue Plan Act (ARPA), Pub. L. No. 117-2 (March 11, 2021), authorizes the Department of the Treasury (Treasury) to make payments to certain Subrecipients from the Coronavirus State Fiscal Recovery Fund. The State of New Mexico has signed and certified a separate agreement with Treasury as a condition of receiving such payments from the Treasury. This agreement is between your organization and the State and your organization is signing and certifying the same terms and conditions included in the State's separate agreement with Treasury. Your organization is referred to as a Subrecipient.

As a condition of your organization receiving federal recovery funds from the State, the authorized representative below hereby (i) certifies that your organization will carry out the activities listed in section 602(c) of the Act and (ii) agrees to the terms attached hereto. Your organization also agrees to use the federal recovery funds as specified in bills passed by the Legislature and signed by the Governor.

Under penalty of perjury, the undersigned official certifies that the authorized representative has read and understood the organization's obligations in the Assurances of Compliance and Civil Rights Requirements, that any information submitted in conjunction with this assurances document is accurate and complete, and that the organization is in compliance with the nondiscrimination requirements.

Subrecipient Name: City of Alamogordo

Authorized Representative: ______________________________

Title: _________________________________

Signature: __________________________

Agreement with Subrecipient of Federal Recovery Funds
Terms And Conditions

1. Use of Funds.

   a. Subrecipient understands and agrees that the funds disbursed under this award may only be used in compliance with section 602(c) of the Social Security Act (the Act) and Treasury's regulations implementing that section and guidance.

   b. Subrecipient will determine prior to engaging in any project using this assistance that it has the institutional, managerial, and financial capability to ensure proper planning, management, and completion of such project.

2. Period of Performance. The period of performance for this subaward is shown on page one of this Agreement. Subrecipient may use funds to cover eligible costs incurred, as set forth in Treasury's implementing regulations, during this period of performance.

3. Reporting. Subrecipient agrees to comply with any reporting obligations established by Treasury as they relate to this award. Subrecipient also agrees to comply with any reporting requirements established by the Governor's Office and State Agency. The State will provide notice of such additional reporting requirements via Exhibit G – Reporting Modification Form.

4. Maintenance of and Access to Records

   a. Subrecipient shall maintain records and financial documents sufficient to evidence compliance with section 602(c), Treasury's regulations implementing that section, and guidance issued by Treasury regarding the foregoing.

   b. The Treasury Office of Inspector General and the Government Accountability Office, or their authorized representatives, shall have the right of access to records (electronic and otherwise) of Subrecipient in order to conduct audits or other investigations.

   c. Records shall be maintained by Subrecipient for a period of five (5) years after all funds have been expended or returned to Treasury, whichever is later.

5. Pre-award Costs. Pre-award costs, as defined in 2 C.F.R. § 200.458, may not be paid with funding from this award.

6. Administrative Costs. Subrecipient may use funds provided under this award to cover both direct and indirect costs. Subrecipient shall follow guidance on administrative costs issued by the Governor's Office and State agency.

7. Cost Sharing. Cost sharing or matching funds are not required to be provided by Subrecipient.

8. Conflicts of Interest. The State of New Mexico understands and agrees it must maintain a conflict of interest policy consistent with 2 C.F.R. § 200.318(c) and that such conflict of interest policy is applicable to each activity funded under this award. Subrecipient and Contractors must disclose in writing to the Agency or the pass-through entity, as appropriate, any potential conflict of interest affecting the awarded funds in accordance with 2 C.F.R. § 200.112. The Agency shall disclose such conflict to Treasury.

9. Compliance with Applicable Law and Regulations.
   a. Subrecipient agrees to comply with the requirements of section 602 of the Act, regulations adopted by Treasury pursuant to section 602(f) of the Act, and guidance issued by Treasury regarding the foregoing. Subrecipient also agrees to comply with all other applicable federal statutes, regulations, and executive orders, and Subrecipient shall provide for such compliance by other parties in any agreements it enters into with other parties relating to this award.

   b. Federal regulations applicable to this award include, without limitation, the following:

      i. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, other than such provisions as Treasury may determine are inapplicable to this Award and subject to such exceptions as may be otherwise provided by Treasury. Subpart F – Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply to this award.

      ii. Universal Identifier and System for Award Management (SAM), 2 C.F.R. Part 25, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 25 is hereby incorporated by reference.

      iii. Reporting Subaward and Executive Compensation Information, 2 C.F.R. Part 170, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 170 is hereby incorporated by reference.

      iv. OMB Guidelines to Agencies on Government wide Debarment and Suspension (Nonprocurement), 2 C.F.R. Part 180, including the requirement to include a term or condition in all lower tier covered transactions (Agreements and Subcontractors described in 2 C.F.R. Part 180, subpart B) that the award is subject to 2 C.F.R. Part 180 and Treasury's implementing regulation at 31 C.F.R. Part 19.

      v. Subrecipient Integrity and Performance Matters, pursuant to which the award term set forth in 2 C.F.R. Part 200, Appendix XII to Part 200 is hereby incorporated by reference.

      vi. Government wide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.

vii. New Restrictions on Lobbying, 31 C.F.R. Part 21.

viii. Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. §§ 4601-4655) and implementing regulations.

ix. Generally applicable federal environmental laws and regulations.

c. Statutes and regulations prohibiting discrimination applicable to this award include, without limitation, the following:

i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and Treasury's implementing regulations at 31 C.F.R. Part 22, which prohibit discrimination on the basis of race, color, or national origin under programs or activities receiving federal financial assistance;

ii. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability;

iii. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance;

iv. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance; and

v. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.

10. <u>Remedial Actions</u>. In the event of Subrecipient's noncompliance with section 602 of the Act, other applicable laws, Treasury's implementing regulations, guidance, or any reporting or other program requirements, Treasury may impose additional conditions on the receipt of a subsequent tranche of future award funds, if any, or take other available remedies as set forth in 2 C.F.R. § 200.339. In the case of a violation of section 602(c) of the Act regarding the use of funds, previous payments shall be subject to recoupment as provided in section 602(e) of the Act and any additional payments may be subject to withholding as provided in sections 602(b)(6)(A)(ii)(III) of the Act, as applicable.

11. Hatch Act. Subrecipient agrees to comply, as applicable, with requirements of the Hatch Act (5 U.S.C.§§ 1501-1508 and 7324-7328), which limit certain political activities of State or local government employees whose principal employment is in connection with an activity financed in whole or in part by this federal assistance.

12. False Statements. Subrecipient understands that making false statements or claims in connection with this award is a violation of federal law and may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in federal awards or Agreements, and/or any other remedy available by law.

13. Publications. Any publications produced with funds from this award must display the following language: “This project [is being] [was] supported, in whole or in part, by federal award number SLFRF0126 awarded to the State of New Mexico by the U.S. Department of the Treasury.”

14. Debts Owed the Federal Government.
    a. Any funds paid to the Subrecipient (1) in excess of the amount to which the Subrecipient is finally determined to be authorized to retain under the terms of this award; (2) that are determined by the Treasury Office of Inspector General to have been misused; or (3) that are determined by Treasury to be subject to a repayment obligation pursuant to sections 602(e) and 603(b)(2)(D) of the Act and have not been repaid by the Subrecipient shall constitute a debt to the federal government.

    b. Any debts determined to be owed to the federal government must be paid promptly by Subrecipient. A debt is delinquent if it has not been paid by the date specified in Treasury’s initial written demand for payment, unless other satisfactory arrangements have been made or if the Subrecipient knowingly or improperly retains funds that are a debt as defined in paragraph 14(a). Treasury will take any actions available to it to collect such a debt.

15. Disclaimer.
    a. The United States expressly disclaims any and all responsibility or liability to Subrecipient or third persons for the actions of Subrecipient or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this award or any other losses resulting in any way from the performance of this award or any Agreement, or Subcontractor under this award.

    b. The acceptance of this award by Subrecipient does not in any way establish an agency relationship between the United States and Subrecipient.

16. Protections for Whistleblowers.
    a. In accordance with 41 U.S.C. § 4712, Subrecipient may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal Agreement or grant, a gross waste of federal funds, an abuse of authority relating to a federal Agreement or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal Agreement (including the competition for or negotiation of an Agreement) or grant.

    b. The list of persons and entities referenced in the paragraph above includes the following:
        i. A member of Congress or a representative of a committee of Congress;
        ii. An Inspector General;
        iii. The Government Accountability Office;
        iv. A Treasury employee responsible for Agreement or grant oversight or management;
        v. An authorized official of the Department of Justice or other law enforcement agency;
        vi. A court or grand jury; or
        vii. A management official or other employee of Subrecipient, Contractor, or Subcontractor who has the responsibility to investigate, discover, or address misconduct.

    c. Subrecipient shall inform its employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.

17. Increasing Seat Belt Use in the United States. Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Subrecipient should encourage its Contractors to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented or personally owned vehicles.

10. Reducing Text Messaging While Driving. Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Subrecipient should encourage its employees, Subrecipients, and Contractors to adopt and enforce policies that ban text messaging while driving, and Subrecipient should establish workplace safety policies to decrease accidents caused by distracted drivers.

ASSURANCES OF COMPLIANCE WITH CIVIL RIGHTS REQUIREMENTS

ASSURANCES OF COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

As a condition of receipt of federal financial assistance from the Department of the Treasury, the Subrecipient provides the assurances stated herein. The federal financial assistance may include federal grants, loans and Agreements to provide assistance to the Subrecipient's beneficiaries, the use or rent of Federal land or property at below market value, Federal training, a loan of Federal personnel, subsidies, and other arrangements with the intention of providing assistance. Federal financial assistance does not encompass Agreements of guarantee or insurance, regulated programs, licenses, procurement Agreements by the Federal government at market value, or programs that provide direct benefits.

The assurances apply to all federal financial assistance from or funds made available through the Department of the Treasury, including any assistance that the Subrecipient may request in the future.

The Civil Rights Restoration Act of 1987 provides that the provisions of the assurances apply to all of the operations of the Subrecipient's program(s) and activity(ies), so long as any portion of the Subrecipient's program(s) or activity(ies) is federally assisted in the manner prescribed above.

1. Subrecipient ensures its current and future compliance with Title VI of the Civil Rights Act of 1964, as amended, which prohibits exclusion from participation, denial of the benefits of, or subjection to discrimination under programs and activities receiving federal financial assistance, of any person in the United States on the ground of race, color, or national origin (42 U.S.C. § 2000d *et seq.*), as implemented by the Department of the Treasury Title VI regulations at 31 CFR Part 22 and other pertinent executive orders such as Executive Order 13166, directives, circulars, policies, memoranda, and/or guidance documents.
2. Subrecipient acknowledges that Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency," seeks to improve access to federally assisted programs and activities for individuals who, because of national origin, have Limited English proficiency (LEP). Subrecipient understands that denying a person access to its programs, services, and activities because of LEP is a form of national origin discrimination prohibited under Title VI of the Civil Rights Act of 1964 and the Department of the Treasury's implementing regulations. Accordingly, Subrecipient shall initiate reasonable steps, or comply with the Department of the Treasury's directives, to ensure that LEP persons have meaningful access to its programs, services, and activities. Subrecipient understands and agrees that meaningful access may entail providing language assistance services, including oral interpretation and written translation where necessary, to ensure effective communication in the Subrecipient's programs, services, and activities.
3. Subrecipient agrees to consider the need for language services for LEP persons when Subrecipient develops applicable budgets and conducts programs, services, and activities. As a resource, the Department of the Treasury has published its LEP guidance at 70 FR

6067. For more information on taking reasonable steps to provide meaningful access for LEP persons, please visit http://www.lep.gov.

1. Subrecipient acknowledges and agrees that compliance with the assurances constitutes a condition of continued receipt of federal financial assistance and is binding upon Subrecipient and Subrecipient's successors, transferees, and assignees for the period in which such assistance is provided.

2. Subrecipient acknowledges and agrees that it must require any sub-grantees, contractors, subcontractors, successors, transferees, and assignees to comply with assurances 1-4 above, and agrees to incorporate the following language in every Agreement or agreement subject to Title VI and its regulations between the Subrecipient and the Subrecipient's sub-grantees, Contractors, Subcontractors, successors, transferees, and assignees:

   The sub-grantee, Contractor, Subcontractor, successor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits Subrecipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this Agreement (or agreement). Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42
   U.S.C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this Agreement or agreement.

1. Subrecipient understands and agrees that if any real property or structure is provided or improved with the aid of federal financial assistance by the Department of the Treasury, this assurance obligates the Subrecipient, or in the case of a subsequent transfer, the transferee, for the period during which the real property or structure is used for a purpose for which the federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is provided, this assurance obligates the Subrecipient for the period during which it retains ownership or possession of the property.

2. Subrecipient shall cooperate in any enforcement or compliance review activities by the Department of the Treasury of the aforementioned obligations. Enforcement may include investigation, arbitration, mediation, litigation, and monitoring of any settlement agreements that may result from these actions. The Subrecipient shall comply with information requests, on-site compliance reviews and reporting requirements.

3. Subrecipient shall maintain a complaint log and inform the Department of the Treasury of any complaints of discrimination on the grounds of race, color, or national origin, and limited English proficiency covered by Title VI of the Civil Rights Act of 1964 and implementing regulations and provide, upon request, a list of all such reviews or proceedings based on the complaint, pending or completed, including outcome. Subrecipient also must inform the Department of the Treasury if Subrecipient has received no complaints under Title VI.

4. Subrecipient must provide documentation of an administrative agency's or court's findings of non-compliance of Title VI and efforts to address the non-compliance, including any voluntary compliance or other agreements between the Subrecipient and the administrative agency that made the finding. If the Subrecipient settles a case or matter alleging such discrimination, the Subrecipient must provide documentation of the settlement. If Subrecipient has not been the subject of any court or administrative agency finding of discrimination, please so state.

5. If the Subrecipient makes sub-awards to other agencies or other entities, the Subrecipient is responsible for ensuring that sub-Subrecipients also comply with Title VI and other applicable authorities covered in this document State agencies that make sub-awards must have in place standard grant assurances and review procedures to demonstrate that that they are effectively monitoring the civil rights compliance of sub- Subrecipients.

The United States of America has the right to seek judicial enforcement of the terms of this assurances document and nothing in this document alters or limits the federal enforcement measures that the United States may take in order to address violations of this document or applicable federal law.

DAVIS-BACON ACT REQUIREMENTS
(If Applicable)

Overview

Section 1606 of the American Recovery and Reinvestment Act (ARRA) of 2009, Pub. L. No. 111-5, 123 Stat. 115 (Feb. 17, 2009) (the "Recovery Act"), requires grant award recipients, subrecipients, contractors, and subcontractors to comply with the wage requirements of the Davis-Bacon Act (40 U.S.C. 3141 *et seq*.) and related acts, stating:

Notwithstanding any other provision of law and in a manner consistent with other provisions in this Act, all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to this Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. With respect to the labor standards specified in this section, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (64 Stat. 1267; 5 U.S.C. App.) and section 3145 of title 40, United States Code.

Scope of the Davis-Bacon Act The Davis-Bacon Act prevailing wage requirements apply to laborers and mechanics employed under contracts or subcontracts in excess of $2,000 for construction, alteration, or repair activities (including but not limited to painting and decorating) that are funded, in whole or in part, under BTOP grant awards. In general:

- Laborers and mechanics – Are workers whose duties are manual or physical in nature, including apprentices, trainees and helpers, but do not include workers whose duties are primarily managerial, administrative, executive, or clerical. See 29 C.F.R. section 5.2(m).

- The $2,000 threshold – Pertains to the amount of the prime construction contract, not to the amount of individual subcontracts. Accordingly, if the prime construction contract exceeds $2,000, all construction work on the project (including subcontracts) is covered by the Davis-Bacon Act. See 29 C.F.R. section 5.5(a)(6).

- Construction, alteration, or repair activities – Are those occurring at the "site of the work" that involve the alteration, remodeling, or installation of items fabricated off-site; painting and decorating; manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work; and, in certain cases, transportation between the site of the work and other points. See 29 C.F.R. section 5.2(j).

- Site of the work – Is the physical place or places where the building or work called for in the contract will remain, and any other site where a significant portion of the building or work is constructed, provided that such site is established specifically for the performance of the contract or project, and includes job headquarters, tool yards, batch plants, borrow pits, etc., if they are dedicated exclusively, or nearly so, to performance of the contract or project, and are adjacent or virtually adjacent to the site of the work. The site of the work does not include permanent home offices, branch plant establishments, fabrication plants, tool yards, etc., of a contractor or subcontractor whose location and continued operation are determined wholly without regard to a particular Federal or Federally assisted contract or project. See 29 C.F.R. section 5.2(l).

- Application to Governmental Agencies - Governmental agencies, such as states or their political subdivisions, are not subject to the Davis Bacon Act requirements when construction work is being performed by their own employees on a "force account" basis. See 29 C.F.R. section 5.2(h).

Davis-Bacon Act prevailing wage requirements are likely to apply to construction and related activities undertaken in connection with Infrastructure Round 1 and Comprehensive Community Infrastructure (CCI) Round 2 projects. In many cases, Davis-Bacon Act prevailing wage requirements will also apply to activities under BTOP grants for Sustainable Broadband Adoption (SBA) and Public Computer Centers (PCC), when construction and related activities (including minor renovation of facilities) can be segregated from the other work contemplated by the grant. See 29 C.F.R. section 4.116; F.A.R. section 22.402(b).

Davis-Bacon Act Requirements

Required contract provisions (appearing at 29 C.F.R. section 5.5) and the applicable wage determination(s) for the activities contemplated by a construction project must be included in any contract or subcontract to which the Davis-Bacon Act applies providing, among other items, that:

- Laborers and mechanics must be paid the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) at least once a week;

- No paycheck deductions or rebates are permitted, except as permitted under Department of Labor (DOL) regulations (29 C.F.R. sections 3.5-3.6);

- Wage and fringe benefit rates must be no less than those contained in DOL wage determination for the labor classification for the work actually performed.

The recipient is responsible for ensuring that the required contract provisions appear in all contracts and subcontracts entered into by recipients, subrecipients, contractors, and subcontractors for construction, alteration and repair activities covered by the Davis-Bacon Act and related acts. Applicable wage determinations included in the contract must be verified by the recipient within 10 days of the contract date.

In cases where state wage rates (determined under state statutes often called “Mini-Davis-Bacon Acts”) are higher than the Federal wage rates, the state wage rates take precedence and should be included in contracts in lieu of the lower, Federal wage rates. In cases of construction projects on tribal lands, the recipient should contact its assigned Federal Program Officer (FPO) for guidance on the interplay among the Davis-Bacon Act, state Mini-Davis-Bacon acts, and the Tribal Employment Rights Ordinance (TERO).

Contracts for amounts over $100,000 that are covered by the Davis-Bacon Act must include additional standard clauses (also appearing in 29 C.F.R. section 5.5) providing, among other things, that overtime for laborers and mechanics must be paid at a rate 1.5 times the basic rate of pay for time worked in excess of 40 hours per week.

In addition, the DOL Davis-Bacon poster (WH-1321) must be prominently posted at the site of the work. Refer to: (www.dol.gov/whd/regs/compliance/posters/fedprojc.pdf 1321).

Davis-Bacon Wage Rate Determinations

DOL conducts statewide surveys seeking payment data on wage and fringe benefit rates from construction contractors and other interested parties, such as labor unions. Wage determinations are issued by locality, typically on a county-by-county basis. Davis-Bacon Act wage determinations are published on DOL’s Wage Determinations OnLine (WDOL) website accessible at: www.wdol.gov. The Davis-Bacon Act prevailing wages are determined by DOL based on wages paid to various classes of laborers and mechanics employed on specific types of construction projects in an area.

If DOL has not published a wage determination for work that is needed to complete a BTOP construction project, the recipient may seek a Conformance. The recipient must submit a Conformance request using Standard Form (SF) 1444. Please go to www.wdol.gov/library.aspx to obtain a copy of the form and instructions.

To complete the form, the recipient must describe the work to be done (identified with a classification that is used in the subject area in the construction industry) and propose a wage rate that bears a reasonable relationship to existing wage determinations. Typically, the rate must not be less than the wage determination for an unskilled laborer and, for a skilled craft, must be at least equal to the lowest wage determination for any other skilled craft.

Infrastructure and CCI recipients should submit the completed SF-1444 through Grants Online as an “Other Action Request.” The SF1444 will be routed to the National Oceanic and Atmospheric Administration (NOAA) Grants Officer and transmitted to the DOL Wage and Hour Division for review and approval. The Wage and Hour Division has committed to act on Conformance requests within 30 days.

SBA and PCC recipients should submit completed SF-1444 Conformance requests through the Post-Award Monitoring (PAM) System. To do so, the recipient should create a report package of the type “POR: PAM Other Request.” After filling out and attaching the Request Template, recipient should attach the completed SF-1444 form using the “Add File” button. The SF-1444 will be routed to the National Institute of Standards and Technology (NIST) Grants Officer and transmitted to the DOL Wage and Hour Division for review and approval. The Wage and Hour Division has committed to act on Conformance requests within 30 days.

Recordkeeping and Monitoring Obligations

Recipients, subrecipients, contractors, and subcontractors must prepare weekly certified payroll documentation using Form WH347 (available at: www.dol.gov/whd/forms/wh347.pdf), properly completed for laborers and mechanics performing activities covered by the Davis-Bacon Act requirements of the Recovery Act. Subrecipients, contractors, and subcontractors must submit this information to the BTOP grant award recipient on a weekly basis within seven (7) days of the regular payment date of the subrecipient’s, contractor’s or subcontractor’s payroll period.

A recipient must review the weekly certified payroll documentation it receives from its subrecipients, contractors and subcontractors on an ongoing basis. See 29 C.F.R. sections 3.3-3.4. If a subrecipient receives the original payroll documents, the subrecipient should review these documents and forward the original documents to the recipient on a weekly basis within the time period described above.

The recipient must maintain in its files the original Davis-Bacon Act payroll records it prepares for itself, as well as those prepared by subrecipients, contractors, and subcontractors. The recipient is not required to submit any of the payroll documents to the BTOP Grants Office unless the assigned Grants Officer makes a request for such records. The payroll records must be maintained so as to be easily accessed by BTOP Grants Officers and by other duly authorized officials. The recipient must retain these records as provided in the Department of Commerce (DOC) Uniform Administrative Requirements for Grants and Cooperative Agreements, 15 C.F.R. section 14.53 or

24.42, as applicable, generally for the later of three years after closeout of the award, or until any litigation, claim, or audit is resolved.

Enforcement and Penalties

Violation of the requirements of Section 1606 of the Recovery Act and the Davis-Bacon Act and related acts is a serious offense. Compliance is subject to audit during OMB Circular A-133 audits (including program-specific audits) of BTOP grant recipients and subrecipients, as well as audits and investigations by the DOC Office of Inspector General, the Government Accountability Office (GAO), the DOL Wage and Hour Division, and other duly authorized officials. A violation of the Davis-Bacon Act wage requirements may lead NTIA to impose appropriate enforcement action in connection with a BTOP grant award, up to and including suspension or termination of the award. In addition, contracting parties are subject to payment of back wages, and suspension or debarment from future contracts for a period of up to three years. Monetary damages may also apply. Falsification of certified payroll records or the required kickback of wages may subject a violator to civil or criminal prosecution, the penalty for which may include fines and/or imprisonment.

ELIGIBLE AND RESTRICTED USES OF CSFRF FUNDS

As described in the CSFRF statute and summarized above, there are four enumerated eligible uses of CSFRF award funds. As a recipient of an award under the CSFRF program, your organization is responsible for complying with requirements for the use of funds. In addition to determining a given project's eligibility, recipients are also responsible for determining subrecipient's or beneficiaries' eligibility and must monitor use of CSFRF award funds.

To help recipients build a greater understanding of eligible uses, Treasury's Interim Final Rule establishes a framework for determining whether a specific project would be eligible under the CSFRF program, including some helpful definitions. For example, Treasury's Interim Final Rule establishes:

- A framework for determining whether a project "responds to" a "negative economic impact" caused by the COVID-19 public health emergency;
- Definitions of "eligible employers", "essential work," "eligible workers", and "premium pay" for cases where premium pay is an eligible use;
- A definition of "general revenue" and a formula for calculating revenue lost due to the COVID-19 public health emergency;
- A framework for eligible water and sewer infrastructure projects that aligns eligible uses with projects that are eligible under the Environmental Protection Agency's Drinking Water and Clean Water State Revolving Funds; and,
- A framework for eligible broadband projects designed to provide service to unserved or underserved households, or businesses at speeds sufficient to enable users to generally meet household needs, including the ability to support the simultaneous use of work, education, and health applications, and also sufficiently robust to meet increasing household demands for bandwidth.

Treasury's Interim Final Rule also provides more information on four important restrictions on use of CSFRF award funds: recipients may not deposit CSFRF funds into a pension fund; recipients that are States or territories may not use CSFRF funds to offset a reduction in net tax revenue caused by the recipient's change in law, regulation, or administrative interpretation; and, recipients may not use CSFRF funds as non-Federal match where prohibited. In addition, the Interim Final Rule clarifies certain uses of CSFRF funds outside the scope of eligible uses, including that recipients generally may not use CSFRF funds directly to service debt, satisfy a judgment or settlement, or contribute to a "rainy day" fund. Recipients should refer to Treasury's Interim Final Rule for more information on these restrictions.