



Alamogordo City Commission

NOTICE OF MEETING

Regular Meeting Agenda

September 26, 2023 - 6:30 PM

Donald E. Carroll City 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

Stephanie Hernandez Acting 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. Swearing in of Code Enforcement Manager Josh Sides and Officers Jeremy Otero, Rocky Chavez, April Payan, and John Romero. (David Overstreet, Municipal Judge)

PUBLIC COMMENT

Residents must sign up with the City Clerk to address the City Commission. The standard allotted time is 3 minutes, but the Mayor reserves the right to change depending on the number of public comments.

CITY MANAGER'S REPORT

REMARKS AND INQUIRIES BY THE CITY COMMISSION

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

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

2. Approve the minutes for the Regular Commission meeting on September 12, 2023. *(Rachel Hughs, City Clerk)*
3. Consider, and act upon, the award of RFP 2023-004 Custodial Services to SMI Facility Services. *(Evelyn Huff, Finance Director)*
4. Consider, and act upon, approval of Change Order 2 in the amount of \$69,617.56, including NMGR, to La Luz Dirt & Paving, LLC related to the FY21 Street Maintenance Program - Ridgcrest Drive project. *(Patrick Riele, Project Manager)*
5. Consider, and act upon, acceptance of FY24 capital outlay grant agreements from the NM Department of Finance totaling \$2,937,000.00. *(Debbie Osborne, Grant Coordinator)*
6. Consider, and act upon, approval of the At-Will Contract for Ricky D. Holden, as City Manager. *(Kim Torres, Human Resources Director)*

ITEMS REMOVED FROM CONSENT AGENDA

NEW BUSINESS

7. Consider, and act upon, the final plat for Case S-2023-0024(A), Replat B Pruitt Subdivision of Lot 1A Pruitt Subdivision. *(Stella Rael, City Planner)*
8. Consider, and act upon, Resolution 2023-48 requesting written approval from the Local Government Division of the Department of Finance and Administration, State of NM for the revised budget numbers computed as of September 26, 2023. *(Evelyn Huff, Finance Director)* **(Roll Call Vote Required)**
9. Consider, and act upon, Resolution 2023-46, declaring 801 Virginia Avenue to be so ruined, damaged, and dilapidated that it is a menace to the public comfort, health, peace, or safety and ordering its abatement. *(Josh Sides, Code Enforcement Manager)* **(Roll Call Vote Required)**
10. Consider, and act upon, Resolution 2023-49 supporting the second amendment of the United States Constitution and Opposing Governor Michelle Lujan Grisham's Executive Order 2023-130 ordering a public health emergency. *(Susan Payne, Mayor)* **(Roll Call Vote Required)**
11. Appointments to Boards and Committees. *(Susan Payne, Mayor)*

ADJOURNMENT

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 9/26/2023

Report Date: 09/19/2023

Report No: 1.

Submitted By: Josh Sides

Subject: Swearing in of Code Enforcement Manager Josh Sides and Officers Jeremy Otero, Rocky Chavez, April Payan, and John Romero. (*David Overstreet, Municipal Judge*)

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation:

Background: Swearing in of Code Enforcement Officers for the City of Alamogordo.

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 9/26/2023

Report Date: 09/21/2023

Report No: 2.

Submitted By: Rachel Hughs

Subject: Approve the minutes for the Regular Commission meeting on September 12, 2023. *(Rachel Hughs, City Clerk)*

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation: Approve the minutes.

Background: This is required by the Open Meetings Act.

**CITY OF ALAMOGORDO, NEW MEXICO
CITY COMMISSION REGULAR MEETING MINUTES
6:30 P.M., DONALD E. CARROLL COMMISSION CHAMBERS
September 12, 2023**

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

**DUSTY WRIGHT, MAYOR PRO-TEM
KARL MELTON, COMMISSIONER
STEPHANIE HERNANDEZ, ACTING CITY MANAGER
ASHLEY SMITH, CITY ATTORNEY
RACHEL HUGHS, CITY CLERK**

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

Mayor Payne called the meeting to order at 6:30 p.m. Roll Call was taken by the Deputy City Clerk. Deputy City Clerk Aleshire announced there was a quorum present. Invocation was given by Pastor Don Hoffman, and the Pledge of Allegiance was led by Mayor Pro-Tem Dusty Wright.

APPROVAL OF AGENDA

**Commissioner Burnett moved to approve the agenda.
Commissioner Melton seconded the motion.
Motion carried with a vote of 7-0-0.**

PRESENTATIONS

1. Swearing in of Certified Police Officer Emilio Alonzo, Police Service Aides Don Brockett and Audie Swing, and Animal Control Officer Steven Howe. (*David Kunihiro, Chief of Police, and David Overstreet, Municipal Court Judge*)

Judge Overstreet swore in Animal Control Officer Steven Howe, Police Service Aide Gerardo Parra, Police Service Aide Audie Swing, Police Service Aide Don Brockett, and Police Officer Emilio Alonzo.

2. Constitution Week Proclamation. (*Susan L. Payne, Mayor*)

Mayor Payne proclaimed the week of September 17th through the 23rd as Constitution Week and presented the proclamation to Kathy Prater of the White Sands Chapter of the Daughters of the American Revolution.

PUBLIC COMMENT

Gary Stevens signed up to speak under Item 11.

CITY MANAGER'S REPORT

Acting City Manager Hernandez made the following remarks:

1. No report; a comprehensive City Manager's Report is sent every week.

REMARKS AND INQUIRIES BY THE CITY COMMISSION

Mayor Payne made the following comments:

She said we should consider a resolution confirming our support for the Constitution and disapproval of the Governor's order this week. The County is doing something. We did not have time to get it on this agenda, but we need to consider it for the next meeting. Commissioner Rardin said he agreed; we need to get a copy of the County's resolution and maybe mirror it for the next meeting. Maybe we could authorize the Police Chief to put a letter out saying he will not enforce it either. Mayor Payne said the Attorney General put out a statement today saying he would not enforce it either. It is obviously very unenforceable, but when it comes to violating the Constitution, we need to take a stand and put out something that makes a strong statement. This is nonsense. Acting City Manager Hernandez asked if this was for the next meeting or a special meeting. Mayor Payne, Mayor Pro-Tem Wright, and Commissioner Rardin all said at the next meeting. Commissioner Rardin said he thought that Otero County already had a resolution drafted; maybe we could reach out to them and take theirs and get it to work. Mayor Payne said we should tweak it and affirm our support. Acting City Manager Hernandez said we technically had one ready because we saw it coming, but we will look at theirs and see if it is different. Commissioner Rardin asked if we could go a step further and make a resolution in favor of John Block's impeachment actions. He said he did not know if everyone would support that or not. Mayor Payne said we needed to be in solidarity on that, and we may not be.

Mayor Payne said Commissioner McDonald was working on the Dudley School, and it looked productive. Commissioner McDonald said it was.

CONSENT AGENDA

3. Approve the minutes for the Special Commission meetings on August 21, 2023, and August 28, 2023, and the Regular Commission meeting on August 22, 2023. (Rachel Hughs, City Clerk)

4. Approve the statements related to the Executive Closed Sessions held on August 21, 2023, and August 28, 2023. (Rachel Hughs, City Clerk)

5. Approve the weekly City Manager Reports for 8/18/2023, 8/25/2023, and 09/1/2023. (Stephanie Hernandez, Acting City Manager)

6. Consider, and act upon, agreement with Otero County for receipt of the \$50,000 reimbursable grant award for the Alamogordo Public Library services to County residents. (Kim Underwood, Library Manager)

7. Consider, and act upon, approval of Change Order No. 1 in the amount of \$61,054.45, including NMGRT, to La Luz Dirt & Paving, LLC related to the FY21 Street Maintenance Program - Ridgecrest Drive project. (Patrick Riele, Project Manager)

8. Consider, and act upon, acceptance of the FY24 New Mexico Department of Tourism's Clean and Beautiful grant award in the amount of \$25,495.84. (Sven Sears, Parks & Recreation Executive Assistant/KAB)

9. Approve Resolution 2023-42 designating the Administrative Manager as the Custodian of Records for the Alamogordo Police Department and including the method of destruction of City records as witnessed shredding. (David Kunihiro, Chief of Police) (Roll Call Vote Required)

Deputy City Clerk Aleshire removed Item 3 from the Consent Agenda.

Commissioner McDonald moved to approve the Consent Agenda as amended.
Commissioner Burnett seconded the motion.

Roll Call Vote was taken.

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

ITEMS REMOVED FROM CONSENT AGENDA

3. Approve the minutes for the Special Commission meetings on August 21, 2023, and August 28, 2023, and the Regular Commission meeting on August 22, 2023. (Rachel Hughs, City Clerk)

Deputy City Clerk Aleshire said an amendment needed to be made to the August 28, 2023, Special Meeting Minutes. He said he put that Commissioner McDonald was absent from the meeting, and that was not correct. Commissioner McDonald was late but present for the Executive Session, and that wording needed to be added.

Mayor Pro-Tem Wright moved to approve Item 3 as amended.

Commissioner Paul seconded the motion.

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

UNFINISHED BUSINESS

10. Consider and act upon Resolution 2023-20, declaring 308 N. White Sands Blvd. to be so ruined, damaged, and dilapidated that it is a menace to the public comfort, health, peace, or safety and ordering its abatement. (Josh Sides, Code Enforcement Manager) (Roll Call Vote Required)

Code Enforcement Manager Sides said he brought this property before the Commission in June, and it had been tabled until today. He said he was unsuccessful in contacting Mr. Douglas after that meeting and had left business cards at his residence. He could not make contact to go back inside the property at 308 White Sands. He said that he saw Mr. Douglas working on the roof throughout the summer and observed from the public rights-of-way that Mr. Douglas did work on the southwest corner. It looked like he patched where the cracks were, but no work was done on the northeast corner, where it is displaced by four to six inches, making it still structurally unsound.

Commissioner Rardin said that this gentleman put a brand-new roof on this building and had done a substantial amount of repairs to it. We gave him three months to see where he would go, and he has improved the face and the south side. Mayor Payne asked if Commissioner Rardin meant since then. Commissioner Rardin said yes. Commissioner Burnett said he drove by it today, and the west and south sides have been repaired, but the east side has not. Mr. Douglas has put work into this place. Commissioner Melton said but did we ask Mr. Douglas to put in work or to fix the structure and code violations. Commissioner Burnett said Mr. Douglas has been fixing what we asked him to start fixing, which was the roof and the cracks. Mayor Payne asked why Mr. Douglas was not returning calls or communicating. Commissioner Rardin said he had not seen Mr. Douglas down there in a couple of weeks, but right after we gave him the three months, Mr. Douglas was down there about every day working on this. There were ladders, buckets, and tar. He put a new roof on it.

Code Enforcement Manager Sides said that by passing the resolution, per the International Property Maintenance Code, that gives him two years to bring it back up to code. By passing it, it does not mean we are going to demolish it tomorrow. Per the International Property Maintenance Code, because the windows are not boarded, he has two years to correct the rest should the resolution pass.

Mayor Payne said he has not communicated. Commissioner Rardin said he was a schoolteacher, so that may be why we are not able to get in contact with him. Mayor Payne said we were clear about how critical it was to communicate, tell us what was going on, and get some of these items corrected.

Acting City Manager Hernandez said we discussed this, and by passing this resolution, it gives the City a little more teeth to reach out to him so that he has to reach out to us. As Code Enforcement Manager Sides said, Mr. Douglas has two years, but he has to be in communication. By not passing this, then by next month, he can just stop doing anything. This gives the City some wiggle room to contact. Mayor Payne said she agreed.

Commissioner Rardin asked if we contacted Mr. Douglas to let him know this was on the agenda. Did we try? Code Enforcement Manager Sides said he tried going by his residence in the City on Princeton and was not able to contact him at all. Commissioner Rardin said that Mr. Douglas has made substantial progress in his eyes. Mayor Payne said she did not want this to sit there for two more years and do nothing because all that progress goes down the tubes if he does. Commissioner Melton said that progress is half of it; the other half is communicating with us since this was a mutually arranged decision. Mayor Payne said her concern was that people do not think we are serious. Commissioner Rardin asked if we knew if Mr. Douglas's father passed away. Code Enforcement Manager Sides said he believed so and has come to understand that he did. Commissioner Rardin said he was the original owner of this building, and Mr. Douglas was the son that has control. There is another son somewhere. Code Enforcement Manager Sides said he believed that back in June, Mr. Douglas said that the building was left to his brother, and his brother let it dilapidate that bad, and now he has taken back control of it and is taking care of it. He said he spoke with Mr. Douglas after the Commission meeting in June and told him that he would need to meet with him again to sign the consent to enter form so we can go in there, and Mr. Douglas had said it was not a problem, and he would be by that week, but there has been nothing since.

Mayor Payne said her concern is that this will go another two to three years if we do not do something. If we pass a resolution, that gives us control over how far we can go with it. She said that she personally was not willing to let this go because it is another building on White Sands Boulevard that is falling apart. If Mr. Douglas does not get it fixed, it is just going to get worse. It is not fair to everybody else, such as property owners that invest and take care of their properties, people that live around or do business there, and quite frankly, it is not fair to us as a community when we have military driving through for the first time and that is what they see.

Commissioner Paul moved to approve.

Commissioner McDonald seconded the motion.

Roll Call Vote was taken.

Motion carried with a vote of 5-0-2. Commissioners Rardin and Burnett voted nay.

NEW BUSINESS

11. Consider, and act upon, Ordinance 1681, Z-2023-0005(A) for first publication, a map amendment to change the current zoning of the property with the legal description of S: 8 T: 16 R: 10 TR IN N1/2SE1/4 from R-1 Single-Family Dwelling District, to R-4 Multi-Family Dwelling District. (Sean McGranaghan, Assistant City Planner) (Roll Call Vote Required)

Assistant City Planner McGranaghan gave his presentation and recommended approval of the rezoning. He said they sent out protest area mailings. Twenty-eight letters were sent out, four letters were returned undeliverable, and we received five letters of opposition.

Commissioner Burnett said there was not a sewer line there, correct? Assistant City Planner McGranaghan said a sewer line was on Walnut, the cul-de-sac street. We talked with Utilities Director Nunnelley, and he said they could tie into that. The cost of extending it to the property would be on the property owner. Commissioner Rardin asked if it was on Walnut or Pinon. Assistant City Planner McGranaghan said that Pinon was the street that ties into it. Commissioner Rardin asked if the sewer was on Pinon or if it stopped on Walnut. Assistant City Planner McGranaghan said he thought it was on Walnut. Commissioner Rardin asked Assistant City Planner McGranaghan if there was City water on it. Assistant City Planner McGranaghan said they could tie into City water, but the expense would be on the owner. Commissioner Burnett said there should be one on Princeton. Commissioner Rardin said it was recently County property back in 2010 or somewhere around there. Commissioner Rardin asked if the protest letters were from residents who lived on Walnut. Assistant City Planner McGranaghan said that within the two-hundred-foot buffer, there were three residents on Walnut and two on Pinon.

Commissioner Burnett asked if we knew where they were coming in to have access. Was it Pinon? Assistant City Planner McGranaghan said there is not a road but a driveway that connects Pinon to Princeton.

Mayor Payne asked the property owners to come up and explain what they wanted to do. Property owner Sean Little said he purchased this land a couple of months back to develop it. It is currently completely undeveloped and almost an eyesore part of town. He said he wanted to completely clean the entire thing, beautify that area, and then build permanent mini homes with the intent of short-term rentals targeting military and traveling nurses. If other people want to rent, then they can. He said he was retired military and understood how much of a challenge it was to move with a family, and he was trying to set up an affordable temporary place close to the base. He said he had friends who were traveling nurses complaining how hard it is to find someplace. You could hit the hospital with a rock from where he lives if you threw it hard enough. He said it is an investment plan for him. Mayor Payne asked if it would be similar to what is on Florida? Are you familiar with the tiny homes? He said he thought she knew what she was talking about, and somewhat, yes. They are going to be more spread out and not so tightly together. Mayor Payne asked if it would be those sizes. He said yes, between four and six hundred square feet and one-to-two-bedroom units. He said he wanted to start with four of them now and, over the next fifteen years, expand with time if business goes well. He said he had three and a half acres to work with and only planned on using half of it.

Commissioner Burnett said he believed the houses on Princeton were on septic, correct? Mr. Little said yes, and he lived on Princeton. He had a well and septic on his property, but he could tap into the City's water and sewer from the Pecan addition, which was his intention.

Assistant City Planner McGranaghan asked the Commission if they received the letters of opposition. Mayor Payne said yes. Commissioner Rardin asked if there were five total. Assistant City Planner McGranaghan said yes, there were five in total. Commissioner Melton said two complaints were about existing infrastructure capacity; is that going to be an issue? Assistant City Planner McGranaghan said that regarding drainage, which was a concern they had, when the property is developed, it would be addressed in the review process. In the Technical Standards, it would call for a detention pond, but he would need to talk with Public Works Director Beshaler because she makes the final decisions. The post-development flow can increase from pre-developed, that way, they address the drainage. Concerning utilities, he had spoken with Utilities Director Nunnelley, and he said that they could connect. Regarding the increase in the number of houses, he would have to check with Utilities Director Nunnelley again, but when we get to the development process, that will also be addressed. As far as increased traffic and congestion, he said he was not sure if there was a way to address that because people are driving there regardless. Concerning the housing density, the property owner

plans to spread them out. The property owner is also planning that if this is subdivided, it can be individual lots. Concerning views of the mountains, there is a height limit, and they cannot do over two stories. The property owner is planning on doing one story.

Commissioner Rardin asked if there was a possibility in the future for Mr. Little to allow those guys to attach to your sewer if you put in a main in? All those houses on Princeton do not have City sewer. Mr. Little said his septic is inside his property at 2611, as was his neighbor's. He said he was not planning on immediately bringing sewer into the property because the alley has a sewer. He can run a six-inch pipe or whatever the City requires directly into it, so there will be minimal sewage on his property. If he does expand closer, then absolutely, there are sewer lines people can tie into. Commissioner Rardin said that was an issue with all those houses. In one house, a tank was failing. At that time, the City looked at acquiring an easement and running a line across 2611 to get to Pinon, but it never came to light. All those homes have septic tanks, and it would be in the City's best interest to get them off septic. Mr. Little said he would love to work with the City to make that happen. As a septic owner, he understood that it has benefits but definite setbacks, and it would be nice not to have to worry about it. When that time came, if we pushed that way with City water and sewage, it was something he was willing to work with the City on. Commissioner Rardin asked if they were on City water at Princeton. Mr. Little said no, he was on a well. The City water ends at the corner of Pinon and Walnut, and then down at 26th and Princeton is where all the City water ends. It does not come any closer.

Public Comment

Mr. Gary Stevens said he lived at 1523 Walnut. When this lot was sold a couple of months ago, he was looking forward to getting construction done and getting a lot taken care of. It is three point two acres. He said he did not know how many acres Mr. Little would use up on this first section. If you are going to build a whole lot of homes, first of all, Princeton is gravel with no sidewalks or curbs. So, if you wash your car on Saturday, you are not using Princeton. You are heading down one street, which is Pinon. Pinon cannot have cars parked on both sides and have two cars drive down. It is a secondary street in Alamogordo and not wide enough. He said he was concerned with kids and everyone else in the neighborhood. He said he almost smacked one a while back because he was using his driveway as a runway in the middle of the street and did not see him, but luckily, he drove slowly. He said if people drive fast down there, someone will get hurt. Waterlines in the area now are the old poly; they are digging up streets there regularly, fixing the lines. He said he was concerned about traffic. If Mr. Little would limit it to ten houses, he would be happy, but if there are follow-ons, we do not know if we have the infrastructure. The sewer has been pumped twice in the last six years by the City. He respects Mr. Little's wanting to build and looks forward to it but wants to come to an agreement that there will not be thirty or forty mini homes back there. That is his concern.

Acting City Manager Hernandez said this is just the zoning part of it. Anything else would go through TRC, and they will look at traffic, drainage, and all of that. If it is not suitable, we will not sign off on it. Mayor Payne said she was just thinking that if it is not possible, it is not possible. She did not know if that was even a concern. Acting City Manager Hernandez said as far as parking, perhaps the owner can address if the lot is big enough to have parking on it instead of the side of the street. Mayor Pro-Tem Wright said tonight is just the zoning change, and after this, Mr. Little will have to coordinate with the City to develop the drawings and make sure they are improved with the infrastructure and setbacks. It would have to meet our new Tech Standards to be even possibly built on this land. Mr. Stevens said his concern was how many homes were going in back there and if we could afford the traffic. Mayor Payne said that if we do not rezone this, we are limited to single-family homes, which does not seem practical for a three-acre lot. What else would Mr. Stevens do with it? Mr. Stevens said if it was R-1, you could build houses and whatever you wanted. He just did not want forty mini-homes

in there. Once it turns R-4, there is no control, and the City cannot stop anybody if he sells the property down the road. Mayor Payne said that if we do not rezone to R-4, Mr. Little is very limited in what he can do, which does not make sense. Mr. Stevens said he understands what Mr. Little is doing and looks forward to it, but if we are going to get a large number of mini homes, well, Princeton has no infrastructure. We are on a dirt road and developing a lot without developing the area. That means there will be one street going down, and who is going to drive down a gravel road or paved road, which is Pinon. We already opened up the bridge at Pecan, and from 25th Street to Fairgrounds is the front stretch of the Coca-Cola 600. You have people flying down and passing you at seventy miles per hour. He said he has been passed numerous times down there at high speeds, and he does not want people on Pinon doing the same thing.

Commissioner Rardin said that on the zoning map, they usually give us a legend of the colors. Assistant City Planner McGranaghan said the blue on the map is R-1. Commissioner Rardin asked what the green and tan were. Assistant City Planner McGranaghan said the green is R-4, tan is C-3, pink is M-1, and light beige is C-1. Commissioner Rardin asked if the brown was County, and if we annexed that or not. Assistant City Planner McGranaghan said it is City. Commissioner Rardin said we are spot zoning that one piece to R-4. Assistant City Planner McGranaghan said yes, but just south of it is a storage unit place. Commissioner Rardin said it should be C-1 right, or is that County back there? Assistant City Planner McGranaghan said the storage unit is zoned R-1 because when it was pulled from the County, everything automatically goes to R-1, so that would need to be fixed at some point, so it is in the proper zoning. So, it would be like an R-4 parcel and a C-1 neighborhood business parcel. Commissioner Rardin said that is right; it was built before it was annexed in.

Commissioner Melton moved to approve.

Commissioner McDonald seconded the motion.

Roll Call Vote was taken.

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

12. Consider, and act upon, Resolution 2023-29, declaring 311 New York Avenue to be so ruined, damaged, and dilapidated that it is a menace to the public comfort, health, peace, or safety and ordering its abatement. (*Josh Sides, Code Enforcement Manager*) (Roll Call Vote Required)

Code Enforcement Manager Sides gave his presentation and recommended approving and ordering the property's abatement.

Mayor Payne asked if the owner lived here. Code Enforcement Manager Sides said he is the same owner of 313 that I took a month ago.

Commissioner McDonald moved to approve.

Commissioner Paul seconded the motion.

Roll Call Vote was taken.

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

13. Consider, and act upon, Ordinance 1682 for first publication amending Chapter 26, Article 03, Sections 010 Definitions, 030 Unlawful growth or accumulation on lots, and 040 Unlawful growth or accumulation on tracts. (*Josh Sides, Code Enforcement Manager*) (Roll Call Vote Required)

Code Enforcement Manager Sides said that Code Enforcement had a property owner that they brought forth to Municipal Court. The Municipal Court rendered a guilty verdict on unlawful growth or

accumulation on lots. The defendant appealed to the District Court. District Court Judge Schneider ruled that our ordinance of unlawful growth or accumulation on lots is unconstitutional due to its vagueness. Nobody understood what the meaning of weeds would be, is what she said in her ruling.

Code Enforcement Manager Sides said he did a lot of research about other communities in New Mexico, and he did not change the verbiage much. He said that in definitions, we defined five weeds as weeds in the City of Alamogordo but allowed the City Manager to designate what were and were not weeds. Per ordinance, there were only five weeds on that definition. In definitions now, there are fifty-five weeds, which matches places like Albuquerque, Las Cruces, and Roswell that have those specific weeds as noxious. In definitions, it also includes whatever the New Mexico State University's Agricultural Department deems a noxious weed on their list because their list is over two hundred weeds long.

Code Enforcement Manager Sides said going on to unlawful growth or accumulation on lots, which is a parcel of land that is under half an acre, the only verbiage added was you could not have weeds that were over six inches tall. We are all from here and understand that goat heads will never grow six inches tall, so he added in width and spread to those six inches. So now, with this, you cannot have weeds that grow over six inches tall or a width or spread either to help get those goat heads on that list. He said there is also verbiage from our unlawful growth and accumulation on tracts, which is any parcel of land over half an acre, that states if the code official deems it a fire hazard, it shall be removed.

Commissioner Rardin asked if we wanted to add grass as well. Everything there is just weeds. Code Enforcement Manager Sides said that under the definition of weeds, grass is not on there, but there is verbiage that if it is very out of control, we can cite it under unlawful growth and accumulation. We can now, he did not add that, and it was already there. We don't, but it could be there. He said he is not going to go out there to measure if grass is over six inches. Commissioner Rardin asked if they were going to waste time going out there and measuring the spread of a weed. Code Enforcement Manager Sides said no. Commissioner Rardin asked if we were just going to go, eh, it is close enough. Code Enforcement Manager Sides said yes, none of his officers go out there with a tape measure to measure weeds. It is obvious if it is over two feet tall. Commissioner Rardin said our state building officials sometimes do check that.

Commissioner Melton said there is a line here that describes weeds as anything that is harmful, unhealthful, unsightly, or offensive. Are we worried those are vague, and someone with an allergy might claim it is unhealthful? Code Enforcement Manager Sides said that is verbiage that was already in there, and it is verbiage that is in a lot of the other ordinances throughout the other cities in the State of New Mexico. When it comes to complaints of weeds, prior to Judge Schnieder's ruling, we only really looked at five. Russian Thistle is a big one, that is the tumbleweeds. Silverleaf Nightshade is another one, and it has little purple flowers. We focus on those. If it is not a weed that we can enforce, then it is not a weed we can enforce. We this, it is not so much okay, I am allergic to it, and it is unhealthy and unsightly. It is more about what is deemed as a weed by the New Mexico State University Agricultural Department, by the people who study that and tell us they are weeds. Commissioner Melton said he just did not want feuding neighbors the ability to give someone's garden offensive. Code Enforcement Manager Sides said we have that all the time with weeds. City Attorney Smith said we pretty much deal with that on a daily basis.

Mayor Payne asked if they needed to take a test on these weeds. Code Enforcement Manager Sides said he did a lot of research, and if he saw a name on there he did not know, he Googled it. Mayor Payne asked if there was a picture book or something. Code Enforcement Manager Sides said he asked for someone from the New Mexico State University's Agricultural Department to come over and give our Code Enforcement officers a brief rundown of the list of weeds. He said that some of the

additions to the weeds list is like bamboo. That would be a weed now under this. Or the River Cane looking plants the Zoo has, that get out of control if you are not taking care of it. There are a few trees there, such as the Tree of Heaven, a noxious weed by Agricultural Department standards.

Commissioner Rardin said the County has been having problems with the African Rue. He said he did not mind that being on here, but he knew from his shop that if you kill that stuff with a weed eater, it comes back four times bigger. If you try to poison it, it does not work. He said he has found nothing that works on African Rue. That stuff is very noxious; even the County Extension Office had a deal with the County talking about that, and they did not have anything to kill it. Code Enforcement Manager Sides said that African Rue is a big problem statewide, and that is why he has tried to get the Agricultural Department to come over and educate us. Code Enforcement is enforcement through education. This is a weed, this is how you take care of it, and we are finding out firsthand how you take care of those kinds of things. Commissioner Rardin said that mechanically cutting just makes it spread more rather than kill it. Acting City Manager Hernandez said with NMSU involved, they also have an extensive program on how to kill some of these weeds, so it will be an overall education. We also have Belinda, a biologist who has done all of that, so she will be another resource we can use. Commissioner Rardin said if you find something that kills African Rue, please let him know. Acting City Manager Hernandez said absolutely, because we have some of that at the Airport. Mayor Payne said she remembered a big presentation on African Rue at the Airport and people saying that they could not get rid of it. Acting City Manager Hernandez said we could buy a bunch of goats. Commissioner Rardin said he thought it was noxious for animals too. City Attorney Smith said her goats like them. Mayor Payne said she felt like we would end up in court over that. Commissioner Rardin said the County was interested in it because it could kill cows.

Commissioner McDonald asked if Code Enforcement Manager Sides said that Silverleaf Nightshade was a weed. Commissioner McDonald said it is not on the list. Code Enforcement Manager Sides said it was. Commissioner Rardin asked what it looked like. Code Enforcement Manager Sides said it does not get very tall but will get over six inches and has purple flowers. He said he mainly saw it on sidewalks. Mayor Payne asked if it was on the original list. Code Enforcement Manager Sides said it was. Mayor Payne said she did not see it here either. This is a detailed list; thank you.

Mayor Pro-Tem Wright moved to approve.

Commissioner McDonald seconded the motion.

Roll Call Vote was taken.

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

14. Consider and act upon, selecting Rick Holden as City Manager and allowing Human Resources and City Attorney to begin contract negotiations. (*Stephanie Hernandez, Acting City Manager*) (Roll Call Vote)

Acting City Manager Hernandez said this is for the Commission to take official action and have your vote. Mr. Holden is here and would like to say a brief word.

Mr. Holden said this is a great honor. He said he has been here long enough tonight to realize he is at home already because we are going to rezone, deal with weeds, and tear down old buildings. He is where he needs to be. He said he appreciates the opportunity and vote of confidence from each of you, and he looks forward to being here on an ongoing basis. He said that Acting City Manager Hernandez spoke to him this morning about being in the audience, and she has a spot cleared out for him and a list of things a mile long. He said he has already begun to get his housing situation situated and will be here and ready to go once we get the contract taken care of. He said he would be available,

and as he has said before, the open door will be there, and he looks forward to it. Thank you very much again for the opportunity to serve.

Commissioner Paul moved to approve.

Mayor Pro-Tem Wright seconded the motion.

Roll Call Vote was taken.

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

15. Consider, and act upon approving 3 agenda items and 2 alternatives for the 10/31/2023 Joint City/County Commission Meeting. (Stephanie Hernandez, Acting City Manager)

Acting City Manager Hernandez said the potential item list of things to discuss came from the Commission with the exception of the last one. She said she put that on there to ask that the Commission consider securing the rocks in the pipeline off Highway 82. As you know, this is the second time the rocks fell and the second time we have had to replace our pipeline. Another thing not on here that she asked the Commission to consider was combining the EOC, the Emergency Operations Center.

Commissioner Rardin said that as far as securing the rocks and pipeline, is there anything we could do? That is NMDOT's area. Acting City Manager Hernandez said the County does go in there and do some. Commissioner Rardin said not on Highway 82. NMDOT will help in emergencies, but that last rockslide was right where they took all the rocks down to try and prevent another rockslide. Acting City Manager Hernandez said that in speaking with Utilities Director Nunnelley and Public Works Director Beshaler, we believe some coordination can happen.

Commissioner Rardin said that one of his big ones was the flooding on Scenic and Florida. That would be a perfect opportunity for Otero County and Alamogordo to get together. It is very important. Commissioner Burnett said the flooding in that area is the number one complaint he gets. Commissioner Rardin said that would be a joint effort that both of us would have to work on since they have part of it up in the canyon there, and we have part of it right there where the culverts and backups start. He said he wanted that one on there for sure as one of ours. Mayor Payne asked if anyone had an objection to that. Can we add that one?

Mayor Payne said that we need to work with the County to come up with some solutions to our housing crisis. It is just going to get worse. Maybe we could add that. Does anyone have any thoughts on that? Commissioner Melton said we definitely need more affordable housing, but we may be limiting ourselves to just focusing on the affordable part. We just need housing in general. Mayor Payne said she agreed, housing in general. Commissioner Rardin asked what steps the City or the County could take to help with that. We have looked at it in the past, and there is not a lot. We started our GRIP program and looked at property tax abatements, and even if we do those, it is not enough money to incentivize those builders to build. With GRIP, you spend \$1,000,000 and you get \$20,000 back. There is a big issue, but he did not know if there was anything we could do to help it. Maybe we could take all the properties we foreclosed on and give them at a rate to the builders or something. We have looked at how to incentivize it for the last twenty years, and there was just no good way for us to do it on our end, but he did not know about Otero County's side. He said he did not know if we could use capital outlay money or if there was a way to look at infield development programs. About thirty years ago in El Paso, they did some infield development where they took older areas, like his and Commissioner McDonald's. A government-sponsored program incentivizes builders to go into those areas and revitalize them. Acting City Manager Hernandez said we could look into that, absolutely. We could research it. Commissioner Rardin said we could look into that part of it. Mayor Payne said

let's set that aside for now. We need to make this productive, so if we do not think this will be productive, then let's not talk about it.

Mayor Payne said she was looking at efforts for mental health facilities to help with problems in our community. That is one area we can work together on, and they have something like health services. She said she thought that was more for helping with the financial side of it, but maybe we can talk about it and expand it. It is a huge issue for us and the County. Commissioner Melton said it is an issue, but his reservation is that it is controversial. People think if the government gets involved, it will involve taxpayer money. It is controversial compared to the other items on the list, like broadband. Mayor Payne said they have three they are going to pick, and she said she could guarantee that broadband will be at the top of Commissioner Barela's list. She is just looking at things that may not be on the County's list.

Commissioner McDonald said she suggested three, and those have already been discussed. She said she didn't talk about Scenic and flooding, but she plans to attend a conference for housing, period. It will be in October, before the meeting. She said she would like to see what they are saying because when she looked at the information, it talked about if we could not get housing, period, we are losing out on the working class of people coming into town. We do not have people to fill jobs. We need to look at housing, whether it is productive or not. We need a plan to see what we can do about it. She said she had counted the number of houses in District 5, between 1st and 10th, and we can come up with about seventy vacant houses. Mayor Payne asked if those were livable or not. Commissioner McDonald said some are livable and some are not. Commissioner Rardin said we could put this up as one of our alternatives. The problem is using taxpayer money to try to incentivize that is not real legal, I guess you could say. Mayor Payne said yes, but she has questioned that before. Other communities are doing something, so what are they doing? She said that she and Commissioner McDonald have been looking into that because we need to do something. We have people working here and living in Las Cruces and other areas. We are losing out on a huge tax base. For instance, Eddie Valencia is building in other areas and talking about other things we are doing. She said she understood that he builds in El Paso and we are in New Mexico. It is different, but new things do not start unless people create them. Maybe we need to get creative. Our State Representative is here, and he knows how critical it is. Maybe things need to start happening at the state level. We cannot stop talking about it. Affordable housing would be for purchase, but what about rentals? We just do not have enough affordable rentals in our community. We need to talk about this and keep it at the forefront, whether it is with the County or not.

Commissioner Melton asked Acting City Manager Hernandez if she recommended it too, that were off this list. Acting City Manager Hernandez said she recommended one that was off the list. She recommended securing the rocks and combining the EOC, Emergency Operations Center. She said to follow up on Eddie Valencia, we have been working with him, and we have another meeting scheduled at the end of this month. We are just trying to address Fire Code issues. She said she believed it was two hundred and twenty-two units. Mayor Payne said she apologized; she asked about everything but that.

Mayor Payne said that Mayor Pro-Tem Wright talked about homelessness prevention and support services, which she thinks goes along with mental health. Mayor Pro-Tem Wright said we have a list of Otero County items and City items. Is that what they suggested versus what we suggested? Acting City Manager Hernandez said that is the email Commissioner Barela sent us. She did not know if the County would end up with that. She said once the Commission makes its decision, she will reach out to County Manager Pamela Heltner to see where they are at.

Commissioner Rardin said he thought the animal control one would be good. They have a fairly nice facility and room to expand. If we can get a plan together to combine the two and get our State Representative to get us some capital outlay, then maybe we could get the County and City together. Typically, they give us half a million to six hundred thousand towards a project, but if the County gets some, and we get some, we get a larger pool of money and can make that happen. Same thing with solid waste. They have about ten facilities around the County, but we have one. Wouldn't it make sense for us to turn ours over to them and let them run it? Then we could just contribute the money. Commissioner Melton said with that, we also give up control. We have our own animal control ordinances, and they have theirs. How would that work under one? Commissioner Rardin said it would probably be structured simply, like our landfill. It is a little different because there are not as many ordinances and rules and laws, but basically, if the animal is picked in city limits, it follows one set of rules. The majority of animals in theirs come from Chaparral. That is stuff we would have to talk about it. Commissioner Melton said he did not know if their noise ordinances are the same as ours, what with Alamogordo being more dense. We can discuss and look into it, but that is his concern. Acting City Manager Hernandez said that as far as the Convenience Center, all our citizens get billed. She said she agreed with Commissioner Melton on that particular issue. Utilities Director Nunnally would have a lot to say about that. Commissioner Rardin said the Convenience Center has always been an issue in Alamogordo. We have the County one and ours right next to each other. A lot of the resident complaints he has heard are that it is easier for them to just go to Otero County because they just let them dump their trash. We want to weigh you, put this in the computer, and then you have to come back around and get weighed again. There is no need for that. The County is just easier to deal with on solid waste. Acting City Manager Hernandez said they are also closed often. Commissioner Rardin said they are open all the time we are they close on Thursdays out in La Luz. Acting City Manager Hernandez said they close on Thursdays, but speaking with Utilities Director Nunnally, they close often, and we have to take some of those citizens, which is unfair to our citizens because our citizens pay for it. Commissioner Rardin said that when this one is closed, what ends up happening is they go down the road in La Velle, and they go down Zuni or Mayflower, take it out in the desert, and dump it. It creates issues for the County as well. Mayor Payne said she did not know how comfortable she was combining that stuff. We are not the County; we are the City. We do things differently, and there is a reason why we do what we do.

Mayor Payne said we know we want the flooding for sure. Commissioner Burnett said that crime reduction and community safety are issues in his District and Commissioner Rardin's, especially between Indian Wells and Dexter. Acting City Manager Hernandez said that is the County's list. Commissioner Rardin said it goes hand-in-hand with the City and County. Commissioner Melton said they would select that. Commissioner Rardin said so, we will come up with three and two alternates. Acting City Manager Hernandez said yes sir. Commissioner Melton said they do not have broadband, though. We are the only ones. Commissioner Rardin said he thought they had that on there. Acting City Manager Hernandez said we have a committee that encompasses all the County already, so we are already working on the broadband issue. She said Commissioner McDonald has gone to several of those, which are already in the works. We may not want to put that on because we are already working on it.

Commissioner Rardin said that Senior Center improvements are on our end, but it is off the County's list, correct? Commissioner Melton said yes. Commissioner Rardin said that it is a pretty nice facility over there. Mayor Payne said she thought they were doing a great job over there and is unsure what that is.

Commissioner Rardin said maybe the mental health facility is one of ours. Mayor Pro-Tem Wright said we could combine homelessness and mental health. Commissioner Rardin said that is an issue, and a lot of people walk around Alamogordo talking to themselves. Commissioner Melton asked what the

solution to that was other than throwing money at it. That is what San Francisco does. Mayor Payne said we have CIT, which helps with the crime portion, but mental health and homelessness often go hand-in-hand. Commissioner Rardin said drug use. Mayor Payne said the issue is that they may not be committing a crime, but they are parked on our sidewalks, and there is no place we can take them. We have no facilities, nothing. It is worth a conversation with the County, so we are all on the same page. We need to figure out what to do. She said she works in this field with the homeless, and we are getting some interesting people coming in, and it is honestly a little bit scary. Some of our volunteers are older. It is not a crisis now, but it is going to be if we do not come up with a solution to deal with it. Commissioner Melton said we could include it on the list; he just has major reservations about it. There have been studies with cities showing that investing in homeless shelters and mental health facilities does not work. It does not improve anything. It just inflates the budget. Mayor Payne said she is not suggesting that we come up with a facility, but we need to talk about it to figure out how we handle it. How do you handle it? You cannot let it continue because it will grow exponentially if we do not do something. Commissioner Melton said work with churches and private charities. Keep the government out of it. Mayor Payne said there is not enough money. Commissioner Rardin asked if the one that Mr. Torres did was still open. Commissioner McDonald said yes. Commissioner Rardin said that maybe it is part of the discussion. The County and the City could pull money together to contribute and help that run. It may not be something we run, but a little bit to us is a lot to them. It is a private organization. Acting City Manager Hernandez said that one is just a men's facility, though. Commissioner McDonald said the issue is just even getting a cooling station set up. It would have taken a long time for the City to do it, but the Counseling Center was able to do it for a month. We do have some avenues, so those can be tweaked if we talk about them. Commissioner Rardin said that would be similar to COPE, wouldn't it? Mayor Payne said it is a domestic violence shelter, and they are full. They have people in hotels. Commissioner Rardin said maybe a 501(c)(3) such a COPE that we and the County could partner with. Acting City Manager Hernandez said we could put it as a combined effort if you all agree. We can have the flooding on Scenic and Florida, and have homelessness and mental health as one item. Mayor Payne said it was a good idea. Commissioner Melton said we could include it on the list. Mayor Payne said we just have to come up with a solution. It is getting worse. Commissioner Melton said it is a philosophical issue about the role of government and whether or not it should get involved. Mayor Payne said she is the last person that believes in handouts. Acting City Manager Hernandez said there may be opportunities for grants where either we or the County are fiscal agents on it. It may not necessarily be us putting money into it rather than us getting the money and pushing it out. Mayor Payne said it is worth talking about, but if it does not get anywhere, then it does not go anywhere.

Commissioner Rardin asked if Commissioner Paul had comments. Commissioner Paul said he was listening to everyone go back and forth. He felt housing and the Airport were important, but the Airport was not on the list. Things like that will grow the community and are worth discussing. Some of these things are good but not necessarily on-topic. Mayor Pro-Tem Wright said we kicked housing out of the way because there is not a lot we can do. Commissioners McDonald and Burnett said it is an alternative. Commissioner Rardin said we have to look at different programs. We could come in and have a big developer come in who wants to get industrial revenue bonds through us, but then we are on the hook for that. They have no feet in the fire on anything, and if it goes belly-up, they walk away, and we sit there holding the note. Mayor Payne said we have already looked into that, and that is not going to work. Commissioner Rardin said we have a few ways of doing that, but we are on the hook for it, not them. Regarding when the GRIP program was in place, they spent \$60,000,000 at the hospital for a \$1,000,000 rebate. In theirs, it is a big one, but you go spend \$500,000. They did not end up getting it because we had to close it due to COVID. You spend \$500,000 to get \$50,000 back, and it is really not worth the paperwork. Mayor Payne said unless they are doing it anyway. The hospital was doing it anyway, and they were doing it regardless. Commissioner Rardin said we do not have the means to offer anything. That is all we have to offer. Mayor Payne said maybe not talk about

it at this meeting, but she agreed with Commissioner McDonald that we need to look into it and not give up on it. Commissioner Rardin said that one of the County Commissioners is a builder. Maybe he has some ideas. He has been in the industry for close to fifty years. Commissioner McDonald asked if that was Commissioner Matherly. Commissioner Rardin said Gerald, yes. He has been a homebuilder for a long time. Maybe he would have ideas. In order to get affordable homes, a lot of builders will not build smaller square footage of homes because there is not enough profit. They want to go out and build these twenty-five hundred to three thousand square foot houses to get the profit they need. Maybe we need to look at getting twelve to sixteen or twelve to eighteen hundred square foot homes and figure out how to get those moving. Mayor Payne said she remembered one of the builders coming before us about setbacks, and they said they wanted to do it to build affordable homes, but at the time, she had said define affordable. What is affordable? For a lot of people in this market, not even \$200,000 is affordable. Commissioner Rardin said that those homes are going for double what they used to go for in areas like his, Commissioner Burnett's, and Commissioner McDonald's. They are in the \$150,000 range for sixty-year-old homes.

Commissioner Melton said we could discuss catch and release. The County and the City are on the same page, but it may be useful to discuss joint lobbying strategies. That is not something we can do in private. It has to be in public.

Mayor Pro-Tem Wright said it is not on this list, but have we ever discussed economic development or tourism strategies with the County, especially since we have taken those both in-house here? Acting City Manager Hernandez said we have not, but she is down for those too. Commissioner Paul said that is highly worthwhile.

Mayor Payne said so let's narrow this down. We want flooding. She said she likes the economic development aspect; it is not on the list, but we can add that, right? Acting City Manager Hernandez said of course, yes. Commissioner Rardin said like what, a five-year plan on that. Mayor Payne said yes, how we can work together to create more business and industry. She said she is big on manufacturing, but a lot of that would have to be done outside city limits. Acting City Manager Hernandez said definitely working with the State and County. The State is really big on manufacturing in this part of the State. Hopefully it would bring the City and County into other efforts as well. Mayor Payne said okay, we can add that. Is everybody okay with that?

Mayor Payne said the third one is homelessness and mental health. Is everyone okay with that? Commissioner Rardin said everyone was cool with that. Commissioner Melton said he personally thought we should do catch and release. Mayor Payne said he was right, too. We can't pick four, right? Commissioner Melton said mental health is on their list, so there is a chance they will pick it. Acting City Manager Hernandez said we could put homelessness and mental health as an alternative and catch and release on number two. Commissioner Melton said we should specify the catch and release to discuss lobbying strategies. Commissioner Rardin said the mental health one would be a lengthy discussion. He agrees it is very important, but it could take up the meeting, which is only two or three hours. Mayor Pro-Tem Wright said three and a half. Acting City Manager Hernandez said she put it for four. Commissioner Melton said that would be a meeting in itself. Mayor Payne said it is an important meeting, so if we are not going to add that, just remember it is critical and getting worse by the day. It is incredibly stressful. Commissioner Rardin said he sees new homeless people standing on corners daily now.

Mayor Payne asked if we wanted to add catch and release. She said she was all for it. Commissioner Rardin said we are all already working on catch and release. The County is, and we are. Commissioner Melton said separately, though. We all plan to do something once the session starts, but we have not discussed it as a combined group. Acting City Manager Hernandez said she thought we had the

support for Representative Block's letter, which went up to the State. Right now, we have different calls from citizens who are sending letters or calling the Governor's Office. That is where we are right now. It would not be bad to put it on there because we have a meeting in October with the pretrial services.

Mayor Payne said okay, so yea or nay. Somebody give me some thoughts. Commissioner Burnett said we are doing the flooding. Mayor Payne said not the flooding, we have economic development. Mayor Pro-Tem Wright said and the catch and release. Commissioner Rardin said those are our alternates. Commissioner Burnett said housing. Mayor Payne said housing and mental health. We made a decision. Acting City Manager Hernandez said the flooding, the economic development, and catch and release.

Commissioner Rardin made a motion to approve the three items we finally discussed and two alternates.

Mayor Pro-Tem Wright seconded the motion.

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

16. Appointments to Boards and Committees. (Susan Payne, Mayor)

Mayor Payne read the openings and appointed Mark Alan Carter to the Mayor's Committee on Aging. No one was opposed.

Commissioner Rardin moved to adjourn at 8:03 p.m.

Mayor Pro-Tem Wright seconded the motion.

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

ADJOURNMENT

Mayor Susan L. Payne

ATTEST:

City Clerk Rachel Hughs

(Prepared by Dylan Aleshire, Deputy City Clerk)

Approved at the Regular Meeting held on September 26, 2023.

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 9/26/2023

Report Date: 09/12/2023

Report No: 3.

Submitted By: Barbara Pyeatt

Subject: Consider, and act upon, the award of RFP 2023-004 Custodial Services to SMI Facility Services.
(*Evelyn Huff, Finance Director*)

Fiscal Impact: 104,474.45

Amount Budgeted: \$0.00

Fund: Various City Funds

Additional Fiscal Impact:

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

Background: RFP 2023-004 scope of work is to provide various departments in the City with custodial services. The RFP was advertised on July 30, 2023, in the Alamogordo Daily News. Three proposals were received before the deadline of August 30, 2023, at 3:00 PM. All proposals were deemed to be responsive. SMI Facility Services, Quality Janitorial, and GLO PRO, LLC. Proposals were evaluated by a panel of five. This is a one year contract with the option to extend for three additional years.

CITY OF ALAMOGORDO
COMPOSITE SCORE SHEET
RFP 2023-004 Custodial SERVICES
8/30/2023 15:00

Factor	Available Points per Vendor	5 Committee Members	SMI Facility	Quality Janitorial	Glo Pro Janitorial Services
1	125	Firm and personnel's experience in providing similar information and services relative to the requirements described in Attachment #1	119	97	83
2	100	Firm's capacity and capability to provide the information and services in a timely manner	89	74	56
3	50	Firms past performance on similar project assignments. As part of their response, firms must provide a list of four references with names and phone numbers	47	35	35
4	50	Firm should describe their approach to providing and managing the anticipated services	45	36	27
5	50	The key personnel who will be assigned to the project should be identified and summarize their experience.	43	34	29
6	125	Pricing	125	80	90
7	Based on Percentages	Preferences: Resident Veterans, NM Business and Local Business	0	28	0
		Accumulated Score	468	384	320

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 9/26/2023

Report Date: 09/13/2023

Report No: 4.

Submitted By: Patrick Riele

Subject: Consider, and act upon, approval of Change Order 2 in the amount of \$69,617.56, including NMGR, to La Luz Dirt & Paving, LLC related to the FY21 Street Maintenance Program - Ridgecrest Drive project. (*Patrick Riele, Project Manager*)

Fiscal Impact: 69,617.56

Amount Budgeted: \$412,251.25

Fund: 109

Additional Fiscal Impact:

Recommendation: Please Approve item.

Background: Regrade and Recompact the existing base course and install 3" Hot Mix Asphalt per City of Alamogordo Technical Standards. Public Works Bid No. 2022-006 was awarded to La Luz Dirt & Paving, LLC on September 27, 2022, for work related to the FY21 Street Maintenance Program – Ridgecrest Drive. The street is being rebuilt and the original design did not address many areas along the roadway with failed adjacent curb, gutter, and sidewalk. We must replace this adjacent curb, gutter, and sidewalk or the street grades will be negatively impacted.



City of Alamogordo

ENGINEERING DEPARTMENT
1376 East Ninth St. • Alamogordo, NM 88310
OFFICE PHONE (575) 439-4235, EXT 1
FAX (575) 439-4343

CONTRACT CHANGE ORDER
CHANGE ORDER NO. 2
FY21 STREET MAINTENANCE PROGRAM-RIDGECREST DRIVE
PUBLIC WORKS PROJECT NO. 2022-06

DATE: SEPTEMBER 22, 2023

CONTRACTOR: LA LUZ DIRT & PAVING, LLC
166 HIGHWAY 82
ALAMOGORDO, NM 88310

OWNER: CITY OF ALAMOGORDO
1376 E. NINTH ST.
ALAMOGORDO, NM 88310

THE FOLLOWING CHANGES ARE HEREBY MADE TO THE CONTRACT DOCUMENTS:

Change order is to increase the Bid Item 5 Price amount from \$15.17 to \$27.75. This will ensure that 3" asphalt is installed per our City Technical Standards. Original cost of item 5 is \$77,822.10 and will increase to \$142,357.50 excluding NMGR. T.

ITEM NO.	ITEM DESCRIPTION	AS-BID QUANTITY	AS-BID UNIT PRICE	UNIT	@	CHANGE UNIT PRICE	=	FINAL CHANGE PRICE	AMOUNT	
									(+)	(-)
5	2-INCH THICK HMA SP-IV	5,130	\$15.17	SY	@	\$27.75	=	\$142,357.50	\$64,535.40	\$0.00
							=			
AMOUNT ADDED THIS CHANGE ORDER									\$64,535.40	

TOTAL CHANGE ORDER COST = \$64,535.40 + \$5,082.16 (NMGR. T) = \$69,617.56

The contract performance period is increased by 20 calendar days, which is inclusive of three (3) days for inclement weather. The revised substantial completion date is November 15, 2023.

REVISED CONTRACT AMOUNT

1. Original Contract Amount \$ 356,036.29
2. Total Contract Amount Including Previously Approved Change Orders..... \$ 417,090.74
3. Amount of this Change Order (**increase**) \$ 69,617.56*
4. Total Revised Contract Amount to Date \$ 486,708.30*

The work covered by this order shall be performed under the same terms and conditions as that included in the original contract.

CHANGE ORDER RECOMMENDATION FOR APPROVAL:

BY: _____
Patrick Riele, Project Manager

_____ Date

CHANGE ORDER ACCEPTED AND APPROVED:

BY: _____
LA LUZ DIRT & PAVING, LLC

_____ Date

CHANGE ORDER APPROVED BY ACTING CITY MANAGER:

BY: _____
Stephanie Hernandez, Acting City Manager

_____ Date

BY: _____
Ashley Smith, City Attorney

_____ Date

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 9/26/2023

Report Date: 09/18/2023

Report No: 5.

Submitted By: Deborah Osborne

Subject: Consider, and act upon, acceptance of FY24 capital outlay grant agreements from the NM Department of Finance totaling \$2,937,000.00. *(Debbie Osborne, Grant Coordinator)*

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact: Grant awards, no additional fiscal impact.

Recommendation: Accept FY24 capital outlay grant agreements.

Background: The City of Alamogordo applied for and was awarded the following FY24 capital outlay grants at the 2023 Legislative Session. The projects were included in the City's FY2024-2028 Infrastructure Capital Improvement Plan, approved by the commission on July 26, 2022.

Alameda Park Equipment Purchase \$262,000
Alameda Park Zoo Duck Pond Renovations \$200,000
Alameda Park Zoo Fencing Construction \$775,000
Desert Lakes Golf Course Irrigation System \$900,000
Police Dept Stairlift Installation \$500,000
Police Vehicle Purchase \$300,000

**STATE OF NEW MEXICO
DEPARTMENT OF FINANCE AND ADMINISTRATION
FUND 93100 CAPITAL APPROPRIATION PROJECT**

THIS AGREEMENT is made and entered into by and between the Department of Finance and Administration, State of New Mexico, Bataan Memorial Building, Room 202, Santa Fe, New Mexico, 87501 hereinafter called the "Department" or abbreviation such as "DFA/LGD", and **CITY OF ALAMOGORDO**, hereinafter called the "Grantee". This Agreement shall be effective as of the date it is executed by the Department.

RECITALS

WHEREAS, in the **Laws of 2023, Chapter 199, Section 28, Paragraph 335**, the Legislature made an appropriation to the Department, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

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

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

AGREEMENT

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

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

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

- 23-H3089
- APPROPRIATION AMOUNT: \$262,000.00
- APPROPRIATION REVERSION DATE: June 30, 2025
- Laws of 2023, Chapter 199, Section 28, Paragraph 335
- TWO HUNDRED SIXTY-TWO THOUSAND (\$262,000.00),
- to purchase and install equipment, including shade structures, picnic tables and benches, at Alameda park in Alamogordo in Otero county;

The Grantee's total reimbursements shall not exceed TWO HUNDRED SIXTY-TWO THOUSAND \$262,000.00 (the "Appropriation Amount") minus the allocation for Art in Public Places ("AIPP amount"), if applicable, ZERO \$0.00, which equals TWO HUNDRED SIXTY-TWO THOUSAND \$262,000.00 (the "Adjusted Appropriation Amount").

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

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

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

- A. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Project Description, the Grantee shall only be reimbursed monies for which the Department has issued and the Grantee has received a Notice of Department's Obligation to Reimburse Grantee (hereinafter referred to as "Notice of Obligation"). This Grant Agreement and the disbursement of any and all amounts of the above referenced Adjusted Appropriation Amount are expressly conditioned upon the following:
- i. Irrespective of any Notice of Obligation, the Grantee's expenditures shall be made on or before the Reversion Date and, if applicable, an Early Termination Date (i.e., the goods have been delivered and accepted or the title to the goods has been transferred to the Grantee and/or the services have been rendered for the Grantee); and
 - ii. The total amount received by the Grantee shall not exceed the lesser of: (a) the Adjusted Appropriation Amount identified in Article I(A) herein or (b) the total of all amounts stated in the Notice(s) of Obligation evidencing that the Department has received and accepted the Grantee's Third Party Obligation(s), as defined in subparagraph iii of this Article II(A); and
 - iii. The Grantee's expenditures were made pursuant to the State Procurement Code and execution of binding written obligations or purchase orders with third party contractors or vendors for the provision of services, including professional services, or the purchase of tangible personal property and real property for the Project, hereinafter referred to as "Third Party Obligations"; and
 - iv. The Grantee's submittal of timely Requests for Payment in accordance with the procedures set forth in Article IX of this Agreement; and
 - v. In the event that capital assets acquired with Project funds are to be sold, leased, or licensed to or operated by a private entity, the sale, lease, license, or operating agreement:
 - a. must be approved by the applicable oversight entity (if any) in accordance with law; or
 - b. if no oversight entity is required to approve the transaction, the Department must approve the transaction as complying with law.
- Prior to the sale, lease, license, or operating agreement being approved pursuant to Articles II(A)(v)(a) and II(A)(v)(b) herein, the Department may, in its sole and absolute discretion and unless inconsistent with State Board of Finance imposed conditions, reimburse the Grantee for necessary expenditures incurred to develop the Project sufficiently to make the sale, lease, license, or operating agreement commercially feasible, such as plan and design expenditures; and
- vi. Grantee's submission of documentation of all Third Party Obligations and amendments thereto (including terminations) to the Department and the Department's issuance and the Grantee's receiving of a Notice of Obligation for a particular amount in accordance with the terms of this Agreement shall be governed by the following:
 - a. The Grantee shall submit to the Department one copy of all Third Party Obligations and amendments thereto (including terminations) as soon as possible after execution by the Third Party but prior to execution by the Grantee.
 - b. Grantee acknowledges and agrees that if it chooses to enter into a Third Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such obligations.
 - c. The Department may, in its sole and absolute discretion, issue to Grantee a Notice of Obligation for the particular amount of that Third Party Obligation that only obligates the Department to reimburse Grantee's expenditures made on or before the Reversion Date or an Early Termination Date. The current Notice of Obligation form is attached to this Agreement as Exhibit 2.
 - d. The date the Department signs the Notice of Obligation is the date that the Department's Notice of Obligation is effective. After that date, the Grantee is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third Party Obligation and request the Third Party to begin work. Payment for any work performed or goods received prior to the effective date of the Notice of Obligation is wholly and solely the obligation of the Grantee.
- B. The Grantee shall implement, in all respects, the Project. The Grantee shall provide all necessary qualified personnel, material, and facilities to implement the Project. The Grantee shall finance its share (if any) of the costs of the Project, including all Project overruns.
- C. Project funds shall not be used for purposes other than those specified in the Project Description.
- D. Unless specifically allowed by law, Project funds cannot be used to reimburse Grantee for indirect Project costs.

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

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

ARTICLE III. NOTICE PROVISIONS AND GRANTEE AND DEPARTMENT DESIGNATED REPRESENTATIVES

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

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

Grantee: CITY OF ALAMOGORDO
Name: Susan Payne
Title: Mayor
Address: 1376 E Ninth Street, Alamogordo, NM 88310
Email: spayne@ci.alamogordo.nm.us
Telephone: 575-214-0024

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

Grantee: CITY OF ALAMOGORDO
Name: Evelyn Huff
Title: Finance Director
Address: 1376 E. 9th Street, Alamogordo, NM 88310
Email: ehuff@ci.alamogordo.nm.us
Telephone: 575/439-4268

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

Department: DFA/Local Government Division
Name: Maureen Ayers
Title: Program Manager
Address: Bataan Memorial Bldg. Rm 202, Santa Fe, NM 87501
Email: Maureen.Ayesr@dfa.nm.gov
Telephone: 505-470-0977

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

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

- A. As referenced in Article I(A), the applicable law establishes a date by which Project funds must be expended by Grantee, which is referred to throughout the remainder of this Agreement as the "Reversion Date." Upon being duly executed by both parties, this Agreement shall be effective as of the date of execution by the Department. It shall terminate on **June 30, 2025** the Reversion Date unless Terminated Before Reversion Date ("Early Termination") pursuant to Article V herein.
- B. The Project's funds must be expended on or before the Reversion Date and, if applicable, Early Termination Date of this Agreement. For purposes of this Agreement, it is not sufficient for the Grantee to encumber the Project funds on its books on or before the Project's Reversion Date or Early Termination Date. Funds are expended and an expenditure has occurred as of the date that a particular quantity of goods are delivered to and received by the Grantee or title to the goods is transferred to the Grantee and/or as of the date particular services are rendered for the Grantee. Funds are not expended and an expenditure has not occurred as of the date they are encumbered by the Grantee pursuant to a contract or purchase order with a third party.

ARTICLE V. EARLY TERMINATION

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

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

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

B. Early Termination Before Reversion Date Due to Non-appropriation

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

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

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

ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS

- A. The Department may choose, in its sole and absolute discretion, to provide written notice to the Grantee to suspend entering into new and further obligations. Upon the receipt of such written notice by the Grantee:
- i. The Grantee shall immediately suspend entering into new or further written obligations with third parties; and
 - ii. The Department will suspend the issuance of any new or further Notice of Obligation under this Agreement; and
 - iii. The Department may direct the Grantee to implement a corrective action plan in accordance with Article VI(D) herein.
- B. In the event of Suspension of this Agreement, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth in Article II herein.
- C. A suspension of new or further obligations under this Agreement shall remain in effect unless or until the date the Grantee receives written notice given by the Department informing the Grantee that the Suspension has been lifted or that the Agreement has been Early Terminated in accordance with Article V herein. If the Suspension is lifted, the Department will consider further requests for Notice of Obligation.

D. Corrective Action Plan in the Event of Suspension

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

ARTICLE VII. AMENDMENT

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

ARTICLE VIII. REPORTS

A. Reporting

The Grantee shall report quarterly Project activity by entering such Project information as the Department and the Department of Finance and Administration may require, such information entered directly into a database maintained by the Department of Finance and Administration (Budget & Formulation Management System). Additionally, the Grantee shall certify on the Request for Payment form (Exhibit 1) that updates have been maintained and are current in the database. The Grantee hereby acknowledges that failure to perform and/or certify updates into the database will delay or potentially jeopardize the reimbursement of funds. The Department shall give Grantee a minimum of thirty (30) days advance written notice of any changes to the information the Grantee is required to report.

Quarterly reports shall be due on the last day of the month, that is 30 days prior to the end of the quarter following execution of this Agreement by the Department and ending during the quarter of the submission of the final request for reimbursement for the Project, or the following quarter.

B. Requests for Additional Information/Project Inspection

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

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

ARTICLE IX. REQUEST FOR PAYMENT PROCEDURES AND DEADLINES

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

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

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

C. Deadlines

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

- i. Immediately as they are received by the Grantee but at a minimum thirty (30) days from when the expenditure was incurred or liability of the Grantee was approved as evidenced by an unpaid invoice received by the Grantee from a third party contractor or vendor; or
- ii. Twenty (20) days from date of Early Termination; or
- iii. Twenty (20) days from the Reversion Date.

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

ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS; REPRESENTATIONS AND WARRANTIES

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

- i. The Project's funds must be spent in accordance with all applicable state laws, regulations, policies, and guidelines, including, but not limited to, the State Procurement Code (or local procurement ordinance, where applicable).
- ii. The Project must be implemented in accordance with the New Mexico Public Works Minimum Wage Act, Section 13-4-10 through 13-4-17 NMSA 1978, as applicable. Every contract or project in excess of sixty thousand dollars (\$60,000) that the Grantee is a party to for construction, alteration, demolition or repair or any combination of these, including painting and decorating, of public buildings, public works or public roads and that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics, shall be based upon the wages and benefits that will be determined by the New Mexico Department of Workforce Solutions to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the locality. Further, every contract or project shall contain a stipulation that the contractor, subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates and fringe benefit rates not less than those determined pursuant to Section 13-4-11 (B) NMSA 1978 to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.
- iii. The Project may only benefit private entities in accordance with applicable law, including, but not limited to, Article IX, Section 14 of the Constitution of the State of New Mexico, the "Anti-Donation Clause."
- iv. The Grantee shall not for a period of 10 years from the date of this agreement convert any property acquired, built, renovated, repaired, designed or developed with the Project's funds to uses other than those specified in the Project Description without the Department's and the Board of Finance's express, advance, written approval, which may include a requirement to reimburse the State for the cost of the project, transfer proceeds from the disposition of property to the State, or otherwise provide consideration to the State.
- v. The Grantee shall comply with all federal and state laws, rules and regulations pertaining to equal employment opportunity. In accordance with all such laws, rules and regulations the Grantee agrees to assure that no person shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with Grantee, be excluded from participation in the Project, be denied benefits or otherwise be subject to discrimination under, any activity performed under this Agreement. If Grantee is found to be not in compliance with these requirements during the life of this Agreement, Grantee agrees to take appropriate steps to correct any deficiencies. The Grantee's failure to implement such appropriate steps within a reasonable time constitutes grounds for terminating this Agreement.

B. The Grantee hereby represents and warrants the following:

- i. The Grantee has the legal authority to receive and expend the Project's funds.
- ii. This Agreement has been duly authorized by the Grantee, the person executing this Agreement has authority to do so, and, once executed by the Grantee, this Agreement shall constitute a binding obligation of the Grantee, enforceable according to its terms.
- iii. This Agreement and the Grantee's obligations hereunder do not conflict with any law or ordinance or resolution applicable to the Grantee, the Grantee's charter (if applicable), or any judgment or decree to which the Grantee is subject.
- iv. The Grantee has independently confirmed that the Project Description, including, but not limited to, the amount and Reversion Date, is consistent with the underlying appropriation in law.
- v. The Grantee's governing body has duly adopted or passed as an official act a resolution, motion, or similar action authorizing the person identified as the official representative of the Grantee to sign the Agreement and to sign Requests for Payment.
- vi. The Grantee shall abide by New Mexico laws regarding conflicts of interest, governmental conduct and whistleblower protection. The Grantee specifically agrees that no officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this Grant, during their tenure or for one year thereafter, shall have any interest, direct or

indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed or goods to be received, pursuant to this Grant. Further, Grantee shall require all of its contractors to incorporate in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.

- vii. No funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of this or any agency or body in connection with the awarding of any Third Party Obligation and that the Grantee shall require certifying language prohibiting lobbying to be included in the award documents for all subawards, including subcontracts, loans and cooperative agreements. All subrecipients shall be required to certify accordingly.

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

- A. Grantee shall be strictly accountable for receipts and disbursements relating to the Project's funds. The Grantee shall follow generally accepted accounting principles, and, if feasible, maintain a separate bank account or fund with a separate organizational code, for the funds to assure separate budgeting and accounting of the funds.
- B. For a period of six (6) years following the Project's completion, the Grantee shall maintain all Project related records, including, but not limited to, all financial records, requests for proposals, invitations to bid, selection and award criteria, contracts and subcontracts, advertisements, minutes of pertinent meetings, as well as records sufficient to fully account for the amount and disposition of the total funds from all sources budgeted for the Project, the purpose for which such funds were used, and such other records as the Department shall prescribe.
- C. Grantee shall make all Project records available to the Department, the Department of Finance and Administration, and the New Mexico State Auditor upon request. With respect to the funds that are the subject of this Agreement, if the State Auditor or the Department of Finance and Administration finds that any or all of these funds were improperly expended, the Grantee may be required to reimburse to the State of New Mexico, to the originating fund, any and all amounts found to be improperly expended.

ARTICLE XII. IMPROPERLY REIMBURSED FUNDS

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

ARTICLE XIII. LIABILITY

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to immunities and limitations of the New Mexico Tort Claims Act.

ARTICLE XIV. SCOPE OF AGREEMENT

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

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

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

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

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

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

“This contract is funded in whole or in part by funds made available under a DFA/LGD Grant Agreement. Should the DFA/LGD early terminate the grant agreement, the CITY OF ALAMOGORDO may early terminate this contract by providing Contractor written notice of such termination. In the event of termination pursuant to this paragraph, the CITY OF ALAMOGORDO only liability shall be to pay Contractor for acceptable goods delivered and services rendered before the termination date.”

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

XVII. COMPLIANCE WITH UNIFORM FUNDING CRITERIA.

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

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

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

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

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

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

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

C. Grantee acknowledges and agrees that this Agreement is subject to the SBOF's Bond Project Disbursements rule, NMAC 2.61.6, as may be amended or re-codified. The rule provides definitions and interpretations of grant language for the purpose of determining whether a particular activity is allowable under the authorizing language of the agreement.

[THIS SPACE LEFT BLANK INTENTIONALLY]

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

GRANTEE

Signature of Official with Authority to Bind Grantee

City of Alamogordo
Entity Name

By: _____
Susan L. Payne
(Type or Print Name)

Its: _____
(Type or Print Title)

Mayor
Date

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

By:

Its: Division Director

Date

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

I. Grantee Information

(Make sure information is complete & accurate)

- A. Grantee: _____
- B. Address: _____
(Complete Mailing, including Suite, if applicable)

City, State, Zip
- C. Contact Name/Phone #: _____
- D. Grant No: _____
- E. Project Title: _____
- F. Grant Expiration Date: _____

II. Payment Computation

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

III. Fiscal Year : _____

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

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

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

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

Grantee Representative

Printed Name

Date: _____

Printed Name

Date: _____

(State Agency Use Only)

Vendor Code: _____ Fund No.: _____ Loc No.: _____

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

Division Fiscal Officer Date

Division Project Manager Date

NOTICE OF OBLIGATION TO REIMBURSE GRANTEE
EXHIBIT 2

Notice of Obligation to Reimburse Grantee # _____

DATE: _____

TO: Department Representative: _____, _____

FROM: Grantee Entity: _____

Grantee Official Representative: _____

SUBJECT: Notice of Obligation to Reimburse Grantee

Grant Number: _____

Grant Termination Date: _____

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

Vendor or Contractor: _____

Third Party Obligation Amount: _____

Vendor or Contractor: _____

Third Party Obligation Amount: _____

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

Grant Amount (Minus AIPP if applicable): _____

The Amount of this Notice of Obligation: _____

The Total Amount of all Previously Issued Notices of Obligation: _____

The Total Amount of all Notices of Obligation to Date: _____

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

Department Rep. Approver: _____

Title: _____

Signature: _____

Date: _____

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

**STATE OF NEW MEXICO
DEPARTMENT OF FINANCE AND ADMINISTRATION
FUND 93100 CAPITAL APPROPRIATION PROJECT**

THIS AGREEMENT is made and entered into by and between the Department of Finance and Administration, State of New Mexico, Bataan Memorial Building, Room 202, Santa Fe, New Mexico, 87501 hereinafter called the "Department" or abbreviation such as "DFA/LGD", and **CITY OF ALAMOGORDO**, hereinafter called the "Grantee". This Agreement shall be effective as of the date it is executed by the Department.

RECITALS

WHEREAS, in the **Laws of 2023, Chapter 199, Section 28, Paragraph 336**, the Legislature made an appropriation to the Department, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

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

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

AGREEMENT

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

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

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

- 23-H3090
- APPROPRIATION AMOUNT: \$200,000.00
- APPROPRIATION REVERSION DATE: June 30, 2027
- Laws of 2023, Chapter 199, Section 28, Paragraph 336
- TWO HUNDRED THOUSAND (\$200,000.00),
- to plan, design, construct and equip duck pond renovations at Alameda park zoo in Alamogordo in Otero county;

The Grantee's total reimbursements shall not exceed TWO HUNDRED THOUSAND \$200,000.00 (the "Appropriation Amount") minus the allocation for Art in Public Places ("AIPP amount"), if applicable, ZERO \$0.00, which equals TWO HUNDRED THOUSAND \$200,000.00 (the "Adjusted Appropriation Amount").

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

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

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

- A. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Project Description, the Grantee shall only be reimbursed monies for which the Department has issued and the Grantee has received a Notice of Department's Obligation to Reimburse Grantee (hereinafter referred to as "Notice of Obligation"). This Grant Agreement and the disbursement of any and all amounts of the above referenced Adjusted Appropriation Amount are expressly conditioned upon the following:
- i. Irrespective of any Notice of Obligation, the Grantee's expenditures shall be made on or before the Reversion Date and, if applicable, an Early Termination Date (i.e., the goods have been delivered and accepted or the title to the goods has been transferred to the Grantee and/or the services have been rendered for the Grantee); and
 - ii. The total amount received by the Grantee shall not exceed the lesser of: (a) the Adjusted Appropriation Amount identified in Article I(A) herein or (b) the total of all amounts stated in the Notice(s) of Obligation evidencing that the Department has received and accepted the Grantee's Third Party Obligation(s), as defined in subparagraph iii of this Article II(A); and
 - iii. The Grantee's expenditures were made pursuant to the State Procurement Code and execution of binding written obligations or purchase orders with third party contractors or vendors for the provision of services, including professional services, or the purchase of tangible personal property and real property for the Project, hereinafter referred to as "Third Party Obligations"; and
 - iv. The Grantee's submittal of timely Requests for Payment in accordance with the procedures set forth in Article IX of this Agreement; and
 - v. In the event that capital assets acquired with Project funds are to be sold, leased, or licensed to or operated by a private entity, the sale, lease, license, or operating agreement:
 - a. must be approved by the applicable oversight entity (if any) in accordance with law; or
 - b. if no oversight entity is required to approve the transaction, the Department must approve the transaction as complying with law.
- Prior to the sale, lease, license, or operating agreement being approved pursuant to Articles II(A)(v)(a) and II(A)(v)(b) herein, the Department may, in its sole and absolute discretion and unless inconsistent with State Board of Finance imposed conditions, reimburse the Grantee for necessary expenditures incurred to develop the Project sufficiently to make the sale, lease, license, or operating agreement commercially feasible, such as plan and design expenditures; and
- vi. Grantee's submission of documentation of all Third Party Obligations and amendments thereto (including terminations) to the Department and the Department's issuance and the Grantee's receiving of a Notice of Obligation for a particular amount in accordance with the terms of this Agreement shall be governed by the following:
 - a. The Grantee shall submit to the Department one copy of all Third Party Obligations and amendments thereto (including terminations) as soon as possible after execution by the Third Party but prior to execution by the Grantee.
 - b. Grantee acknowledges and agrees that if it chooses to enter into a Third Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such obligations.
 - c. The Department may, in its sole and absolute discretion, issue to Grantee a Notice of Obligation for the particular amount of that Third Party Obligation that only obligates the Department to reimburse Grantee's expenditures made on or before the Reversion Date or an Early Termination Date. The current Notice of Obligation form is attached to this Agreement as Exhibit 2.
 - d. The date the Department signs the Notice of Obligation is the date that the Department's Notice of Obligation is effective. After that date, the Grantee is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third Party Obligation and request the Third Party to begin work. Payment for any work performed or goods received prior to the effective date of the Notice of Obligation is wholly and solely the obligation of the Grantee.
- B. The Grantee shall implement, in all respects, the Project. The Grantee shall provide all necessary qualified personnel, material, and facilities to implement the Project. The Grantee shall finance its share (if any) of the costs of the Project, including all Project overruns.
- C. Project funds shall not be used for purposes other than those specified in the Project Description.
- D. Unless specifically allowed by law, Project funds cannot be used to reimburse Grantee for indirect Project costs.

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

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

ARTICLE III. NOTICE PROVISIONS AND GRANTEE AND DEPARTMENT DESIGNATED REPRESENTATIVES

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

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

Grantee: CITY OF ALAMOGORDO
Name: Susan Payne
Title: Mayor
Address: 1376 E Ninth Street, Alamogordo, NM 88310
Email: spayne@ci.alamogordo.nm.us
Telephone: 575-214-0024

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

Grantee: CITY OF ALAMOGORDO
Name: Evelyn Huff
Title: Finance Director
Address: 1376 E. 9th Street, Alamogordo, NM 88310
Email: ehuff@ci.alamogordo.nm.us
Telephone: 575/439-4268

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

Department: DFA/Local Government Division
Name: Maureen Ayers
Title: Program Manager
Address: Bataan Memorial Bldg. Rm 202, Santa Fe, NM 87501
Email: Maureen.Ayesr@dfa.nm.gov
Telephone: 505-470-0977

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

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

- A. As referenced in Article I(A), the applicable law establishes a date by which Project funds must be expended by Grantee, which is referred to throughout the remainder of this Agreement as the "Reversion Date." Upon being duly executed by both parties, this Agreement shall be effective as of the date of execution by the Department. It shall terminate on **June 30, 2027** the Reversion Date unless Terminated Before Reversion Date ("Early Termination") pursuant to Article V herein.
- B. The Project's funds must be expended on or before the Reversion Date and, if applicable, Early Termination Date of this Agreement. For purposes of this Agreement, it is not sufficient for the Grantee to encumber the Project funds on its books on or before the Project's Reversion Date or Early Termination Date. Funds are expended and an expenditure has occurred as of the date that a particular quantity of goods are delivered to and received by the Grantee or title to the goods is transferred to the Grantee and/or as of the date particular services are rendered for the Grantee. Funds are not expended and an expenditure has not occurred as of the date they are encumbered by the Grantee pursuant to a contract or purchase order with a third party.

ARTICLE V. EARLY TERMINATION

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

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

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

B. Early Termination Before Reversion Date Due to Non-appropriation

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

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

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

ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS

- A. The Department may choose, in its sole and absolute discretion, to provide written notice to the Grantee to suspend entering into new and further obligations. Upon the receipt of such written notice by the Grantee:
- i. The Grantee shall immediately suspend entering into new or further written obligations with third parties; and
 - ii. The Department will suspend the issuance of any new or further Notice of Obligation under this Agreement; and
 - iii. The Department may direct the Grantee to implement a corrective action plan in accordance with Article VI(D) herein.
- B. In the event of Suspension of this Agreement, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth in Article II herein.
- C. A suspension of new or further obligations under this Agreement shall remain in effect unless or until the date the Grantee receives written notice given by the Department informing the Grantee that the Suspension has been lifted or that the Agreement has been Early Terminated in accordance with Article V herein. If the Suspension is lifted, the Department will consider further requests for Notice of Obligation.

D. Corrective Action Plan in the Event of Suspension

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

ARTICLE VII. AMENDMENT

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

ARTICLE VIII. REPORTS

A. Reporting

The Grantee shall report quarterly Project activity by entering such Project information as the Department and the Department of Finance and Administration may require, such information entered directly into a database maintained by the Department of Finance and Administration (Budget & Formulation Management System). Additionally, the Grantee shall certify on the Request for Payment form (Exhibit 1) that updates have been maintained and are current in the database. The Grantee hereby acknowledges that failure to perform and/or certify updates into the database will delay or potentially jeopardize the reimbursement of funds. The Department shall give Grantee a minimum of thirty (30) days advance written notice of any changes to the information the Grantee is required to report.

Quarterly reports shall be due on the last day of the month, that is 30 days prior to the end of the quarter following execution of this Agreement by the Department and ending during the quarter of the submission of the final request for reimbursement for the Project, or the following quarter.

B. Requests for Additional Information/Project Inspection

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

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

ARTICLE IX. REQUEST FOR PAYMENT PROCEDURES AND DEADLINES

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

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

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

C. Deadlines

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

- i. Immediately as they are received by the Grantee but at a minimum thirty (30) days from when the expenditure was incurred or liability of the Grantee was approved as evidenced by an unpaid invoice received by the Grantee from a third party contractor or vendor; or
- ii. Twenty (20) days from date of Early Termination; or
- iii. Twenty (20) days from the Reversion Date.

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

ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS; REPRESENTATIONS AND WARRANTIES

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

- i. The Project's funds must be spent in accordance with all applicable state laws, regulations, policies, and guidelines, including, but not limited to, the State Procurement Code (or local procurement ordinance, where applicable).
- ii. The Project must be implemented in accordance with the New Mexico Public Works Minimum Wage Act, Section 13-4-10 through 13-4-17 NMSA 1978, as applicable. Every contract or project in excess of sixty thousand dollars (\$60,000) that the Grantee is a party to for construction, alteration, demolition or repair or any combination of these, including painting and decorating, of public buildings, public works or public roads and that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics, shall be based upon the wages and benefits that will be determined by the New Mexico Department of Workforce Solutions to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the locality. Further, every contract or project shall contain a stipulation that the contractor, subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates and fringe benefit rates not less than those determined pursuant to Section 13-4-11 (B) NMSA 1978 to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.
- iii. The Project may only benefit private entities in accordance with applicable law, including, but not limited to, Article IX, Section 14 of the Constitution of the State of New Mexico, the "Anti-Donation Clause."
- iv. The Grantee shall not for a period of 10 years from the date of this agreement convert any property acquired, built, renovated, repaired, designed or developed with the Project's funds to uses other than those specified in the Project Description without the Department's and the Board of Finance's express, advance, written approval, which may include a requirement to reimburse the State for the cost of the project, transfer proceeds from the disposition of property to the State, or otherwise provide consideration to the State.
- v. The Grantee shall comply with all federal and state laws, rules and regulations pertaining to equal employment opportunity. In accordance with all such laws, rules and regulations the Grantee agrees to assure that no person shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with Grantee, be excluded from participation in the Project, be denied benefits or otherwise be subject to discrimination under, any activity performed under this Agreement. If Grantee is found to be not in compliance with these requirements during the life of this Agreement, Grantee agrees to take appropriate steps to correct any deficiencies. The Grantee's failure to implement such appropriate steps within a reasonable time constitutes grounds for terminating this Agreement.

B. The Grantee hereby represents and warrants the following:

- i. The Grantee has the legal authority to receive and expend the Project's funds.
- ii. This Agreement has been duly authorized by the Grantee, the person executing this Agreement has authority to do so, and, once executed by the Grantee, this Agreement shall constitute a binding obligation of the Grantee, enforceable according to its terms.
- iii. This Agreement and the Grantee's obligations hereunder do not conflict with any law or ordinance or resolution applicable to the Grantee, the Grantee's charter (if applicable), or any judgment or decree to which the Grantee is subject.
- iv. The Grantee has independently confirmed that the Project Description, including, but not limited to, the amount and Reversion Date, is consistent with the underlying appropriation in law.
- v. The Grantee's governing body has duly adopted or passed as an official act a resolution, motion, or similar action authorizing the person identified as the official representative of the Grantee to sign the Agreement and to sign Requests for Payment.
- vi. The Grantee shall abide by New Mexico laws regarding conflicts of interest, governmental conduct and whistleblower protection. The Grantee specifically agrees that no officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this Grant, during their tenure or for one year thereafter, shall have any interest, direct or

indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed or goods to be received, pursuant to this Grant. Further, Grantee shall require all of its contractors to incorporate in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.

- vii. No funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of this or any agency or body in connection with the awarding of any Third Party Obligation and that the Grantee shall require certifying language prohibiting lobbying to be included in the award documents for all subawards, including subcontracts, loans and cooperative agreements. All subrecipients shall be required to certify accordingly.

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

- A. Grantee shall be strictly accountable for receipts and disbursements relating to the Project's funds. The Grantee shall follow generally accepted accounting principles, and, if feasible, maintain a separate bank account or fund with a separate organizational code, for the funds to assure separate budgeting and accounting of the funds.
- B. For a period of six (6) years following the Project's completion, the Grantee shall maintain all Project related records, including, but not limited to, all financial records, requests for proposals, invitations to bid, selection and award criteria, contracts and subcontracts, advertisements, minutes of pertinent meetings, as well as records sufficient to fully account for the amount and disposition of the total funds from all sources budgeted for the Project, the purpose for which such funds were used, and such other records as the Department shall prescribe.
- C. Grantee shall make all Project records available to the Department, the Department of Finance and Administration, and the New Mexico State Auditor upon request. With respect to the funds that are the subject of this Agreement, if the State Auditor or the Department of Finance and Administration finds that any or all of these funds were improperly expended, the Grantee may be required to reimburse to the State of New Mexico, to the originating fund, any and all amounts found to be improperly expended.

ARTICLE XII. IMPROPERLY REIMBURSED FUNDS

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

ARTICLE XIII. LIABILITY

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to immunities and limitations of the New Mexico Tort Claims Act.

ARTICLE XIV. SCOPE OF AGREEMENT

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

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

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

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

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

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

“This contract is funded in whole or in part by funds made available under a DFA/LGD Grant Agreement. Should the DFA/LGD early terminate the grant agreement, the CITY OF ALAMOGORDO may early terminate this contract by providing Contractor written notice of such termination. In the event of termination pursuant to this paragraph, the CITY OF ALAMOGORDO only liability shall be to pay Contractor for acceptable goods delivered and services rendered before the termination date.”

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

XVII. COMPLIANCE WITH UNIFORM FUNDING CRITERIA.

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

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

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

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

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

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

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

C. Grantee acknowledges and agrees that this Agreement is subject to the SBOF's Bond Project Disbursements rule, NMAC 2.61.6, as may be amended or re-codified. The rule provides definitions and interpretations of grant language for the purpose of determining whether a particular activity is allowable under the authorizing language of the agreement.

[THIS SPACE LEFT BLANK INTENTIONALLY]

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

GRANTEE

Signature of Official with Authority to Bind Grantee

City of Alamogordo
Entity Name

By: Susan L. Payne
(Type or Print Name)

Its: Mayor
(Type or Print Title)

Date

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

By:

Its: Division Director

Date

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

I. Grantee Information

(Make sure information is complete & accurate)

- A. Grantee: _____
- B. Address: _____
(Complete Mailing, including Suite, if applicable)

City, State, Zip
- C. Contact Name/Phone #: _____
- D. Grant No: _____
- E. Project Title: _____
- F. Grant Expiration Date: _____

II. Payment Computation

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

III. Fiscal Year : _____

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

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

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

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

Grantee Representative

Printed Name

Date: _____

Printed Name

Date: _____

(State Agency Use Only)

Vendor Code: _____ Fund No.: _____ Loc No.: _____

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

Division Fiscal Officer Date

Division Project Manager Date

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

Notice of Obligation to Reimburse Grantee # _____

DATE: _____

TO: Department Representative: _____, _____

FROM: Grantee Entity: _____

Grantee Official Representative: _____

SUBJECT: Notice of Obligation to Reimburse Grantee

Grant Number: _____

Grant Termination Date: _____

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

Vendor or Contractor: _____

Third Party Obligation Amount: _____

Vendor or Contractor: _____

Third Party Obligation Amount: _____

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

Grant Amount (Minus AIPP if applicable): _____

The Amount of this Notice of Obligation: _____

The Total Amount of all Previously Issued Notices of Obligation: _____

The Total Amount of all Notices of Obligation to Date: _____

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

Department Rep. Approver: _____

Title: _____

Signature: _____

Date: _____

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

STATE OF NEW MEXICO
DEPARTMENT OF FINANCE AND ADMINISTRATION
FUND 93100 CAPITAL APPROPRIATION PROJECT

THIS AGREEMENT is made and entered into by and between the Department of Finance and Administration, State of New Mexico, Bataan Memorial Building, Room 202, Santa Fe, New Mexico, 87501 hereinafter called the "Department" or abbreviation such as "DFA/LGD", and **CITY OF ALAMOGORDO**, hereinafter called the "Grantee". This Agreement shall be effective as of the date it is executed by the Department.

RECITALS

WHEREAS, in the **Laws of 2023, Chapter 199, Section 28, Paragraph 337**, the Legislature made an appropriation to the Department, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

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

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

AGREEMENT

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

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

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

- 23-H3091
- APPROPRIATION AMOUNT: \$775,000.00
- APPROPRIATION REVERSION DATE: June 30, 2027
- Laws of 2023, Chapter 199, Section 28, Paragraph 337
- SEVEN HUNDRED SEVENTY-FIVE THOUSAND (\$775,000.00),
- to plan, design and construct perimeter and exhibit fencing at the Alameda park zoo in Alamogordo in Otero county;

The Grantee's total reimbursements shall not exceed SEVEN HUNDRED SEVENTY-FIVE THOUSAND \$775,000.00 (the "Appropriation Amount") minus the allocation for Art in Public Places ("AIPP amount"), if applicable, ZERO \$0.00, which equals SEVEN HUNDRED SEVENTY-FIVE THOUSAND \$775,000.00 (the "Adjusted Appropriation Amount").

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

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

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

- A. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Project Description, the Grantee shall only be reimbursed monies for which the Department has issued and the Grantee has received a Notice of Department's Obligation to Reimburse Grantee (hereinafter referred to as "Notice of Obligation"). This Grant Agreement and the disbursement of any and all amounts of the above referenced Adjusted Appropriation Amount are expressly conditioned upon the following:
- i. Irrespective of any Notice of Obligation, the Grantee's expenditures shall be made on or before the Reversion Date and, if applicable, an Early Termination Date (i.e., the goods have been delivered and accepted or the title to the goods has been transferred to the Grantee and/or the services have been rendered for the Grantee); and
 - ii. The total amount received by the Grantee shall not exceed the lesser of: (a) the Adjusted Appropriation Amount identified in Article I(A) herein or (b) the total of all amounts stated in the Notice(s) of Obligation evidencing that the Department has received and accepted the Grantee's Third Party Obligation(s), as defined in subparagraph iii of this Article II(A); and
 - iii. The Grantee's expenditures were made pursuant to the State Procurement Code and execution of binding written obligations or purchase orders with third party contractors or vendors for the provision of services, including professional services, or the purchase of tangible personal property and real property for the Project, hereinafter referred to as "Third Party Obligations"; and
 - iv. The Grantee's submittal of timely Requests for Payment in accordance with the procedures set forth in Article IX of this Agreement; and
 - v. In the event that capital assets acquired with Project funds are to be sold, leased, or licensed to or operated by a private entity, the sale, lease, license, or operating agreement:
 - a. must be approved by the applicable oversight entity (if any) in accordance with law; or
 - b. if no oversight entity is required to approve the transaction, the Department must approve the transaction as complying with law.
- Prior to the sale, lease, license, or operating agreement being approved pursuant to Articles II(A)(v)(a) and II(A)(v)(b) herein, the Department may, in its sole and absolute discretion and unless inconsistent with State Board of Finance imposed conditions, reimburse the Grantee for necessary expenditures incurred to develop the Project sufficiently to make the sale, lease, license, or operating agreement commercially feasible, such as plan and design expenditures; and
- vi. Grantee's submission of documentation of all Third Party Obligations and amendments thereto (including terminations) to the Department and the Department's issuance and the Grantee's receiving of a Notice of Obligation for a particular amount in accordance with the terms of this Agreement shall be governed by the following:
 - a. The Grantee shall submit to the Department one copy of all Third Party Obligations and amendments thereto (including terminations) as soon as possible after execution by the Third Party but prior to execution by the Grantee.
 - b. Grantee acknowledges and agrees that if it chooses to enter into a Third Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such obligations.
 - c. The Department may, in its sole and absolute discretion, issue to Grantee a Notice of Obligation for the particular amount of that Third Party Obligation that only obligates the Department to reimburse Grantee's expenditures made on or before the Reversion Date or an Early Termination Date. The current Notice of Obligation form is attached to this Agreement as Exhibit 2.
 - d. The date the Department signs the Notice of Obligation is the date that the Department's Notice of Obligation is effective. After that date, the Grantee is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third Party Obligation and request the Third Party to begin work. Payment for any work performed or goods received prior to the effective date of the Notice of Obligation is wholly and solely the obligation of the Grantee.
- B. The Grantee shall implement, in all respects, the Project. The Grantee shall provide all necessary qualified personnel, material, and facilities to implement the Project. The Grantee shall finance its share (if any) of the costs of the Project, including all Project overruns.
- C. Project funds shall not be used for purposes other than those specified in the Project Description.
- D. Unless specifically allowed by law, Project funds cannot be used to reimburse Grantee for indirect Project costs.

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

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

ARTICLE III. NOTICE PROVISIONS AND GRANTEE AND DEPARTMENT DESIGNATED REPRESENTATIVES

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

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

Grantee: CITY OF ALAMOGORDO
Name: Susan Payne
Title: Mayor
Address: 1376 E Ninth Street, Alamogordo, NM 88310
Email: spayne@ci.alamogordo.nm.us
Telephone: 575-214-0024

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

Grantee: CITY OF ALAMOGORDO
Name: Evelyn Huff
Title: Finance Director
Address: 1376 E. 9th Street, Alamogordo, NM 88310
Email: ehuff@ci.alamogordo.nm.us
Telephone: 575/439-4268

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

Department: DFA/Local Government Division
Name: Maureen Ayers
Title: Program Manager
Address: Bataan Memorial Bldg. Rm 202, Santa Fe, NM 87501
Email: Maureen.Ayesr@dfa.nm.gov
Telephone: 505-470-0977

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

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

- A. As referenced in Article I(A), the applicable law establishes a date by which Project funds must be expended by Grantee, which is referred to throughout the remainder of this Agreement as the "Reversion Date." Upon being duly executed by both parties, this Agreement shall be effective as of the date of execution by the Department. It shall terminate on **June 30, 2027** the Reversion Date unless Terminated Before Reversion Date ("Early Termination") pursuant to Article V herein.
- B. The Project's funds must be expended on or before the Reversion Date and, if applicable, Early Termination Date of this Agreement. For purposes of this Agreement, it is not sufficient for the Grantee to encumber the Project funds on its books on or before the Project's Reversion Date or Early Termination Date. Funds are expended and an expenditure has occurred as of the date that a particular quantity of goods are delivered to and received by the Grantee or title to the goods is transferred to the Grantee and/or as of the date particular services are rendered for the Grantee. Funds are not expended and an expenditure has not occurred as of the date they are encumbered by the Grantee pursuant to a contract or purchase order with a third party.

ARTICLE V. EARLY TERMINATION

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

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

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

B. Early Termination Before Reversion Date Due to Non-appropriation

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

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

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

ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS

- A. The Department may choose, in its sole and absolute discretion, to provide written notice to the Grantee to suspend entering into new and further obligations. Upon the receipt of such written notice by the Grantee:
- i. The Grantee shall immediately suspend entering into new or further written obligations with third parties; and
 - ii. The Department will suspend the issuance of any new or further Notice of Obligation under this Agreement; and
 - iii. The Department may direct the Grantee to implement a corrective action plan in accordance with Article VI(D) herein.
- B. In the event of Suspension of this Agreement, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth in Article II herein.
- C. A suspension of new or further obligations under this Agreement shall remain in effect unless or until the date the Grantee receives written notice given by the Department informing the Grantee that the Suspension has been lifted or that the Agreement has been Early Terminated in accordance with Article V herein. If the Suspension is lifted, the Department will consider further requests for Notice of Obligation.

D. Corrective Action Plan in the Event of Suspension

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

ARTICLE VII. AMENDMENT

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

ARTICLE VIII. REPORTS

A. Reporting

The Grantee shall report quarterly Project activity by entering such Project information as the Department and the Department of Finance and Administration may require, such information entered directly into a database maintained by the Department of Finance and Administration (Budget & Formulation Management System). Additionally, the Grantee shall certify on the Request for Payment form (Exhibit 1) that updates have been maintained and are current in the database. The Grantee hereby acknowledges that failure to perform and/or certify updates into the database will delay or potentially jeopardize the reimbursement of funds. The Department shall give Grantee a minimum of thirty (30) days advance written notice of any changes to the information the Grantee is required to report.

Quarterly reports shall be due on the last day of the month, that is 30 days prior to the end of the quarter following execution of this Agreement by the Department and ending during the quarter of the submission of the final request for reimbursement for the Project, or the following quarter.

B. Requests for Additional Information/Project Inspection

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

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

ARTICLE IX. REQUEST FOR PAYMENT PROCEDURES AND DEADLINES

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

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

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

C. Deadlines

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

- i. Immediately as they are received by the Grantee but at a minimum thirty (30) days from when the expenditure was incurred or liability of the Grantee was approved as evidenced by an unpaid invoice received by the Grantee from a third party contractor or vendor; or
- ii. Twenty (20) days from date of Early Termination; or
- iii. Twenty (20) days from the Reversion Date.

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

ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS; REPRESENTATIONS AND WARRANTIES

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

- i. The Project's funds must be spent in accordance with all applicable state laws, regulations, policies, and guidelines, including, but not limited to, the State Procurement Code (or local procurement ordinance, where applicable).
- ii. The Project must be implemented in accordance with the New Mexico Public Works Minimum Wage Act, Section 13-4-10 through 13-4-17 NMSA 1978, as applicable. Every contract or project in excess of sixty thousand dollars (\$60,000) that the Grantee is a party to for construction, alteration, demolition or repair or any combination of these, including painting and decorating, of public buildings, public works or public roads and that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics, shall be based upon the wages and benefits that will be determined by the New Mexico Department of Workforce Solutions to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the locality. Further, every contract or project shall contain a stipulation that the contractor, subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates and fringe benefit rates not less than those determined pursuant to Section 13-4-11 (B) NMSA 1978 to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.
- iii. The Project may only benefit private entities in accordance with applicable law, including, but not limited to, Article IX, Section 14 of the Constitution of the State of New Mexico, the "Anti-Donation Clause."
- iv. The Grantee shall not for a period of 10 years from the date of this agreement convert any property acquired, built, renovated, repaired, designed or developed with the Project's funds to uses other than those specified in the Project Description without the Department's and the Board of Finance's express, advance, written approval, which may include a requirement to reimburse the State for the cost of the project, transfer proceeds from the disposition of property to the State, or otherwise provide consideration to the State.
- v. The Grantee shall comply with all federal and state laws, rules and regulations pertaining to equal employment opportunity. In accordance with all such laws, rules and regulations the Grantee agrees to assure that no person shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with Grantee, be excluded from participation in the Project, be denied benefits or otherwise be subject to discrimination under, any activity performed under this Agreement. If Grantee is found to be not in compliance with these requirements during the life of this Agreement, Grantee agrees to take appropriate steps to correct any deficiencies. The Grantee's failure to implement such appropriate steps within a reasonable time constitutes grounds for terminating this Agreement.

B. The Grantee hereby represents and warrants the following:

- i. The Grantee has the legal authority to receive and expend the Project's funds.
- ii. This Agreement has been duly authorized by the Grantee, the person executing this Agreement has authority to do so, and, once executed by the Grantee, this Agreement shall constitute a binding obligation of the Grantee, enforceable according to its terms.
- iii. This Agreement and the Grantee's obligations hereunder do not conflict with any law or ordinance or resolution applicable to the Grantee, the Grantee's charter (if applicable), or any judgment or decree to which the Grantee is subject.
- iv. The Grantee has independently confirmed that the Project Description, including, but not limited to, the amount and Reversion Date, is consistent with the underlying appropriation in law.
- v. The Grantee's governing body has duly adopted or passed as an official act a resolution, motion, or similar action authorizing the person identified as the official representative of the Grantee to sign the Agreement and to sign Requests for Payment.
- vi. The Grantee shall abide by New Mexico laws regarding conflicts of interest, governmental conduct and whistleblower protection. The Grantee specifically agrees that no officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this Grant, during their tenure or for one year thereafter, shall have any interest, direct or

indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed or goods to be received, pursuant to this Grant. Further, Grantee shall require all of its contractors to incorporate in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.

- vii. No funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of this or any agency or body in connection with the awarding of any Third Party Obligation and that the Grantee shall require certifying language prohibiting lobbying to be included in the award documents for all subawards, including subcontracts, loans and cooperative agreements. All subrecipients shall be required to certify accordingly.

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

- A. Grantee shall be strictly accountable for receipts and disbursements relating to the Project's funds. The Grantee shall follow generally accepted accounting principles, and, if feasible, maintain a separate bank account or fund with a separate organizational code, for the funds to assure separate budgeting and accounting of the funds.
- B. For a period of six (6) years following the Project's completion, the Grantee shall maintain all Project related records, including, but not limited to, all financial records, requests for proposals, invitations to bid, selection and award criteria, contracts and subcontracts, advertisements, minutes of pertinent meetings, as well as records sufficient to fully account for the amount and disposition of the total funds from all sources budgeted for the Project, the purpose for which such funds were used, and such other records as the Department shall prescribe.
- C. Grantee shall make all Project records available to the Department, the Department of Finance and Administration, and the New Mexico State Auditor upon request. With respect to the funds that are the subject of this Agreement, if the State Auditor or the Department of Finance and Administration finds that any or all of these funds were improperly expended, the Grantee may be required to reimburse to the State of New Mexico, to the originating fund, any and all amounts found to be improperly expended.

ARTICLE XII. IMPROPERLY REIMBURSED FUNDS

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

ARTICLE XIII. LIABILITY

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to immunities and limitations of the New Mexico Tort Claims Act.

ARTICLE XIV. SCOPE OF AGREEMENT

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

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

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

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

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

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

“This contract is funded in whole or in part by funds made available under a DFA/LGD Grant Agreement. Should the DFA/LGD early terminate the grant agreement, the CITY OF ALAMOGORDO may early terminate this contract by providing Contractor written notice of such termination. In the event of termination pursuant to this paragraph, the CITY OF ALAMOGORDO only liability shall be to pay Contractor for acceptable goods delivered and services rendered before the termination date.”

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

XVII. COMPLIANCE WITH UNIFORM FUNDING CRITERIA.

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

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

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

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

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

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

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

C. Grantee acknowledges and agrees that this Agreement is subject to the SBOF's Bond Project Disbursements rule, NMAC 2.61.6, as may be amended or re-codified. The rule provides definitions and interpretations of grant language for the purpose of determining whether a particular activity is allowable under the authorizing language of the agreement.

[THIS SPACE LEFT BLANK INTENTIONALLY]

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

GRANTEE

Signature of Official with Authority to Bind Grantee

City of Alamogordo
Entity Name

By: _____
Susan L. Payne
(Type or Print Name)

Its: _____
Mayor
(Type or Print Title)

Date

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

By:

Its: Division Director

Date

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

I. Grantee Information

(Make sure information is complete & accurate)

- A. Grantee: _____
- B. Address: _____
(Complete Mailing, including Suite, if applicable)

City, State, Zip
- C. Contact Name/Phone #: _____
- D. Grant No: _____
- E. Project Title: _____
- F. Grant Expiration Date: _____

II. Payment Computation

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

III. Fiscal Year : _____

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

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

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

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

Grantee Representative

Printed Name

Date: _____

Printed Name

Date: _____

(State Agency Use Only)

Vendor Code: _____ Fund No.: _____ Loc No.: _____

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

Division Fiscal Officer Date

Division Project Manager Date

NOTICE OF OBLIGATION TO REIMBURSE GRANTEE
EXHIBIT 2

Notice of Obligation to Reimburse Grantee # _____

DATE: _____

TO: Department Representative: _____, _____

FROM: Grantee Entity: _____

Grantee Official Representative: _____

SUBJECT: Notice of Obligation to Reimburse Grantee

Grant Number: _____

Grant Termination Date: _____

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

Vendor or Contractor: _____

Third Party Obligation Amount: _____

Vendor or Contractor: _____

Third Party Obligation Amount: _____

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

Grant Amount (Minus AIPP if applicable): _____

The Amount of this Notice of Obligation: _____

The Total Amount of all Previously Issued Notices of Obligation: _____

The Total Amount of all Notices of Obligation to Date: _____

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

Department Rep. Approver: _____

Title: _____

Signature: _____

Date: _____

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

STATE OF NEW MEXICO
DEPARTMENT OF FINANCE AND ADMINISTRATION
FUND 93100 CAPITAL APPROPRIATION PROJECT

THIS AGREEMENT is made and entered into by and between the Department of Finance and Administration, State of New Mexico, Bataan Memorial Building, Room 202, Santa Fe, New Mexico, 87501 hereinafter called the "Department" or abbreviation such as "DFA/LGD", and **CITY OF ALAMOGORDO**, hereinafter called the "Grantee". This Agreement shall be effective as of the date it is executed by the Department.

RECITALS

WHEREAS, in the **Laws of 2023, Chapter 199, Section 28, Paragraph 338**, the Legislature made an appropriation to the Department, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

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

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

AGREEMENT

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

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

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

- 23-H3092
- APPROPRIATION AMOUNT: \$900,000.00
- APPROPRIATION REVERSION DATE: June 30, 2027
- Laws of 2023, Chapter 199, Section 28, Paragraph 338
- NINE HUNDRED THOUSAND (\$900,000.00),
- to plan, design and construct an irrigation system for the Desert Lakes golf course in Alamogordo in Otero county;

The Grantee's total reimbursements shall not exceed NINE HUNDRED THOUSAND \$900,000.00 (the "Appropriation Amount") minus the allocation for Art in Public Places ("AIPP amount"), if applicable, ZERO \$0.00, which equals NINE HUNDRED THOUSAND \$900,000.00 (the "Adjusted Appropriation Amount").

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

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

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

- A. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Project Description, the Grantee shall only be reimbursed monies for which the Department has issued and the Grantee has received a Notice of Department's Obligation to Reimburse Grantee (hereinafter referred to as "Notice of Obligation"). This Grant Agreement and the disbursement of any and all amounts of the above referenced Adjusted Appropriation Amount are expressly conditioned upon the following:
- i. Irrespective of any Notice of Obligation, the Grantee's expenditures shall be made on or before the Reversion Date and, if applicable, an Early Termination Date (i.e., the goods have been delivered and accepted or the title to the goods has been transferred to the Grantee and/or the services have been rendered for the Grantee); and
 - ii. The total amount received by the Grantee shall not exceed the lesser of: (a) the Adjusted Appropriation Amount identified in Article I(A) herein or (b) the total of all amounts stated in the Notice(s) of Obligation evidencing that the Department has received and accepted the Grantee's Third Party Obligation(s), as defined in subparagraph iii of this Article II(A); and
 - iii. The Grantee's expenditures were made pursuant to the State Procurement Code and execution of binding written obligations or purchase orders with third party contractors or vendors for the provision of services, including professional services, or the purchase of tangible personal property and real property for the Project, hereinafter referred to as "Third Party Obligations"; and
 - iv. The Grantee's submittal of timely Requests for Payment in accordance with the procedures set forth in Article IX of this Agreement; and
 - v. In the event that capital assets acquired with Project funds are to be sold, leased, or licensed to or operated by a private entity, the sale, lease, license, or operating agreement:
 - a. must be approved by the applicable oversight entity (if any) in accordance with law; or
 - b. if no oversight entity is required to approve the transaction, the Department must approve the transaction as complying with law.
- Prior to the sale, lease, license, or operating agreement being approved pursuant to Articles II(A)(v)(a) and II(A)(v)(b) herein, the Department may, in its sole and absolute discretion and unless inconsistent with State Board of Finance imposed conditions, reimburse the Grantee for necessary expenditures incurred to develop the Project sufficiently to make the sale, lease, license, or operating agreement commercially feasible, such as plan and design expenditures; and
- vi. Grantee's submission of documentation of all Third Party Obligations and amendments thereto (including terminations) to the Department and the Department's issuance and the Grantee's receiving of a Notice of Obligation for a particular amount in accordance with the terms of this Agreement shall be governed by the following:
 - a. The Grantee shall submit to the Department one copy of all Third Party Obligations and amendments thereto (including terminations) as soon as possible after execution by the Third Party but prior to execution by the Grantee.
 - b. Grantee acknowledges and agrees that if it chooses to enter into a Third Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such obligations.
 - c. The Department may, in its sole and absolute discretion, issue to Grantee a Notice of Obligation for the particular amount of that Third Party Obligation that only obligates the Department to reimburse Grantee's expenditures made on or before the Reversion Date or an Early Termination Date. The current Notice of Obligation form is attached to this Agreement as Exhibit 2.
 - d. The date the Department signs the Notice of Obligation is the date that the Department's Notice of Obligation is effective. After that date, the Grantee is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third Party Obligation and request the Third Party to begin work. Payment for any work performed or goods received prior to the effective date of the Notice of Obligation is wholly and solely the obligation of the Grantee.
- B. The Grantee shall implement, in all respects, the Project. The Grantee shall provide all necessary qualified personnel, material, and facilities to implement the Project. The Grantee shall finance its share (if any) of the costs of the Project, including all Project overruns.
- C. Project funds shall not be used for purposes other than those specified in the Project Description.
- D. Unless specifically allowed by law, Project funds cannot be used to reimburse Grantee for indirect Project costs.

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

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

ARTICLE III. NOTICE PROVISIONS AND GRANTEE AND DEPARTMENT DESIGNATED REPRESENTATIVES

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

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

Grantee: CITY OF ALAMOGORDO
Name: Susan Payne
Title: Mayor
Address: 1376 E Ninth Street, Alamogordo, NM 88310
Email: spayne@ci.alamogordo.nm.us
Telephone: 575-214-0024

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

Grantee: CITY OF ALAMOGORDO
Name: Evelyn Huff
Title: Finance Director
Address: 1376 E. 9th Street, Alamogordo, NM 88310
Email: ehuff@ci.alamogordo.nm.us
Telephone: 575/439-4268

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

Department: DFA/Local Government Division
Name: Maureen Ayers
Title: Program Manager
Address: Bataan Memorial Bldg. Rm 202, Santa Fe, NM 87501
Email: Maureen.Ayesr@dfa.nm.gov
Telephone: 505-470-0977

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

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

- A. As referenced in Article I(A), the applicable law establishes a date by which Project funds must be expended by Grantee, which is referred to throughout the remainder of this Agreement as the "Reversion Date." Upon being duly executed by both parties, this Agreement shall be effective as of the date of execution by the Department. It shall terminate on **June 30, 2027** the Reversion Date unless Terminated Before Reversion Date ("Early Termination") pursuant to Article V herein.
- B. The Project's funds must be expended on or before the Reversion Date and, if applicable, Early Termination Date of this Agreement. For purposes of this Agreement, it is not sufficient for the Grantee to encumber the Project funds on its books on or before the Project's Reversion Date or Early Termination Date. Funds are expended and an expenditure has occurred as of the date that a particular quantity of goods are delivered to and received by the Grantee or title to the goods is transferred to the Grantee and/or as of the date particular services are rendered for the Grantee. Funds are not expended and an expenditure has not occurred as of the date they are encumbered by the Grantee pursuant to a contract or purchase order with a third party.

ARTICLE V. EARLY TERMINATION

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

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

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

B. Early Termination Before Reversion Date Due to Non-appropriation

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

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

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

ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS

- A. The Department may choose, in its sole and absolute discretion, to provide written notice to the Grantee to suspend entering into new and further obligations. Upon the receipt of such written notice by the Grantee:
- i. The Grantee shall immediately suspend entering into new or further written obligations with third parties; and
 - ii. The Department will suspend the issuance of any new or further Notice of Obligation under this Agreement; and
 - iii. The Department may direct the Grantee to implement a corrective action plan in accordance with Article VI(D) herein.
- B. In the event of Suspension of this Agreement, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth in Article II herein.
- C. A suspension of new or further obligations under this Agreement shall remain in effect unless or until the date the Grantee receives written notice given by the Department informing the Grantee that the Suspension has been lifted or that the Agreement has been Early Terminated in accordance with Article V herein. If the Suspension is lifted, the Department will consider further requests for Notice of Obligation.

D. Corrective Action Plan in the Event of Suspension

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

ARTICLE VII. AMENDMENT

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

ARTICLE VIII. REPORTS

A. Reporting

The Grantee shall report quarterly Project activity by entering such Project information as the Department and the Department of Finance and Administration may require, such information entered directly into a database maintained by the Department of Finance and Administration (Budget & Formulation Management System). Additionally, the Grantee shall certify on the Request for Payment form (Exhibit 1) that updates have been maintained and are current in the database. The Grantee hereby acknowledges that failure to perform and/or certify updates into the database will delay or potentially jeopardize the reimbursement of funds. The Department shall give Grantee a minimum of thirty (30) days advance written notice of any changes to the information the Grantee is required to report.

Quarterly reports shall be due on the last day of the month, that is 30 days prior to the end of the quarter following execution of this Agreement by the Department and ending during the quarter of the submission of the final request for reimbursement for the Project, or the following quarter.

B. Requests for Additional Information/Project Inspection

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

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

ARTICLE IX. REQUEST FOR PAYMENT PROCEDURES AND DEADLINES

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

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

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

C. Deadlines

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

- i. Immediately as they are received by the Grantee but at a minimum thirty (30) days from when the expenditure was incurred or liability of the Grantee was approved as evidenced by an unpaid invoice received by the Grantee from a third party contractor or vendor; or
- ii. Twenty (20) days from date of Early Termination; or
- iii. Twenty (20) days from the Reversion Date.

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

ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS; REPRESENTATIONS AND WARRANTIES

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

- i. The Project's funds must be spent in accordance with all applicable state laws, regulations, policies, and guidelines, including, but not limited to, the State Procurement Code (or local procurement ordinance, where applicable).
- ii. The Project must be implemented in accordance with the New Mexico Public Works Minimum Wage Act, Section 13-4-10 through 13-4-17 NMSA 1978, as applicable. Every contract or project in excess of sixty thousand dollars (\$60,000) that the Grantee is a party to for construction, alteration, demolition or repair or any combination of these, including painting and decorating, of public buildings, public works or public roads and that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics, shall be based upon the wages and benefits that will be determined by the New Mexico Department of Workforce Solutions to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the locality. Further, every contract or project shall contain a stipulation that the contractor, subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates and fringe benefit rates not less than those determined pursuant to Section 13-4-11 (B) NMSA 1978 to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.
- iii. The Project may only benefit private entities in accordance with applicable law, including, but not limited to, Article IX, Section 14 of the Constitution of the State of New Mexico, the "Anti-Donation Clause."
- iv. The Grantee shall not for a period of 10 years from the date of this agreement convert any property acquired, built, renovated, repaired, designed or developed with the Project's funds to uses other than those specified in the Project Description without the Department's and the Board of Finance's express, advance, written approval, which may include a requirement to reimburse the State for the cost of the project, transfer proceeds from the disposition of property to the State, or otherwise provide consideration to the State.
- v. The Grantee shall comply with all federal and state laws, rules and regulations pertaining to equal employment opportunity. In accordance with all such laws, rules and regulations the Grantee agrees to assure that no person shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with Grantee, be excluded from participation in the Project, be denied benefits or otherwise be subject to discrimination under, any activity performed under this Agreement. If Grantee is found to be not in compliance with these requirements during the life of this Agreement, Grantee agrees to take appropriate steps to correct any deficiencies. The Grantee's failure to implement such appropriate steps within a reasonable time constitutes grounds for terminating this Agreement.

B. The Grantee hereby represents and warrants the following:

- i. The Grantee has the legal authority to receive and expend the Project's funds.
- ii. This Agreement has been duly authorized by the Grantee, the person executing this Agreement has authority to do so, and, once executed by the Grantee, this Agreement shall constitute a binding obligation of the Grantee, enforceable according to its terms.
- iii. This Agreement and the Grantee's obligations hereunder do not conflict with any law or ordinance or resolution applicable to the Grantee, the Grantee's charter (if applicable), or any judgment or decree to which the Grantee is subject.
- iv. The Grantee has independently confirmed that the Project Description, including, but not limited to, the amount and Reversion Date, is consistent with the underlying appropriation in law.
- v. The Grantee's governing body has duly adopted or passed as an official act a resolution, motion, or similar action authorizing the person identified as the official representative of the Grantee to sign the Agreement and to sign Requests for Payment.
- vi. The Grantee shall abide by New Mexico laws regarding conflicts of interest, governmental conduct and whistleblower protection. The Grantee specifically agrees that no officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this Grant, during their tenure or for one year thereafter, shall have any interest, direct or

indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed or goods to be received, pursuant to this Grant. Further, Grantee shall require all of its contractors to incorporate in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.

- vii. No funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of this or any agency or body in connection with the awarding of any Third Party Obligation and that the Grantee shall require certifying language prohibiting lobbying to be included in the award documents for all subawards, including subcontracts, loans and cooperative agreements. All subrecipients shall be required to certify accordingly.

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

- A. Grantee shall be strictly accountable for receipts and disbursements relating to the Project's funds. The Grantee shall follow generally accepted accounting principles, and, if feasible, maintain a separate bank account or fund with a separate organizational code, for the funds to assure separate budgeting and accounting of the funds.
- B. For a period of six (6) years following the Project's completion, the Grantee shall maintain all Project related records, including, but not limited to, all financial records, requests for proposals, invitations to bid, selection and award criteria, contracts and subcontracts, advertisements, minutes of pertinent meetings, as well as records sufficient to fully account for the amount and disposition of the total funds from all sources budgeted for the Project, the purpose for which such funds were used, and such other records as the Department shall prescribe.
- C. Grantee shall make all Project records available to the Department, the Department of Finance and Administration, and the New Mexico State Auditor upon request. With respect to the funds that are the subject of this Agreement, if the State Auditor or the Department of Finance and Administration finds that any or all of these funds were improperly expended, the Grantee may be required to reimburse to the State of New Mexico, to the originating fund, any and all amounts found to be improperly expended.

ARTICLE XII. IMPROPERLY REIMBURSED FUNDS

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

ARTICLE XIII. LIABILITY

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to immunities and limitations of the New Mexico Tort Claims Act.

ARTICLE XIV. SCOPE OF AGREEMENT

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

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

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

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

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

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

“This contract is funded in whole or in part by funds made available under a DFA/LGD Grant Agreement. Should the DFA/LGD early terminate the grant agreement, the CITY OF ALAMOGORDO may early terminate this contract by providing Contractor written notice of such termination. In the event of termination pursuant to this paragraph, the CITY OF ALAMOGORDO only liability shall be to pay Contractor for acceptable goods delivered and services rendered before the termination date.”

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

XVII. COMPLIANCE WITH UNIFORM FUNDING CRITERIA.

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

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

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

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

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

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

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

C. Grantee acknowledges and agrees that this Agreement is subject to the SBOF's Bond Project Disbursements rule, NMAC 2.61.6, as may be amended or re-codified. The rule provides definitions and interpretations of grant language for the purpose of determining whether a particular activity is allowable under the authorizing language of the agreement.

[THIS SPACE LEFT BLANK INTENTIONALLY]

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

GRANTEE

Signature of Official with Authority to Bind Grantee

Entity Name

By: _____
(Type or Print Name)

Its: _____
(Type or Print Title)

Date

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

By:

Its: Division Director

Date

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

I. Grantee Information

(Make sure information is complete & accurate)

- A. Grantee: _____
- B. Address: _____
(Complete Mailing, including Suite, if applicable)

City, State, Zip
- C. Contact Name/Phone #: _____
- D. Grant No: _____
- E. Project Title: _____
- F. Grant Expiration Date: _____

II. Payment Computation

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

III. Fiscal Year : _____

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

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

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

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

Grantee Representative

Printed Name

Date: _____

Printed Name

Date: _____

(State Agency Use Only)

Vendor Code: _____ Fund No.: _____ Loc No.: _____

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

Division Fiscal Officer Date

Division Project Manager Date

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

Notice of Obligation to Reimburse Grantee # _____

DATE: _____

TO: Department Representative: _____, _____

FROM: Grantee Entity: _____

Grantee Official Representative: _____

SUBJECT: Notice of Obligation to Reimburse Grantee

Grant Number: _____

Grant Termination Date: _____

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

Vendor or Contractor: _____

Third Party Obligation Amount: _____

Vendor or Contractor: _____

Third Party Obligation Amount: _____

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

Grant Amount (Minus AIPP if applicable): _____

The Amount of this Notice of Obligation: _____

The Total Amount of all Previously Issued Notices of Obligation: _____

The Total Amount of all Notices of Obligation to Date: _____

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

Department Rep. Approver: _____

Title: _____

Signature: _____

Date: _____

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

STATE OF NEW MEXICO
DEPARTMENT OF FINANCE AND ADMINISTRATION
FUND 93100 CAPITAL APPROPRIATION PROJECT

THIS AGREEMENT is made and entered into by and between the Department of Finance and Administration, State of New Mexico, Bataan Memorial Building, Room 202, Santa Fe, New Mexico, 87501 hereinafter called the "Department" or abbreviation such as "DFA/LGD", and **CITY OF ALAMOGORDO**, hereinafter called the "Grantee". This Agreement shall be effective as of the date it is executed by the Department.

RECITALS

WHEREAS, in the **Laws of 2023, Chapter 199, Section 28, Paragraph 339**, the Legislature made an appropriation to the Department, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

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

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

AGREEMENT

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

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

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

- 23-H3093
- APPROPRIATION AMOUNT: \$500,000.00
- APPROPRIATION REVERSION DATE: June 30, 2025
- Laws of 2023, Chapter 199, Section 28, Paragraph 339
- FIVE HUNDRED THOUSAND (\$500,000.00),
- to purchase and install an accessibility-compliant stairlift elevator at the police department facility in Alamogordo in Otero county;

The Grantee's total reimbursements shall not exceed FIVE HUNDRED THOUSAND \$500,000.00 (the "Appropriation Amount") minus the allocation for Art in Public Places ("AIPP amount"), if applicable, ZERO \$0.00, which equals FIVE HUNDRED THOUSAND \$500,000.00 (the "Adjusted Appropriation Amount").

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

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

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

- A. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Project Description, the Grantee shall only be reimbursed monies for which the Department has issued and the Grantee has received a Notice of Department's Obligation to Reimburse Grantee (hereinafter referred to as "Notice of Obligation"). This Grant Agreement and the disbursement of any and all amounts of the above referenced Adjusted Appropriation Amount are expressly conditioned upon the following:
- i. Irrespective of any Notice of Obligation, the Grantee's expenditures shall be made on or before the Reversion Date and, if applicable, an Early Termination Date (i.e., the goods have been delivered and accepted or the title to the goods has been transferred to the Grantee and/or the services have been rendered for the Grantee); and
 - ii. The total amount received by the Grantee shall not exceed the lesser of: (a) the Adjusted Appropriation Amount identified in Article I(A) herein or (b) the total of all amounts stated in the Notice(s) of Obligation evidencing that the Department has received and accepted the Grantee's Third Party Obligation(s), as defined in subparagraph iii of this Article II(A); and
 - iii. The Grantee's expenditures were made pursuant to the State Procurement Code and execution of binding written obligations or purchase orders with third party contractors or vendors for the provision of services, including professional services, or the purchase of tangible personal property and real property for the Project, hereinafter referred to as "Third Party Obligations"; and
 - iv. The Grantee's submittal of timely Requests for Payment in accordance with the procedures set forth in Article IX of this Agreement; and
 - v. In the event that capital assets acquired with Project funds are to be sold, leased, or licensed to or operated by a private entity, the sale, lease, license, or operating agreement:
 - a. must be approved by the applicable oversight entity (if any) in accordance with law; or
 - b. if no oversight entity is required to approve the transaction, the Department must approve the transaction as complying with law.
- Prior to the sale, lease, license, or operating agreement being approved pursuant to Articles II(A)(v)(a) and II(A)(v)(b) herein, the Department may, in its sole and absolute discretion and unless inconsistent with State Board of Finance imposed conditions, reimburse the Grantee for necessary expenditures incurred to develop the Project sufficiently to make the sale, lease, license, or operating agreement commercially feasible, such as plan and design expenditures; and
- vi. Grantee's submission of documentation of all Third Party Obligations and amendments thereto (including terminations) to the Department and the Department's issuance and the Grantee's receiving of a Notice of Obligation for a particular amount in accordance with the terms of this Agreement shall be governed by the following:
 - a. The Grantee shall submit to the Department one copy of all Third Party Obligations and amendments thereto (including terminations) as soon as possible after execution by the Third Party but prior to execution by the Grantee.
 - b. Grantee acknowledges and agrees that if it chooses to enter into a Third Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such obligations.
 - c. The Department may, in its sole and absolute discretion, issue to Grantee a Notice of Obligation for the particular amount of that Third Party Obligation that only obligates the Department to reimburse Grantee's expenditures made on or before the Reversion Date or an Early Termination Date. The current Notice of Obligation form is attached to this Agreement as Exhibit 2.
 - d. The date the Department signs the Notice of Obligation is the date that the Department's Notice of Obligation is effective. After that date, the Grantee is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third Party Obligation and request the Third Party to begin work. Payment for any work performed or goods received prior to the effective date of the Notice of Obligation is wholly and solely the obligation of the Grantee.
- B. The Grantee shall implement, in all respects, the Project. The Grantee shall provide all necessary qualified personnel, material, and facilities to implement the Project. The Grantee shall finance its share (if any) of the costs of the Project, including all Project overruns.
- C. Project funds shall not be used for purposes other than those specified in the Project Description.
- D. Unless specifically allowed by law, Project funds cannot be used to reimburse Grantee for indirect Project costs.

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

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

ARTICLE III. NOTICE PROVISIONS AND GRANTEE AND DEPARTMENT DESIGNATED REPRESENTATIVES

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

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

Grantee: CITY OF ALAMOGORDO
Name: Susan Payne
Title: Mayor
Address: 1376 E Ninth Street, Alamogordo, NM 88310
Email: spayne@ci.alamogordo.nm.us
Telephone: 575-214-0024

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

Grantee: CITY OF ALAMOGORDO
Name: Evelyn Huff
Title: Finance Director
Address: 1376 E. 9th Street, Alamogordo, NM 88310
Email: ehuff@ci.alamogordo.nm.us
Telephone: 575/439-4268

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

Department: DFA/Local Government Division
Name: Maureen Ayers
Title: Program Manager
Address: Bataan Memorial Bldg. Rm 202, Santa Fe, NM 87501
Email: Maureen.Ayesr@dfa.nm.gov
Telephone: 505-470-0977

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

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

- A. As referenced in Article I(A), the applicable law establishes a date by which Project funds must be expended by Grantee, which is referred to throughout the remainder of this Agreement as the "Reversion Date." Upon being duly executed by both parties, this Agreement shall be effective as of the date of execution by the Department. It shall terminate on **June 30, 2025** the Reversion Date unless Terminated Before Reversion Date ("Early Termination") pursuant to Article V herein.
- B. The Project's funds must be expended on or before the Reversion Date and, if applicable, Early Termination Date of this Agreement. For purposes of this Agreement, it is not sufficient for the Grantee to encumber the Project funds on its books on or before the Project's Reversion Date or Early Termination Date. Funds are expended and an expenditure has occurred as of the date that a particular quantity of goods are delivered to and received by the Grantee or title to the goods is transferred to the Grantee and/or as of the date particular services are rendered for the Grantee. Funds are not expended and an expenditure has not occurred as of the date they are encumbered by the Grantee pursuant to a contract or purchase order with a third party.

ARTICLE V. EARLY TERMINATION

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

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

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

B. Early Termination Before Reversion Date Due to Non-appropriation

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

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

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

ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS

- A. The Department may choose, in its sole and absolute discretion, to provide written notice to the Grantee to suspend entering into new and further obligations. Upon the receipt of such written notice by the Grantee:
- i. The Grantee shall immediately suspend entering into new or further written obligations with third parties; and
 - ii. The Department will suspend the issuance of any new or further Notice of Obligation under this Agreement; and
 - iii. The Department may direct the Grantee to implement a corrective action plan in accordance with Article VI(D) herein.
- B. In the event of Suspension of this Agreement, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth in Article II herein.
- C. A suspension of new or further obligations under this Agreement shall remain in effect unless or until the date the Grantee receives written notice given by the Department informing the Grantee that the Suspension has been lifted or that the Agreement has been Early Terminated in accordance with Article V herein. If the Suspension is lifted, the Department will consider further requests for Notice of Obligation.

D. Corrective Action Plan in the Event of Suspension

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

ARTICLE VII. AMENDMENT

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

ARTICLE VIII. REPORTS

A. Reporting

The Grantee shall report quarterly Project activity by entering such Project information as the Department and the Department of Finance and Administration may require, such information entered directly into a database maintained by the Department of Finance and Administration (Budget & Formulation Management System). Additionally, the Grantee shall certify on the Request for Payment form (Exhibit 1) that updates have been maintained and are current in the database. The Grantee hereby acknowledges that failure to perform and/or certify updates into the database will delay or potentially jeopardize the reimbursement of funds. The Department shall give Grantee a minimum of thirty (30) days advance written notice of any changes to the information the Grantee is required to report.

Quarterly reports shall be due on the last day of the month, that is 30 days prior to the end of the quarter following execution of this Agreement by the Department and ending during the quarter of the submission of the final request for reimbursement for the Project, or the following quarter.

B. Requests for Additional Information/Project Inspection

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

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

ARTICLE IX. REQUEST FOR PAYMENT PROCEDURES AND DEADLINES

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

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

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

C. Deadlines

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

- i. Immediately as they are received by the Grantee but at a minimum thirty (30) days from when the expenditure was incurred or liability of the Grantee was approved as evidenced by an unpaid invoice received by the Grantee from a third party contractor or vendor; or
- ii. Twenty (20) days from date of Early Termination; or
- iii. Twenty (20) days from the Reversion Date.

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

ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS; REPRESENTATIONS AND WARRANTIES

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

- i. The Project's funds must be spent in accordance with all applicable state laws, regulations, policies, and guidelines, including, but not limited to, the State Procurement Code (or local procurement ordinance, where applicable).
- ii. The Project must be implemented in accordance with the New Mexico Public Works Minimum Wage Act, Section 13-4-10 through 13-4-17 NMSA 1978, as applicable. Every contract or project in excess of sixty thousand dollars (\$60,000) that the Grantee is a party to for construction, alteration, demolition or repair or any combination of these, including painting and decorating, of public buildings, public works or public roads and that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics, shall be based upon the wages and benefits that will be determined by the New Mexico Department of Workforce Solutions to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the locality. Further, every contract or project shall contain a stipulation that the contractor, subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates and fringe benefit rates not less than those determined pursuant to Section 13-4-11 (B) NMSA 1978 to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.
- iii. The Project may only benefit private entities in accordance with applicable law, including, but not limited to, Article IX, Section 14 of the Constitution of the State of New Mexico, the "Anti-Donation Clause."
- iv. The Grantee shall not for a period of 10 years from the date of this agreement convert any property acquired, built, renovated, repaired, designed or developed with the Project's funds to uses other than those specified in the Project Description without the Department's and the Board of Finance's express, advance, written approval, which may include a requirement to reimburse the State for the cost of the project, transfer proceeds from the disposition of property to the State, or otherwise provide consideration to the State.
- v. The Grantee shall comply with all federal and state laws, rules and regulations pertaining to equal employment opportunity. In accordance with all such laws, rules and regulations the Grantee agrees to assure that no person shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with Grantee, be excluded from participation in the Project, be denied benefits or otherwise be subject to discrimination under, any activity performed under this Agreement. If Grantee is found to be not in compliance with these requirements during the life of this Agreement, Grantee agrees to take appropriate steps to correct any deficiencies. The Grantee's failure to implement such appropriate steps within a reasonable time constitutes grounds for terminating this Agreement.

B. The Grantee hereby represents and warrants the following:

- i. The Grantee has the legal authority to receive and expend the Project's funds.
- ii. This Agreement has been duly authorized by the Grantee, the person executing this Agreement has authority to do so, and, once executed by the Grantee, this Agreement shall constitute a binding obligation of the Grantee, enforceable according to its terms.
- iii. This Agreement and the Grantee's obligations hereunder do not conflict with any law or ordinance or resolution applicable to the Grantee, the Grantee's charter (if applicable), or any judgment or decree to which the Grantee is subject.
- iv. The Grantee has independently confirmed that the Project Description, including, but not limited to, the amount and Reversion Date, is consistent with the underlying appropriation in law.
- v. The Grantee's governing body has duly adopted or passed as an official act a resolution, motion, or similar action authorizing the person identified as the official representative of the Grantee to sign the Agreement and to sign Requests for Payment.
- vi. The Grantee shall abide by New Mexico laws regarding conflicts of interest, governmental conduct and whistleblower protection. The Grantee specifically agrees that no officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this Grant, during their tenure or for one year thereafter, shall have any interest, direct or

indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed or goods to be received, pursuant to this Grant. Further, Grantee shall require all of its contractors to incorporate in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.

- vii. No funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of this or any agency or body in connection with the awarding of any Third Party Obligation and that the Grantee shall require certifying language prohibiting lobbying to be included in the award documents for all subawards, including subcontracts, loans and cooperative agreements. All subrecipients shall be required to certify accordingly.

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

- A. Grantee shall be strictly accountable for receipts and disbursements relating to the Project's funds. The Grantee shall follow generally accepted accounting principles, and, if feasible, maintain a separate bank account or fund with a separate organizational code, for the funds to assure separate budgeting and accounting of the funds.
- B. For a period of six (6) years following the Project's completion, the Grantee shall maintain all Project related records, including, but not limited to, all financial records, requests for proposals, invitations to bid, selection and award criteria, contracts and subcontracts, advertisements, minutes of pertinent meetings, as well as records sufficient to fully account for the amount and disposition of the total funds from all sources budgeted for the Project, the purpose for which such funds were used, and such other records as the Department shall prescribe.
- C. Grantee shall make all Project records available to the Department, the Department of Finance and Administration, and the New Mexico State Auditor upon request. With respect to the funds that are the subject of this Agreement, if the State Auditor or the Department of Finance and Administration finds that any or all of these funds were improperly expended, the Grantee may be required to reimburse to the State of New Mexico, to the originating fund, any and all amounts found to be improperly expended.

ARTICLE XII. IMPROPERLY REIMBURSED FUNDS

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

ARTICLE XIII. LIABILITY

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to immunities and limitations of the New Mexico Tort Claims Act.

ARTICLE XIV. SCOPE OF AGREEMENT

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

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

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

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

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

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

“This contract is funded in whole or in part by funds made available under a DFA/LGD Grant Agreement. Should the DFA/LGD early terminate the grant agreement, the CITY OF ALAMOGORDO may early terminate this contract by providing Contractor written notice of such termination. In the event of termination pursuant to this paragraph, the CITY OF ALAMOGORDO only liability shall be to pay Contractor for acceptable goods delivered and services rendered before the termination date.”

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

XVII. COMPLIANCE WITH UNIFORM FUNDING CRITERIA.

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

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

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

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

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

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

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

C. Grantee acknowledges and agrees that this Agreement is subject to the SBOF's Bond Project Disbursements rule, NMAC 2.61.6, as may be amended or re-codified. The rule provides definitions and interpretations of grant language for the purpose of determining whether a particular activity is allowable under the authorizing language of the agreement.

[THIS SPACE LEFT BLANK INTENTIONALLY]

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

GRANTEE

Signature of Official with Authority to Bind Grantee

Entity Name

By: _____
(Type or Print Name)

Its: _____
(Type or Print Title)

Date

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

By:

Its: Division Director

Date

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

I. Grantee Information

(Make sure information is complete & accurate)

- A. Grantee: _____
- B. Address: _____
(Complete Mailing, including Suite, if applicable)

City, State, Zip
- C. Contact Name/Phone #: _____
- D. Grant No: _____
- E. Project Title: _____
- F. Grant Expiration Date: _____

II. Payment Computation

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

III. Fiscal Year : _____

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

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

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

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

Grantee Representative

Printed Name

Date: _____

Printed Name

Date: _____

(State Agency Use Only)

Vendor Code: _____ Fund No.: _____ Loc No.: _____

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

Division Fiscal Officer Date

Division Project Manager Date

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

Notice of Obligation to Reimburse Grantee # _____

DATE: _____

TO: Department Representative: _____, _____

FROM: Grantee Entity: _____

Grantee Official Representative: _____

SUBJECT: Notice of Obligation to Reimburse Grantee

Grant Number: _____

Grant Termination Date: _____

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

Vendor or Contractor: _____

Third Party Obligation Amount: _____

Vendor or Contractor: _____

Third Party Obligation Amount: _____

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

Grant Amount (Minus AIPP if applicable): _____

The Amount of this Notice of Obligation: _____

The Total Amount of all Previously Issued Notices of Obligation: _____

The Total Amount of all Notices of Obligation to Date: _____

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

Department Rep. Approver: _____

Title: _____

Signature: _____

Date: _____

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

STATE OF NEW MEXICO
DEPARTMENT OF FINANCE AND ADMINISTRATION
FUND 93100 CAPITAL APPROPRIATION PROJECT

THIS AGREEMENT is made and entered into by and between the Department of Finance and Administration, State of New Mexico, Bataan Memorial Building, Room 202, Santa Fe, New Mexico, 87501 hereinafter called the "Department" or abbreviation such as "DFA/LGD", and **CITY OF ALAMOGORDO**, hereinafter called the "Grantee". This Agreement shall be effective as of the date it is executed by the Department.

RECITALS

WHEREAS, in the **Laws of 2023, Chapter 199, Section 28, Paragraph 340**, the Legislature made an appropriation to the Department, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

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

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

AGREEMENT

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

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

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

- 23-H3094
- APPROPRIATION AMOUNT: \$300,000.00
- APPROPRIATION REVERSION DATE: June 30, 2025
- Laws of 2023, Chapter 199, Section 28, Paragraph 340
- THREE HUNDRED THOUSAND (\$300,000.00),
- to purchase and equip vehicles for the police department in Alamogordo in Otero county;

The Grantee's total reimbursements shall not exceed THREE HUNDRED THOUSAND \$300,000.00 (the "Appropriation Amount") minus the allocation for Art in Public Places ("AIPP amount"), if applicable, ZERO \$0.00, which equals THREE HUNDRED THOUSAND \$300,000.00 (the "Adjusted Appropriation Amount").

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

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

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

- A. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Project Description, the Grantee shall only be reimbursed monies for which the Department has issued and the Grantee has received a Notice of Department's Obligation to Reimburse Grantee (hereinafter referred to as "Notice of Obligation"). This Grant Agreement and the disbursement of any and all amounts of the above referenced Adjusted Appropriation Amount are expressly conditioned upon the following:
- i. Irrespective of any Notice of Obligation, the Grantee's expenditures shall be made on or before the Reversion Date and, if applicable, an Early Termination Date (i.e., the goods have been delivered and accepted or the title to the goods has been transferred to the Grantee and/or the services have been rendered for the Grantee); and
 - ii. The total amount received by the Grantee shall not exceed the lesser of: (a) the Adjusted Appropriation Amount identified in Article I(A) herein or (b) the total of all amounts stated in the Notice(s) of Obligation evidencing that the Department has received and accepted the Grantee's Third Party Obligation(s), as defined in subparagraph iii of this Article II(A); and
 - iii. The Grantee's expenditures were made pursuant to the State Procurement Code and execution of binding written obligations or purchase orders with third party contractors or vendors for the provision of services, including professional services, or the purchase of tangible personal property and real property for the Project, hereinafter referred to as "Third Party Obligations"; and
 - iv. The Grantee's submittal of timely Requests for Payment in accordance with the procedures set forth in Article IX of this Agreement; and
 - v. In the event that capital assets acquired with Project funds are to be sold, leased, or licensed to or operated by a private entity, the sale, lease, license, or operating agreement:
 - a. must be approved by the applicable oversight entity (if any) in accordance with law; or
 - b. if no oversight entity is required to approve the transaction, the Department must approve the transaction as complying with law.
- Prior to the sale, lease, license, or operating agreement being approved pursuant to Articles II(A)(v)(a) and II(A)(v)(b) herein, the Department may, in its sole and absolute discretion and unless inconsistent with State Board of Finance imposed conditions, reimburse the Grantee for necessary expenditures incurred to develop the Project sufficiently to make the sale, lease, license, or operating agreement commercially feasible, such as plan and design expenditures; and
- vi. Grantee's submission of documentation of all Third Party Obligations and amendments thereto (including terminations) to the Department and the Department's issuance and the Grantee's receiving of a Notice of Obligation for a particular amount in accordance with the terms of this Agreement shall be governed by the following:
 - a. The Grantee shall submit to the Department one copy of all Third Party Obligations and amendments thereto (including terminations) as soon as possible after execution by the Third Party but prior to execution by the Grantee.
 - b. Grantee acknowledges and agrees that if it chooses to enter into a Third Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such obligations.
 - c. The Department may, in its sole and absolute discretion, issue to Grantee a Notice of Obligation for the particular amount of that Third Party Obligation that only obligates the Department to reimburse Grantee's expenditures made on or before the Reversion Date or an Early Termination Date. The current Notice of Obligation form is attached to this Agreement as Exhibit 2.
 - d. The date the Department signs the Notice of Obligation is the date that the Department's Notice of Obligation is effective. After that date, the Grantee is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third Party Obligation and request the Third Party to begin work. Payment for any work performed or goods received prior to the effective date of the Notice of Obligation is wholly and solely the obligation of the Grantee.
- B. The Grantee shall implement, in all respects, the Project. The Grantee shall provide all necessary qualified personnel, material, and facilities to implement the Project. The Grantee shall finance its share (if any) of the costs of the Project, including all Project overruns.
- C. Project funds shall not be used for purposes other than those specified in the Project Description.
- D. Unless specifically allowed by law, Project funds cannot be used to reimburse Grantee for indirect Project costs.

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

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

ARTICLE III. NOTICE PROVISIONS AND GRANTEE AND DEPARTMENT DESIGNATED REPRESENTATIVES

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

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

Grantee: CITY OF ALAMOGORDO
Name: Susan Payne
Title: Mayor
Address: 1376 E Ninth Street, Alamogordo, NM 88310
Email: spayne@ci.alamogordo.nm.us
Telephone: 575-214-0024

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

Grantee: CITY OF ALAMOGORDO
Name: Evelyn Huff
Title: Finance Director
Address: 1376 E. 9th Street, Alamogordo, NM 88310
Email: ehuff@ci.alamogordo.nm.us
Telephone: 575/439-4268

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

Department: DFA/Local Government Division
Name: Maureen Ayers
Title: Program Manager
Address: Bataan Memorial Bldg. Rm 202, Santa Fe, NM 87501
Email: Maureen.Ayesr@dfa.nm.gov
Telephone: 505-470-0977

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

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

- A. As referenced in Article I(A), the applicable law establishes a date by which Project funds must be expended by Grantee, which is referred to throughout the remainder of this Agreement as the "Reversion Date." Upon being duly executed by both parties, this Agreement shall be effective as of the date of execution by the Department. It shall terminate on **June 30, 2025** the Reversion Date unless Terminated Before Reversion Date ("Early Termination") pursuant to Article V herein.
- B. The Project's funds must be expended on or before the Reversion Date and, if applicable, Early Termination Date of this Agreement. For purposes of this Agreement, it is not sufficient for the Grantee to encumber the Project funds on its books on or before the Project's Reversion Date or Early Termination Date. Funds are expended and an expenditure has occurred as of the date that a particular quantity of goods are delivered to and received by the Grantee or title to the goods is transferred to the Grantee and/or as of the date particular services are rendered for the Grantee. Funds are not expended and an expenditure has not occurred as of the date they are encumbered by the Grantee pursuant to a contract or purchase order with a third party.

ARTICLE V. EARLY TERMINATION

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

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

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

B. Early Termination Before Reversion Date Due to Non-appropriation

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

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

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

ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS

- A. The Department may choose, in its sole and absolute discretion, to provide written notice to the Grantee to suspend entering into new and further obligations. Upon the receipt of such written notice by the Grantee:
- i. The Grantee shall immediately suspend entering into new or further written obligations with third parties; and
 - ii. The Department will suspend the issuance of any new or further Notice of Obligation under this Agreement; and
 - iii. The Department may direct the Grantee to implement a corrective action plan in accordance with Article VI(D) herein.
- B. In the event of Suspension of this Agreement, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth in Article II herein.
- C. A suspension of new or further obligations under this Agreement shall remain in effect unless or until the date the Grantee receives written notice given by the Department informing the Grantee that the Suspension has been lifted or that the Agreement has been Early Terminated in accordance with Article V herein. If the Suspension is lifted, the Department will consider further requests for Notice of Obligation.

D. Corrective Action Plan in the Event of Suspension

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

ARTICLE VII. AMENDMENT

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

ARTICLE VIII. REPORTS

A. Reporting

The Grantee shall report quarterly Project activity by entering such Project information as the Department and the Department of Finance and Administration may require, such information entered directly into a database maintained by the Department of Finance and Administration (Budget & Formulation Management System). Additionally, the Grantee shall certify on the Request for Payment form (Exhibit 1) that updates have been maintained and are current in the database. The Grantee hereby acknowledges that failure to perform and/or certify updates into the database will delay or potentially jeopardize the reimbursement of funds. The Department shall give Grantee a minimum of thirty (30) days advance written notice of any changes to the information the Grantee is required to report.

Quarterly reports shall be due on the last day of the month, that is 30 days prior to the end of the quarter following execution of this Agreement by the Department and ending during the quarter of the submission of the final request for reimbursement for the Project, or the following quarter.

B. Requests for Additional Information/Project Inspection

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

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

ARTICLE IX. REQUEST FOR PAYMENT PROCEDURES AND DEADLINES

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

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

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

C. Deadlines

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

- i. Immediately as they are received by the Grantee but at a minimum thirty (30) days from when the expenditure was incurred or liability of the Grantee was approved as evidenced by an unpaid invoice received by the Grantee from a third party contractor or vendor; or
- ii. Twenty (20) days from date of Early Termination; or
- iii. Twenty (20) days from the Reversion Date.

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

ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS; REPRESENTATIONS AND WARRANTIES

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

- i. The Project's funds must be spent in accordance with all applicable state laws, regulations, policies, and guidelines, including, but not limited to, the State Procurement Code (or local procurement ordinance, where applicable).
- ii. The Project must be implemented in accordance with the New Mexico Public Works Minimum Wage Act, Section 13-4-10 through 13-4-17 NMSA 1978, as applicable. Every contract or project in excess of sixty thousand dollars (\$60,000) that the Grantee is a party to for construction, alteration, demolition or repair or any combination of these, including painting and decorating, of public buildings, public works or public roads and that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics, shall be based upon the wages and benefits that will be determined by the New Mexico Department of Workforce Solutions to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the locality. Further, every contract or project shall contain a stipulation that the contractor, subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates and fringe benefit rates not less than those determined pursuant to Section 13-4-11 (B) NMSA 1978 to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.
- iii. The Project may only benefit private entities in accordance with applicable law, including, but not limited to, Article IX, Section 14 of the Constitution of the State of New Mexico, the "Anti-Donation Clause."
- iv. The Grantee shall not for a period of 10 years from the date of this agreement convert any property acquired, built, renovated, repaired, designed or developed with the Project's funds to uses other than those specified in the Project Description without the Department's and the Board of Finance's express, advance, written approval, which may include a requirement to reimburse the State for the cost of the project, transfer proceeds from the disposition of property to the State, or otherwise provide consideration to the State.
- v. The Grantee shall comply with all federal and state laws, rules and regulations pertaining to equal employment opportunity. In accordance with all such laws, rules and regulations the Grantee agrees to assure that no person shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with Grantee, be excluded from participation in the Project, be denied benefits or otherwise be subject to discrimination under, any activity performed under this Agreement. If Grantee is found to be not in compliance with these requirements during the life of this Agreement, Grantee agrees to take appropriate steps to correct any deficiencies. The Grantee's failure to implement such appropriate steps within a reasonable time constitutes grounds for terminating this Agreement.

B. The Grantee hereby represents and warrants the following:

- i. The Grantee has the legal authority to receive and expend the Project's funds.
- ii. This Agreement has been duly authorized by the Grantee, the person executing this Agreement has authority to do so, and, once executed by the Grantee, this Agreement shall constitute a binding obligation of the Grantee, enforceable according to its terms.
- iii. This Agreement and the Grantee's obligations hereunder do not conflict with any law or ordinance or resolution applicable to the Grantee, the Grantee's charter (if applicable), or any judgment or decree to which the Grantee is subject.
- iv. The Grantee has independently confirmed that the Project Description, including, but not limited to, the amount and Reversion Date, is consistent with the underlying appropriation in law.
- v. The Grantee's governing body has duly adopted or passed as an official act a resolution, motion, or similar action authorizing the person identified as the official representative of the Grantee to sign the Agreement and to sign Requests for Payment.
- vi. The Grantee shall abide by New Mexico laws regarding conflicts of interest, governmental conduct and whistleblower protection. The Grantee specifically agrees that no officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this Grant, during their tenure or for one year thereafter, shall have any interest, direct or

indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed or goods to be received, pursuant to this Grant. Further, Grantee shall require all of its contractors to incorporate in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.

- vii. No funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of this or any agency or body in connection with the awarding of any Third Party Obligation and that the Grantee shall require certifying language prohibiting lobbying to be included in the award documents for all subawards, including subcontracts, loans and cooperative agreements. All subrecipients shall be required to certify accordingly.

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

- A. Grantee shall be strictly accountable for receipts and disbursements relating to the Project's funds. The Grantee shall follow generally accepted accounting principles, and, if feasible, maintain a separate bank account or fund with a separate organizational code, for the funds to assure separate budgeting and accounting of the funds.
- B. For a period of six (6) years following the Project's completion, the Grantee shall maintain all Project related records, including, but not limited to, all financial records, requests for proposals, invitations to bid, selection and award criteria, contracts and subcontracts, advertisements, minutes of pertinent meetings, as well as records sufficient to fully account for the amount and disposition of the total funds from all sources budgeted for the Project, the purpose for which such funds were used, and such other records as the Department shall prescribe.
- C. Grantee shall make all Project records available to the Department, the Department of Finance and Administration, and the New Mexico State Auditor upon request. With respect to the funds that are the subject of this Agreement, if the State Auditor or the Department of Finance and Administration finds that any or all of these funds were improperly expended, the Grantee may be required to reimburse to the State of New Mexico, to the originating fund, any and all amounts found to be improperly expended.

ARTICLE XII. IMPROPERLY REIMBURSED FUNDS

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

ARTICLE XIII. LIABILITY

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to immunities and limitations of the New Mexico Tort Claims Act.

ARTICLE XIV. SCOPE OF AGREEMENT

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

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

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

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

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

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

“This contract is funded in whole or in part by funds made available under a DFA/LGD Grant Agreement. Should the DFA/LGD early terminate the grant agreement, the CITY OF ALAMOGORDO may early terminate this contract by providing Contractor written notice of such termination. In the event of termination pursuant to this paragraph, the CITY OF ALAMOGORDO only liability shall be to pay Contractor for acceptable goods delivered and services rendered before the termination date.”

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

XVII. COMPLIANCE WITH UNIFORM FUNDING CRITERIA.

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

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

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

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

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

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

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

C. Grantee acknowledges and agrees that this Agreement is subject to the SBOF's Bond Project Disbursements rule, NMAC 2.61.6, as may be amended or re-codified. The rule provides definitions and interpretations of grant language for the purpose of determining whether a particular activity is allowable under the authorizing language of the agreement.

[THIS SPACE LEFT BLANK INTENTIONALLY]

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

GRANTEE

Signature of Official with Authority to Bind Grantee

Entity Name

By: _____
(Type or Print Name)

Its: _____
(Type or Print Title)

Date

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

By:

Its: Division Director

Date

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

I. Grantee Information

(Make sure information is complete & accurate)

- A. Grantee: _____
- B. Address: _____
(Complete Mailing, including Suite, if applicable)

City, State, Zip
- C. Contact Name/Phone #: _____
- D. Grant No: _____
- E. Project Title: _____
- F. Grant Expiration Date: _____

II. Payment Computation

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

III. Fiscal Year : _____

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

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

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

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

Grantee Representative

Printed Name

Date: _____

Printed Name

Date: _____

(State Agency Use Only)

Vendor Code: _____ Fund No.: _____ Loc No.: _____

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

Division Fiscal Officer Date

Division Project Manager Date

NOTICE OF OBLIGATION TO REIMBURSE GRANTEE
EXHIBIT 2

Notice of Obligation to Reimburse Grantee # _____

DATE: _____

TO: Department Representative: _____, _____

FROM: Grantee Entity: _____

Grantee Official Representative: _____

SUBJECT: Notice of Obligation to Reimburse Grantee

Grant Number: _____

Grant Termination Date: _____

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

Vendor or Contractor: _____

Third Party Obligation Amount: _____

Vendor or Contractor: _____

Third Party Obligation Amount: _____

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

Grant Amount (Minus AIPP if applicable): _____

The Amount of this Notice of Obligation: _____

The Total Amount of all Previously Issued Notices of Obligation: _____

The Total Amount of all Notices of Obligation to Date: _____

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

Department Rep. Approver: _____

Title: _____

Signature: _____

Date: _____

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

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 9/26/2023

Report Date: 09/21/2023

Report No: 6.

Submitted By: Kim Torres

Subject: Consider, and act upon, approval of the At-Will Contract for Ricky D. Holden, as City Manager.
(Kim Torres, Human Resources Director)

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation: Approve.

Background: On September 12, 2023, the Commission approved selecting Ricky D. Holden as City Manager and allowed Human Resources and the City Attorney to begin contract negotiations. The contract has been negotiated and signed by all applicable parties.

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT, entered into this 13th day of September 2023, between the CITY OF ALAMOGORDO, a New Mexico municipal corporation (“City”), and RICKY D. HOLDEN (“City Manager”), both of whom understand as follows:

City desires to employ the services of Ricky D. Holden as City Manager of the City of Alamogordo, New Mexico, as provided in Section 2.03-055 through Section 2.03-120, *Code of Ordinances of the City of Alamogordo, New Mexico*; Article XI, Charter for the City of Alamogordo, New Mexico, and, Article 14, Chapter 3 NMSA 1978, as amended, and;

It is the desire of the City:

1. To provide certain benefits, establish certain conditions of employment, and set working conditions for the City Manager; and
2. Secure and retain the services of the City Manager and provide inducement to remain in such employment; and
3. Make positive full work productivity by assuring the City Manager’s morale and peace of mind with respect to future security; and
4. Act as a deterrent against malfeasance or dishonesty for personal gain on the part of the City Manager; and
5. Provide a means for terminating City Manager service at such time as City Manager may be unable fully to discharge duties due to disability or when City may otherwise desire to terminate employment; and

It is the desire of Ricky D. Holden to accept employment as the City Manager of the City;

Now, therefore, in consideration of the mutual covenants here contained, the parties agree as follows:

Section 1. Duties and Other Requirements:

(a) Duties. On the terms and subject to the conditions stated in this Agreement, City agrees to employ and Ricky D. Holden hereby accepts employment as the City Manager of the City to perform the functions and duties of that office as outlined in the *City of Alamogordo Charter, Code of Ordinances* and New Mexico Statutes Annotated, the official job description for the position of City Manager, the City of Alamogordo Employee Manual, and to perform other legally permissible duties and functions as the City Commission shall from time to time assign. The City

Manager shall devote full attention and effort to the office and perform the mentioned duties and functions in a professional manner.

Section 2. Status and Term.

- (a) The City Manager shall serve for an indefinite term at the pleasure of the City Commission and shall be considered an at-will employee of the City.
- (b) Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the City Commission to terminate the employment of the City Manager at any time, subject only to the provisions set forth in Section 4, paragraph (a), (b) and (c) of this Agreement.
- (c) Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the City Manager to resign at any time from City employment, subject only to the provisions set forth in Section 4, paragraph (d), of this Agreement.
- (d) The City Manager agrees to remain in the exclusive employ of City for an indefinite period and shall neither accept other employment nor become employed by any other employer without the prior written approval of the City Commission until notice of resignation is given.
- (e) The first date on which the City Manager is required to provide professional services on behalf of the City pursuant to this Agreement shall be November 27, 2023.

The term “employed” (and derivations of that term as used in the preceding paragraph) shall include employment by another legal entity or self-employment; however, shall not be construed to include occasional teaching, writing, consulting, or military reserve service performed on the City Manager’s time off, and with the advance approval of the City Commission.

Section 3. Administrative Leave. City Commission may place the City Manager on Administrative Leave with full pay and benefits at any time during the term of this Agreement.

Section 4. Termination and Severance Pay.

- (a) Except as provided in subsection (b), in the event the City Commission terminates the employment of the City Manager, and during such time the City Manager is willing and able to perform assigned duties under this Agreement, the City shall:
 - 1. Pay to the City Manager a severance payment equal to salary payments which the City Manager would have been receiving over a six (6) month period at the City Manager’s current rate of pay in effect on the day prior to

the date of termination. The current rate of pay does not include any acting or overlay pay that City Manager may be receiving.

2. For the sixty (60) calendar days after the date of termination the City shall maintain and pay for medical, dental, and basic life insurance in such amounts and on such terms as have been received by the City Manager and the City Manager's dependents at the time of such termination; however, no other or additional benefits shall accrue during this sixty (60) calendar day period. This may be accomplished either by the City continuing the current coverage, or if such coverage is not available, the employee receiving COBRA coverage. If COBRA is elected then the City Manager must enroll in said coverage and provide the City with the COBRA invoice within five (5) days of its receipt.
3. Pay any PTO benefit accrued by the employee pursuant to the limits set forth in the City's Employee Manual at the time of termination.

Such payment shall fully and finally release the City from any and all further obligations to the City Manager under this Agreement. Any severance shall be paid in a lump sum within ten (10) days of termination unless otherwise agreed to by the City and the City Manager.

(b)

(1) Notwithstanding subsection (a) above, the following reasons shall constitute grounds to terminate the employment of the City Manager without severance pay:

- (i) A breach of this agreement or repeated neglect by City Manager to perform required duties;
- (ii) Conviction of any criminal act relating to employment with the City;
- (iii) Conduct which while not necessarily criminal in nature, violates the City's established work rules or standards of conduct in a substantial manner;
- (iv) Conviction of a felony.

(2) Prior to the time that the City Commission terminates the City Manager without severance pay for any of the reasons set forth in Section (b)(1) above, and only in that case, the City Commission shall provide the City Manager with written notice of proposed termination which contains the factual basis for such action. Within seven (7) days of such notice, the City Manager may request an opportunity to respond to the factual basis provided by the City Commission. If such a request to respond is made, the City Commission shall conduct a meeting, which may be informal in nature, at which the City Manager may respond to the notice of proposed termination. At such meeting, the City Manager may be represented by an attorney to present evidence or information relevant to the reasons and factual basis

set forth in the notice of proposed termination. If such an attorney is present, then the City Commission may, at their discretion, require the City's attorney to be present as well. Subsequently, the decision of the City Commission as to whether reasons set forth in Section (b) (1) exist or do not exist shall be final as between the City and the City Manager.

(c) In the event the City, at any time during the term of this Agreement, reduces the salary of the City Manager from its then current year level, except as part of an across-the-board reduction for all employees of the City, or in the event City refuses, following written notice, to extend to the City Manager any non-salary benefit customarily available to all employees, the City Manager may exercise such option to be considered terminated within the meaning and context of the severance pay provision in paragraph (a) above. This section is not applicable when City Manager's pay is reduced as part of a suspension as a result of a disciplinary or corrective action.

(d) In the event the City Manager resigns following a suggestion, whether formal or informal, by the City Commission that the City Manager's resignation is desired, then, the City Manager may, at City Manager's option, be deemed to be "terminated" at the date of such suggestion of resignation within the meaning and context of the severance pay provision in paragraph (a) above; provided that such option to be deemed terminated must be exercised by written notice from the City Manager to the City Commission within three (3) working days of notification of such suggestion of resignation. In that event, the severance payment shall be calculated from the date the City Manager is deemed terminated.

(e) In the event the City Manager voluntarily resigns from City employment, the City Manager shall give City Commission written notice at least four (4) weeks prior to the last work day, unless the City Manager and the City Commission otherwise agree. Unless there is agreement to the contrary, and notwithstanding any provision or provisions of the City of Alamogordo Employee Manual to the contrary, if the City Manager fails to provide such notice to the City Commission, the City Manager forfeits any right to accrued benefits for PTO pay.

(f) It is understood that after notice of termination in any form the City Manager and City will cooperate to provide for an orderly transition. Specific responsibilities during such transition may be specified in a written separation agreement.

Section 5. Disability. If City Manager is totally disabled or otherwise unable to perform City Manager duties because of sickness, accident, injury, mental incapacity or ill health, the City Manager shall be eligible for leave in accordance with applicable State and Federal laws. This leave will be unpaid unless there is sufficient leave balances in the City Manager's leave bank. If the City

Manager is unable to return to work at that time, City shall have the option to terminate the employment of the City Manager, subject to the requirements imposed on the City by Section 4, paragraph (a) and any State or Federal law requirements.

Section 6. Performance Evaluation. The City Commission shall review and evaluate in writing the performance of the City Manager at least once annually.

Section 7. Salary. City agrees to pay City Manager for services rendered pursuant to this agreement in accordance with the City's classification plan or ordinances enacted from time to time that govern such compensation. Initial salary shall be \$121,375.90. payable on the same schedule that City pays other exempt employees. This Agreement shall be automatically amended to reflect any salary adjustments that may be provided. When calculating City Manager annual salary, any acting or overlay pay shall not be considered as a part of the regular base salary.

Section 8. Other Benefits.

- (a) All applicable provisions of the City of Alamogordo "Employee Manual" as they may be amended from time to time, shall apply to the City Manager as they would to other employees of the City, except as the terms and conditions of this Agreement may preclude them or modify them. In recognition of the many hours worked beyond the normal work week, the City Manager shall receive ten (10) days of executive leave to be taken by the City Manager in each fiscal year. This leave will be prorated based on the effective date of this contract. Executive leave may not be carried over, nor may it be converted to cash upon termination or resignation. The City will pay 100% of the lowest available cost of health, dental, and basic life coverage under the City's group insurance policy for Employee and eligible family. If insurance is not elected, or partial coverage is elected, the City will pay the difference between an amount equivalent to the lowest available cost of family group coverage under the City's group insurance policy and the elected benefit into Ricky D. Holden's deferred compensation plan available through the City.

The maximum contribution amount placed into the deferred compensation plan each year will be determined by the maximums allowed for a 457 deferred compensation plan as determined by the IRS. Insurance costs that exceed the annual contribution amount allowable will be forfeited. Any amount placed into deferred compensation will be reduced by any mandatory taxes or deductions.

The City Manager will be eligible to participate at City Manager's own expense, in the City's Deferred Compensation Plan and/or any other benefit offered to other City employees. As an employee of an affiliated public employer, the City Manager is required to become a member of the New Mexico Public Employees Retirement Association.

- (b) City shall provide City Manager a City vehicle for use in the course of employment including commuting or other incidental personal use. The City shall be responsible for paying liability, property damage, and comprehensive insurance, and for the purchase,

operation, maintenance, repair and regular, reasonable replacement of the vehicle. Under the Internal Revenue Service commuting Rule, some vehicles may be taxable. The City Manager shall remain eligible for travel per diem for any city related travel per the City's Travel Policy; however, eligibility under this policy shall be limited to City related travel outside the Otero County area. Such payment will be subject to applicable withholding taxes.

Section 9. Professional Development. Subject to appropriation of the necessary funds by the City Commission, the City Manager shall receive paid leave, plus registration, travel and reasonable expenses for conferences and seminars that are necessary for professional development and, in the judgment of the City Commission, for the good of the City, and subject to established travel policies and procedures.

Section 10. Financial Disclosure and Conflict of Interest. The City Manager shall comply with provisions in the New Mexico Governmental Conduct Act. These provisions include standards for ethical behavior and financial conflicts of interest for public employees. The City Manager shall also comply with provisions of Section 7-2, Code of Ethics and Conflict of Interest, of the Alamogordo Employee Manual.

Section 11. Bonding. City shall bear the full cost of any fidelity or other bonds required of the City Manager under any law or ordinances.

Section 12. Notices. Notices pursuant to this Agreement shall be considered given by deposit in the custody of the United States Postal Service, certified mail, postage prepaid, addressed to the City Manager's Office, 1376 E. Ninth Street, Alamogordo, New Mexico 88310, and to the City Manager's home address on file in the Human Resources Department. Alternatively, notices required pursuant to this Agreement may be personally served or served in the same manner as is applicable to civil suits in the State of New Mexico. Notice shall be deemed given as of the date of personal service or as of the date of mailing.

Section 13. Entire Agreement; Amendment; Waiver. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes all prior or contemporaneous communications, negotiations, and agreements, written or oral, regarding the subject matter hereto. No modification of or amendment or waiver to this Agreement will be effective unless in writing and signed by each of the parties. Where provisions of this contract conflict with those of the Employee Manual, the provisions of this contract shall control.

Section 14. General Provisions.

(a) If any provision, or a portion of any provision, contained in this Agreement is held unconstitutional, invalid, or unenforceable, the remainder of this Agreement, or any portion of it, shall be deemed severable, shall not be affected and shall remain in full force and effect.

(b) This agreement shall be construed in accordance with the laws of the State of New Mexico and the United States of America.

(c) No presumption shall exist in favor of or against any party to this Agreement as a result of the drafting and preparation of this document.

(d) No waiver of any breach by either party of the terms of this Agreement shall be deemed a waiver of any subsequent breach of the Agreement.

IN WITNESS, the City of Alamogordo has caused this Agreement to be signed and executed on its behalf by its Mayor and duly attested by its City Clerk, and the City Attorney has signed and executed this Agreement the day and year first above written.

CITY OF ALAMOGORDO, NEW MEXICO
a New Mexico municipal corporation

By: *Susan L Payne*
[Susan L Payne \(Sep 13, 2023 17:46 MDT\)](#)
Susan L. Payne, City Mayor

By: *Ricky D. Holden*
[Ricky D. Holden \(Sep 13, 2023 10:11 CDT\)](#)
Ricky D. Holden, City Manager

ATTEST:

Rachel Hughes

Rachel Hughes, City Clerk



APPROVED AS TO FORM:

Ashley Smith
[Ashley Smith \(Sep 13, 2023 08:39 MDT\)](#)
Ashley Smith, City Attorney

Employment Agreement – Ricky D. Holden
Page 7 of 7

RDH
[RDH](#)
Initials

AT WILL CONTRACT DRAFT Holden, Ricky D. 9.1.2023

Final Audit Report

2023-09-14

Created:	2023-09-13
By:	Kim Torres (ktores@ci.alamogordo.nm.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAAkpugNocWKS-iTFh4ioMYIAhHTbmE0SOI

"AT WILL CONTRACT DRAFT Holden, Ricky D. 9.1.2023" History

-  Document created by Kim Torres (ktores@ci.alamogordo.nm.us)
2023-09-13 - 1:52:23 PM GMT
-  Document emailed to Ashley Smith (ashsmith@ci.alamogordo.nm.us) for signature
2023-09-13 - 2:03:04 PM GMT
-  Email viewed by Ashley Smith (ashsmith@ci.alamogordo.nm.us)
2023-09-13 - 2:37:46 PM GMT
-  Document e-signed by Ashley Smith (ashsmith@ci.alamogordo.nm.us)
Signature Date: 2023-09-13 - 2:39:31 PM GMT - Time Source: server
-  Document emailed to rickydh55@outlook.com for signature
2023-09-13 - 2:39:33 PM GMT
-  Email viewed by rickydh55@outlook.com
2023-09-13 - 3:07:26 PM GMT
-  Signer rickydh55@outlook.com entered name at signing as Ricky D. Holden
2023-09-13 - 3:11:02 PM GMT
-  Document e-signed by Ricky D. Holden (rickydh55@outlook.com)
Signature Date: 2023-09-13 - 3:11:04 PM GMT - Time Source: server
-  Document emailed to spayne@ci.alamogordo.nm.us for signature
2023-09-13 - 3:11:05 PM GMT
-  Email viewed by spayne@ci.alamogordo.nm.us
2023-09-13 - 11:45:54 PM GMT

 Signer spayne@ci.alamogordo.nm.us entered name at signing as Susan L Payne

2023-09-13 - 11:46:47 PM GMT

 Document e-signed by Susan L Payne (spayne@ci.alamogordo.nm.us)

Signature Date: 2023-09-13 - 11:46:49 PM GMT - Time Source: server

 Document emailed to Rachel Hughs (rhughs@ci.alamogordo.nm.us) for signature

2023-09-13 - 11:46:50 PM GMT

 Email viewed by Rachel Hughs (rhughs@ci.alamogordo.nm.us)

2023-09-14 - 1:59:25 PM GMT

 Document e-signed by Rachel Hughs (rhughs@ci.alamogordo.nm.us)

Signature Date: 2023-09-14 - 2:19:25 PM GMT - Time Source: server

 Agreement completed.

2023-09-14 - 2:19:25 PM GMT

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 9/26/2023

Report Date: 09/19/2023

Report No: 7.

Submitted By: Sean McGranaghan

Subject: Consider, and act upon, the final plat for Case S-2023-0024(A), Replat B Pruitt Subdivision of Lot 1A Pruitt Subdivision. (*Stella Rael, City Planner*)

Fiscal Impact:

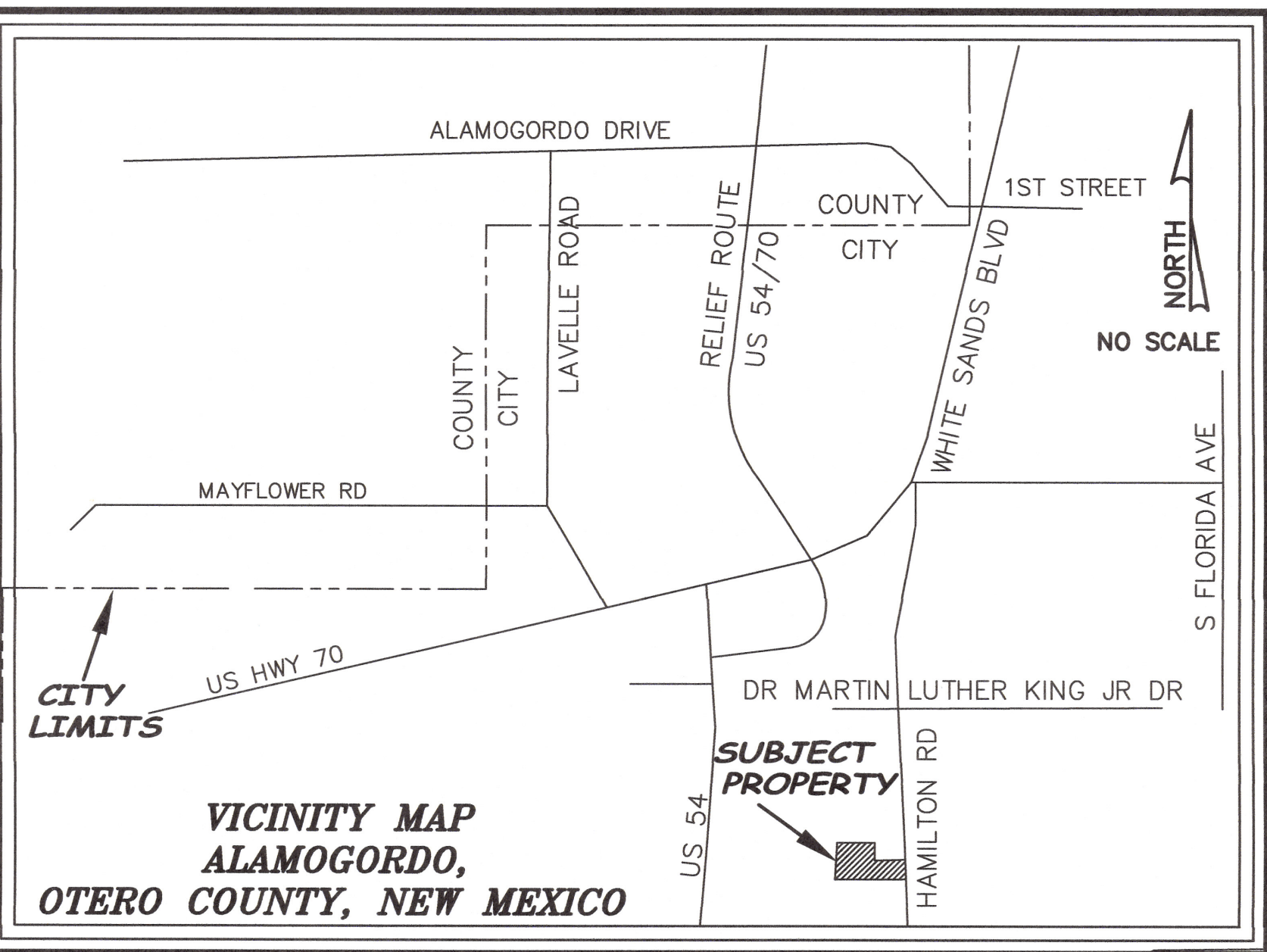
Amount Budgeted:

Fund:

Additional Fiscal Impact: N/A

Recommendation: Approve Final Plat

Background: Consider, and act upon, the final plat for Case S-2023-0024(A), Replat B Pruitt Subdivision of Lot 1A Pruitt Subdivision.



REPLAT B
PRUIETT SUBDIVISION
AN EXEMPTED SUBDIVISION OF LOT 1A, PRUIETT SUBDIVISION
ALAMOGORDO, OTERO COUNTY, NEW MEXICO
JULY 2023

BASIS OF BEARING:
N19°42'58"E
BETWEEN FOUND CITY OF ALAMOGORDO
CONTROL SURVEY MONUMENTS "ALAMOIR"
AND "DUKE 1994," MODIFIED STATE PLANE
GRID COORDINATES, NAD83
ALAMOIR: N 889,500.98
E 1,718,270.30
DUKE 1994: N 697,617.10
E 1,728,346.24

DOCUMENTS OF RECORD:
WARRANTY DEED TO
BRIAN LOWELL STAGNER & CYNTHIA LAUREN STAGNER
FILED FOR RECORD JULY 1, 2020
BY INSTRUMENT 202005464

REPLAT A, PRUIETT SUBDIVISION
FILED FOR RECORD FEBRUARY 23, 2009
BY INSTRUMENT 200901637

DEDICATION
STATE OF NEW MEXICO)
COUNTY OF OTERO)

KNOW ALL PEOPLE BY THESE PRESENTS THAT BRIAN LOWELL STAGNER & CYNTHIA LAUREN STAGNER ARE THE OWNERS AND PROPRIETORS OF LOT 1A, REPLAT A, PRUIETT SUBDIVISION (R019311), CITY OF ALAMOGORDO, OTERO COUNTY, NEW MEXICO, LYING GENERALLY WEST OF HAMILTON ROAD AND SAID OWNERS HEREWITH CLAIM AN EXEMPTION FROM THE CITY OF ALAMOGORDO SUBDIVISION REGULATIONS AND CERTIFY THIS TRANSACTION INVOLVES:

DEFINITIONS. SUBDIVISION. (3) .DOES NOT INCLUDE: a. THE DIVISION OF LAND TO CREATE A PARCEL THAT IS SOLD OR DONATED AS A GIFT TO AN IMMEDIATE FAMILY MEMBER; HOWEVER, THIS EXCEPTION SHALL BE LIMITED TO ALLOW THE SELLER OR DONOR TO SELL OR GIVE NO MORE THAN ONE PARCEL PER TRACT OF LAND PER IMMEDIATE FAMILY MEMBER. AS USED HEREIN THE TERM 'IMMEDIATE FAMILY MEMBER' MEANS A HUSBAND, WIFE, FATHER, STEPFATHER, MOTHER, STEPMOTHER, BROTHER, STEPBROTHER, SISTER, STEPSISTER, SON, STEPSON, DAUGHTER, STEPDAUGHTER, GRANDSON, STEP GRANDSON, GRANDDAUGHTER, STEP GRANDDAUGHTER, NEPHEW, NIECE, WETHER RELATED BY BIRTH OR ADOPTION.

SAID OWNERS DO HEREBY DIVIDE THE PARCEL AS SHOWN HEREON USING THE EXEMPTED SUBDIVISION PROCEDURE OF THE CITY OF ALAMOGORDO SUBDIVISION REGULATIONS AND IN THE RECORDING OF THIS PLAT, SAID OWNERS AND PROPRIETORS HEREBY CAUSE SAID LOTS TO BE VACATED AND REPLATTED AS SHOWN ON THIS PLAT AND DO CAUSE ALL THE ROADS AND EASEMENTS, IF ANY, WITHIN THE BOUNDS OF THE ABOVE DESCRIBED TRACTS OF LAND TO BE DEDICATED FOR THE PURPOSES SHOWN HEREON. THIS PLAT IS MADE WITH THE FREE CONSENT AND IN ACCORDANCE WITH THE DESIRES OF THE UNDERSIGNED OWNERS AND PROPRIETORS OF SAID TRACTS OF LAND.

IN WITNESS THEREOF SAID OWNERS HAVE SET THEIR HANDS AND SEALS ON THIS 25th DAY

OF August, 2023.

Brian Stagner
BRIAN LOWELL STAGNER

Cynthia Stagner
CYNTHIA LAUREN STAGNER

ACKNOWLEDGMENT

STATE OF NEW MEXICO)
COUNTY OF OTERO)

THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME ON THIS 25th DAY OF August, 2023, BY BRIAN LOWELL STAGNER & CYNTHIA LAUREN STAGNER. WITNESS MY HAND AND SEAL ON THIS DAY AND YEAR LAST WRITTEN ABOVE.

State of New Mexico
Notary Public
Cheryl Lee Sandenaw
Commission Number 1058546
Expiration Date 9/09/2026

MY COMMISSION EXPIRES 9/9/26

PUBLIC UTILITY EASEMENTS SHOWN ON THIS PLAT ARE GRANTED FOR THE COMMON AND JOINT USE OF PNM PUBLIC SERVICE COMPANY OF NEW MEXICO, AN ELECTRIC SERVICE COMPANY, FOR INSTALLATION, MAINTENANCE, AND SERVICE OF OVERHEAD AND UNDERGROUND ELECTRICAL LINES, TRANSFORMERS, AND OTHER EQUIPMENT AND RELATED FACILITIES REASONABLY NECESSARY TO PROVIDE ELECTRICAL SERVICES; THE TELEPHONE COMPANY FOR THE INSTALLATION, MAINTENANCE, AND SERVICE OF SUCH LINES, CABLE, AND OTHER RELATED EQUIPMENT AND FACILITIES REASONABLY NECESSARY TO PROVIDE COMMUNICATION SERVICES; THE NATURAL GAS COMPANY FOR THE INSTALLATION, MAINTENANCE, AND SERVICE OF SUCH LINES, METERS, AND OTHER RELATED EQUIPMENT AND FACILITIES REASONABLY NECESSARY TO PROVIDE NATURAL GAS SERVICES; AND THE CABLE COMPANY FOR THE INSTALLATION, MAINTENANCE, AND SERVICE OF SUCH LINES, CABLE, AND OTHER RELATED EQUIPMENT AND FACILITIES REASONABLY NECESSARY TO PROVIDE CABLE SERVICES.

INCLUDED, IS THE RIGHT TO BUILD, REBUILD, CONSTRUCT, RECONSTRUCT, LOCATE, RELOCATE, WITHIN THE EASEMENT, CHANGE, REMOVE, REPLACE, MODIFY, RENEW, OPERATE AND MAINTAIN FACILITIES FOR PURPOSES DESCRIBED ABOVE, TOGETHER WITH FREE ACCESS TO, FROM, AND OVER SAID EASEMENTS, WITH THE RIGHT AND PRIVILEGE OF GOING UPON, OVER AND ACROSS ADJOINING LANDS OF GRANTOR FOR THE PURPOSES SET FORTH HEREIN AND WITH THE RIGHT TO UTILIZE THE RIGHT OF WAY AND EASEMENT TO EXTEND SERVICES TO CUSTOMER OF GRANTEE, INCLUDING SUFFICIENT WORKING AREA SPACE FOR ELECTRIC TRANSFORMERS, WITH THE RIGHT AND PRIVILEGE TO TRIM AND REMOVE TREES, SHRUBS OR BUSHES WHICH INTERFERE WITH THE PURPOSES SET FORTH HEREIN. NO BUILDING, SIGN, POOL (ABOVEGROUND OR SUBSURFACE), HOT TUB, CONCRETE OR WOOD POOL DECKING, OR OTHER STRUCTURE SHALL BE ERRECTED OR CONSTRUCTED ON SAID EASEMENTS, NOR SHALL ANY WELL BE DRILLED OR OPERATED THEREON. PROPERTY OWNERS SHALL BE SOLELY RESPONSIBLE FOR CORRECTING ANY VIOLATIONS OF NATIONAL ELECTRICAL SAFETY CODE BY CONSTRUCTION OF POOLS, DECKING, OR ANY STRUCTURES ADJACENT TO OR NEAR EASEMENTS SHOWN ON THIS PLAT. EASEMENTS FOR ELECTRIC TRANSFORMERS/SWITCH GEAR, AS INSTALLED SHALL EXTEND TEN (10) FEET IN FRONT OF TRANSFORMERS/SWITCH GEAR DOORS AND FIVE (5) FEET ON EACH SIDE.

APPROVALS

New Mexico Gas Company GAS COMPANY

BY: Holly Opelad DATE: 8/3/2023

ELECTRIC SERVICE COMPANY

BY: Daniel Aragon DATE: 8/02/2023

TELEPHONE SERVICE COMPANY

BY: _____ DATE: _____

TDS CABLE TELEVISION PROVIDER

BY: PLP DATE: 8/9/23

APPROVAL BY THE CITY OF ALAMOGORDO

THIS PLAT OF SURVEY AND CLAIM OF EXEMPTION, WITHIN THE CORPORATE LIMITS OF THE CITY OF ALAMOGORDO,

OTERO COUNTY, NEW MEXICO IS ON THIS _____ DAY OF _____, 2023, HEREBY SUBMITTED AND APPROVED.

CITY MANAGER

ATTEST: CITY CLERK

FILING

STATE OF NEW MEXICO)

COUNTY OF OTERO)

RECORDED IN THE OFFICE OF THE COUNTY CLERK AND EX-OFFICIO RECORDER OF OTERO COUNTY, NEW

MEXICO, AT _____ O'CLOCK, ____M., THIS _____ DAY OF _____, 2023

COUNTY CLERK

BY _____

RECEPTION NO. _____ INSTRUMENT RECORD # _____

CSS Proj. No. 23-863

Sheet 1 of 1

Construction Surveying Services
PO Box 2295, Alamogordo, NM 88311
(575) 443-6202 FAX (575) 443-1151

SURVEYOR'S CERTIFICATE

I, STEVEN J. SANDOVAL, A NEW MEXICO REGISTERED PROFESSIONAL SURVEYOR, CERTIFY THAT I CONDUCTED AND AM RESPONSIBLE FOR THIS SURVEY, THAT THIS SURVEY IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF, AND THAT THIS SURVEY AND PLAT MEET THE MINIMUM STANDARDS FOR SURVEYING IN NEW MEXICO.

STEVEN J. SANDOVAL NMPS NO. 12351

DATE

July 26, 2023





City of Alamogordo

City Commission



S-2023-0024(A)

Stella Rael, City Planner
September 26, 2023

Zoning Request Case: S-2023-0024(A)

2

Request:

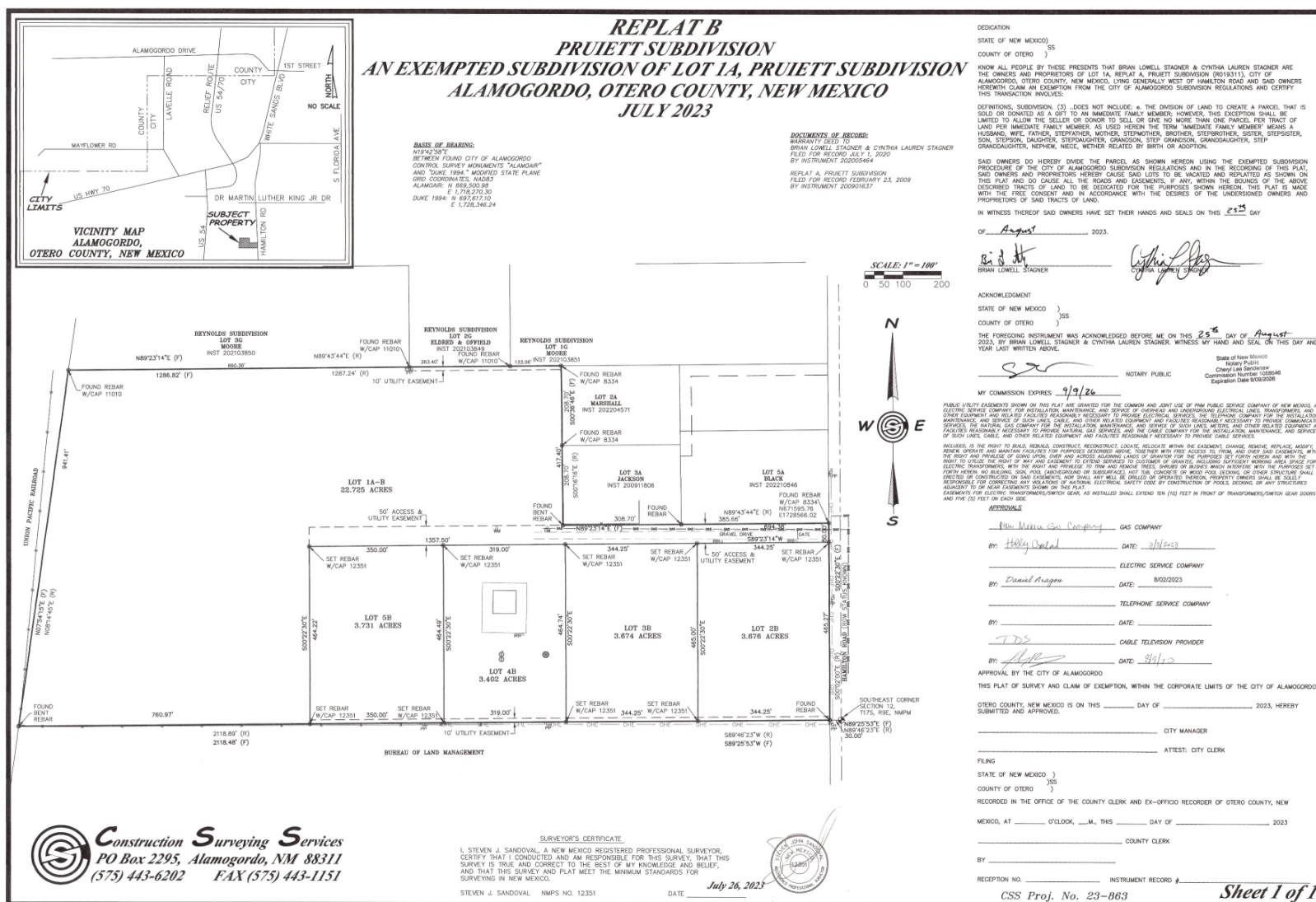
The property owner is requesting the city approve a 5-lot subdivision for their property located at 3190 Hamilton Road. Per Ordinance #1197, a subdivision resulting in an increase of more than two lots requires City Commission approval through the subdivision process.

Brian L. & Cynthia L. Stagner

406 9th Street

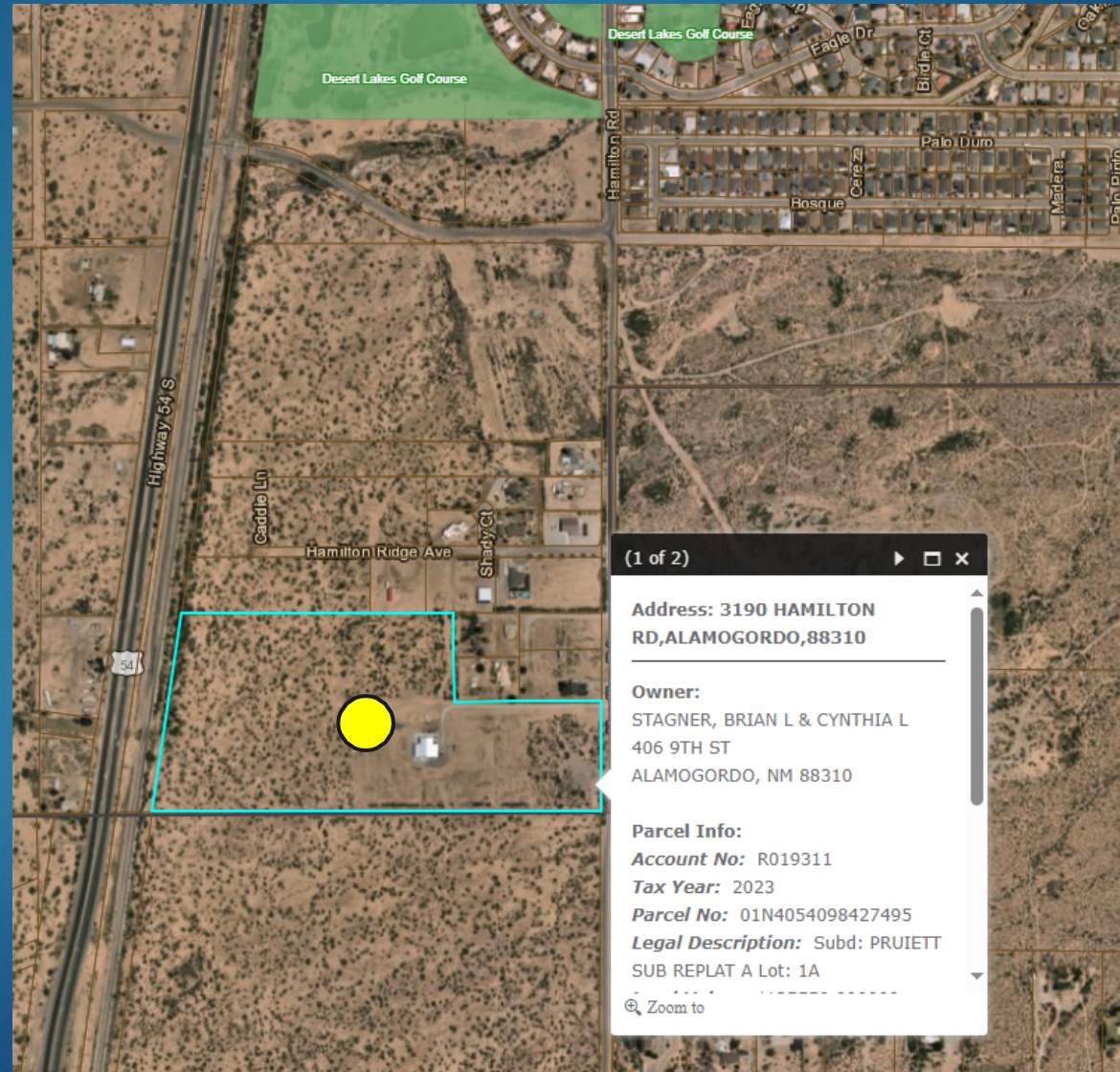
Alamogordo, NM 88310

3



Aerial

4



Zoning Map

5

The screenshot displays the 'Alamogordo General Map' web application. The interface includes a top navigation bar with a search bar, a 'Layers' button, and a 'Basemap gallery' button. The map itself shows various zoning districts in different colors: light blue for R-1 Single-Family Dwelling, yellow for R-2 Townhouse Dwelling, orange for R-3 Two-Family Dwelling, green for R-4 Multiple-Family Dwelling, blue for RE Residential Estates, grey for MH-1 Manufactured Housing Subdivision, dark grey for MH-2 Manufactured Housing Park, light orange for C-1 Neighborhood Business, brown for C-3 Business, and pink for M-1 Light Industrial. A yellow circle highlights a specific property at 3190 Hamilton Rd. A popup window provides detailed information for this property:

(1 of 2)

Address: 3190 HAMILTON RD, ALAMOGORDO, 88310

Owner: STAGNER, BRIAN L & CYNTHIA L
406 9TH ST
ALAMOGORDO, NM 88310

Parcel Info:
Account No: R019311
Tax Year: 2023
Parcel No: 01N4054098427495
Legal Description: Subd: PRUIETT
SUB REPLAT A Lot: 1A

[Zoom to](#)

The 'Layers' panel on the right shows the 'Zoning Districts' layer is checked. The legend lists the following districts with their corresponding colors:

- R-1 Single-Family Dwelling (light blue)
- R-2 Townhouse Dwelling (yellow)
- R-3 Two-Family Dwelling (orange)
- R-4 Multiple-Family Dwelling (green)
- RE Residential Estates (blue)
- MH-1 Manufactured Housing Subdivision (grey)
- MH-2 Manufactured Housing Park (dark grey)
- C-1 Neighborhood Business (light orange)
- C-3 Business (brown)
- M-1 Light Industrial (pink)

S-2023-0024(A)

6

- ◆ The application was filed, and all fees were paid.
- ◆ TRC reviewed the plat, and no issues were identified.
- ◆ Staff recommends approval of the plat.

RESOLUTION NO. 2023-48

A RESOLUTION REQUESTING THE DEPARTMENT OF FINANCE AND ADMINISTRATION, STATE OF NEW MEXICO, APPROVE REVISED BUDGET FIGURES FOR CERTAIN LINE ITEMS IN THE CITY'S BUDGET FOR FISCAL YEAR 2023-2024.

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

WHEREAS, the Department of Finance and Administration, State of New Mexico, gave its written final approval to the City of Alamogordo, New Mexico's annual budget on August 15, 2023, for fiscal year 2023-2024; and

WHEREAS, the City of Alamogordo, New Mexico, has tabulated on the following pages the additional resources and expenditures for fiscal year 2023-2024.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF ALAMOGORDO, NEW MEXICO, that the City's annual budget for fiscal year 2023-2024 be and hereby is revised as of September 26, 2023, to reflect a more true and accurate projection of the actual revenues and expenditures for fiscal year 2023-2024 as shown on the following pages.

NOW, BE IT FURTHER RESOLVED BY THE GOVERNING BODY OF THE CITY OF ALAMOGORDO, NEW MEXICO, that the Department of Finance and Administration, State of New Mexico, be requested to give its written approval to the revised budget figures computed on September 26, 2023, as a more true and accurate projection of the actual revenues and expenditures for fiscal year 2023-2024.

PASSED, APPROVED AND ADOPTED by the Governing Body of the City of Alamogordo, New Mexico, at a Regular Meeting held this 26th. day of September 2023.

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 N. Smith, City Attorney

**ALL FUNDS SUMMARY
BUDGET 2023-2024**

1/12TH REQ RSRV
1,722,759
1/12TH REQ RSRV
0
Fund Reserve Policy
468,745
Bal. Remaining
3,148,014

FY24 BUDGET - RESOLUTION 2023-48 (#3) SEPTEMBER 26, 2023

FUND NO.	FY 2023-2024 FUND DESCRIPTION	UNAUDITED BEGINNING CASH BALANCE	ESTIMATED REVENUES	TRANSFERS IN	TRANSFERS OUT	NET CASH TRANSFERS	BUDGETED EXPENDITURES	ESTIMATED ENDING CASH BALANCE	LOCAL RESERVE REQUIREMENTS UNAVAILABLE FOR BUDGETING	ADJUSTED ENDING CASH BALANCE
11	GENERAL OPERATING FUND	15,423,967	22,128,273	311,577	11,851,186	(11,539,609)	20,673,112	5,339,519	2,191,505	3,148,014
12	INTERNAL SERVICE FUND	10,000	241,739	5,092,359	0	5,092,359	5,337,184	6,914		\$6,914
15	CORRECTIONS-JAIL	90,675	54,734	0	0	0	113,240	32,169		\$32,169
16	LODGER'S TAX-PROMOTIONAL FUND	353,179	2,067	0	0	0	213,750	141,496		\$141,496
17	POLICE COURT BOND	8,638	0	0	0	0	0	8,638		\$8,638
19	COURT AUTOMATION FUND	6,033	35,000	37,089	0	37,089	71,709	6,413		\$6,413
20	LODGER'S TAX-CITY	536,427	80,898	183,295	87,553	95,742	566,937	146,130		\$146,130
21	D.A.R.E. DONATIONS FUND	21,005	2,195	0	0	0	13,092	10,108		\$10,108
24	GRANT CAPITAL IMPROVEMENT	0	5,605,565	49,500	0	49,500	5,142,430	512,635		\$512,635
27	MUNICIPAL COURT OPERATIONS	5,000	13,000	506,000	0	506,000	523,517	483		\$483
28	POLICE CONTINGENCY	75,078	650	0	0	0	10,000	65,728		\$65,728
31	CEMETERY-PERPETUAL CARE	860,280	21,642	0	40,000	(40,000)	0	841,922		\$841,922
32	COMMUNITY SERVICES	13,775	498,854	6,622,485	0	6,622,485	7,112,712	22,402		\$22,402
33	FIRE PROTECTION	1,113,851	747,324	0	0	0	1,824,265	36,910		\$36,910
35	HIDTA GRANT FUND	780	0	0	0	0	0	780		\$780
36	LAW ENFORCEMENT FUND	68,724	159,500	0	0	0	228,224	(0)		(\$0)
37	STATE HIGHWAY FUND	115,832	51,280	0	0	0	85,815	81,297		\$81,297
38	TRAFFIC SAFETY FUND	77,507	14,581	0	0	0	10,000	82,088		\$82,088
39	STATE JUDICIAL	2,393	34,000	0	0	0	34,000	2,393		\$2,393
42	1984 GROSS RECEIPTS TAX	3,872,525	2,121,677	0	4,050,682	(4,050,682)	37,016	1,906,504	252,119	\$1,654,385
44	TRANSPORTATION FUND	22,581	1,200,328	5,107,339	361,436	4,745,903	5,967,617	1,195		\$1,195
48	NEW MEXICO C.D.B.G.	0	382,515	1,161,308	0	1,161,308	1,407,044	136,779		\$136,779
49	1986 GROSS RECEIPTS TAX	4,547,832	2,129,102	0	896,490	(896,490)	279,812	5,500,632	268,391	\$5,232,241
50	PROPERTY ACQUISITION	85,010	0	0	0	0	0	85,010		\$85,010
53	GENERAL OBLIGATION	989,996	1,201,162	0	0	0	1,183,245	1,007,913	557,029	\$450,884
54	REVERSE OSMOSIS PROJECT RSV	21,967	0	0	0	0	10,447	11,520		\$11,520
56	99 GRT FLOOD CONTROL BOND PROJ	8	0	269,404	0	269,404	269,404	8		\$8
59	REVENUE BOND P & I FUND	172,412	8,300	2,357,973	0	2,357,973	2,357,973	180,712		\$180,712
61	MUNICIPAL INFRASTRUCTURE .0625%	1,872,040	530,855	0	260,000	(260,000)	9,254	2,133,641		\$2,133,641
63	COMMUNITY DEVELOPMENT	2,500	0	462,723	30,105	432,618	432,074	3,044		\$3,044
69	1994 GROSS RECEIPTS	4,040,006	2,114,548	0	2,401,640	(2,401,640)	37,016	3,715,898	553,051	\$3,162,847
71	ALAMO SENIOR CENTER	14,430	820,220	785,907	0	785,907	1,611,835	8,722		\$8,722
74	ALAMO SENIOR CENTER GIFT	136,021	11,078	0	0	0	26,286	120,813		\$120,813
75	SENIOR VOLUNTEER PROGRAM	10,107	139,307	1,400	0	1,400	150,427	387		\$387
81	WATER/SEWER OPERATING	16,271,347	11,262,553	658,461	2,295,718	(1,637,257)	13,853,385	12,043,258	1,463,850	\$10,579,408
82	98 JT WATER/SEWER BOND P&I	1,149,309	15,226	1,863,751	0	1,863,751	1,863,751	1,164,535		\$1,164,535
86	SOLID WASTE COLLECTION SYS.	996,061	2,495,198	240,000	158,629	81,371	2,770,215	802,415	178,583	\$623,832
88	BONITO CAMPGROUND	395,878	4,138	150,000	0	150,000	174,456	375,560		\$375,560
89	ESGRT .0625%	1,800,843	542,623	0	278,683	(278,683)	1,153,142	911,641		\$911,641

**ALL FUNDS SUMMARY
BUDGET 2023-2024**

1/12TH REQ RSRV
1,722,759
1/12TH REQ RSRV
0
Fund Reserve Policy
468,745
Bal. Remaining
3,148,014

FY24 BUDGET - RESOLUTION 2023-48 (#3) SEPTEMBER 26, 2023

FUND NO.	FY 2023-2024 FUND DESCRIPTION	UNAUDITED BEGINNING CASH BALANCE	ESTIMATED REVENUES	TRANSFERS IN	TRANSFERS OUT	NET CASH TRANSFERS	BUDGETED EXPENDITURES	ESTIMATED ENDING CASH BALANCE	LOCAL RESERVE REQUIREMENTS UNAVAILABLE FOR BUDGETING	ADJUSTED ENDING CASH BALANCE
90	GOLF COURSE	0	1,715,450	246,082	0	246,082	1,957,734	3,798		\$3,798
91	AIRPORT	20,000	253,809	191,500	45,736	145,764	418,800	773		\$773
94	OTERO GREENTREE REG LANDFILL	3,444,133	1,418,772	0	5,000	(5,000)	2,635,200	2,222,705		\$2,222,705
96	SELF-INSURED FUND	581,219	140,317	0	276,600	(276,600)	141,121	303,815		\$303,815
98	PAYROLL CLEARING	242,872	0	0	0	0	0	242,872		\$242,872
104	UTILITY DEPOSITS	628,617	0	0	0	0	0	628,617		\$628,617
105	ECONOMIC DEVELOPMENT	6,821,364	1,133,468	0	0	0	43,508	7,911,324		\$7,911,324
107	SELF INSURED/LIABILITY	1,081,582	8,050	0	0	0	535,000	554,632		\$554,632
109	2004 GRT CAPITAL OUTLAY	15,640,173	4,335,972	0	3,258,695	(3,258,695)	4,472,897	12,244,553	534,452	\$11,710,101
114	SIDEWALKS REVOLVING LOANS	146,446	1,722	0	0	0	0	148,168		\$148,168
115	CORP ESCROW ACCOUNT RESERVE	1,000	0	0	0	0	0	1,000		\$1,000
119	2012 GRT REF/IMP REVBD	199,317	3,085	0	0	0	192,557	9,845		\$9,845
121	2015 GO BONDS-FUN CENTER	92,226	1,081	0	0	0	0	93,307		\$93,307
122	2015 GO BONDS-STREETS	178,708	2,095	0	0	0	0	180,803		\$180,803
124	AMERICAN RESCUE PLAN ACT	7,226,672	75,043	0	0	0	7,119,553	182,162		\$182,162
125	CANNABIS GRT	0	204,000	0	0	0	6,120	197,880		\$197,880
901	HOUSING LOW RENT OPERATING	899,290	0	0	0	0	0	899,290	86,881	\$812,409
903	HOUSING HOMEOWNERSHIP OPER	18	0	0	0	0	0	18		\$18
904	HOUSING CAPITAL FUND PROJECTS	563,966	0	0	0	0	0	563,966		\$563,966
TOTALS FY2024		92,951,619	63,962,996	26,298,153	26,298,153	0	93,076,876	63,837,739	6,085,861	57,751,878

ALL FUNDS SUMMARY

BUDGET 2023-2024

1/12TH REQ RSRV
1,722,759
1/12TH REQ RSRV
0
Fund Reserve Policy
468,745
Bal. Remaining
3,148,014

FY24 BUDGET - RESOLUTION 2023-48 (#3) SEPTEMBER 26, 2023

FUND NO.	FY 2023-2024 FUND DESCRIPTION	UNAUDITED BEGINNING CASH BALANCE	ESTIMATED REVENUES	TRANSFERS IN	TRANSFERS OUT	NET CASH TRANSFERS	BUDGETED EXPENDITURES	ESTIMATED ENDING CASH BALANCE	LOCAL RESERVE REQUIREMENTS UNAVAILABLE FOR BUDGETING	ADJUSTED ENDING CASH BALANCE
11	GENERAL OPERATING FUND	15,423,967	21,780,074	271,577	11,789,686	(11,518,109)	19,214,589	6,471,343	2,191,505	4,279,838
	Revision #1-Community Services Admin. Salary/Benefit Correction				30,000	(30,000)		(30,000)		(30,000)
	Revision #5-Airport Fleet Maint./Airport Flight Tracking Software				7,500	(7,500)		(7,500)		(7,500)
	Revision #9-Police Dept. GRT/Salary Increase Budget 25PP		348,199			0	1,143,553	(795,354)		(795,354)
	Revision #10-APD Training Bldg. Gate & Surveillance System			40,000		40,000	40,000	0		0
	Revision #12-Atari Sales/Railroad Park Signage Project					0	1,000	(1,000)		(1,000)
	Revision #15-Dudley School Project Carryover					0	273,970	(273,970)		(273,970)
	Revision #19-Oregon School HVAC Project				24,000	(24,000)		(24,000)		(24,000)
	Total Revised Fund 11	15,423,967	22,128,273	311,577	11,851,186	(11,539,609)	20,673,112	5,339,519	2,191,505	3,148,014
12	INTERNAL SERVICE FUND	10,000	241,739	5,062,359	0	5,062,359	5,307,184	6,914		6,914
	Revision #5-Airport Flight Tracking Software			6,000		6,000	6,000	0		0
	Revision #19-Oregon School HVAC Project			24,000		24,000	24,000	0		0
	Total Revised Fund 12	10,000	241,739	5,092,359	0	5,092,359	5,337,184	6,914		6,914
15	CORRECTIONS-JAIL	90,675	54,734	0	0	0	113,240	32,169		32,169
	Total Revised Fund 15	90,675	54,734	0	0	0	113,240	32,169		32,169
16	LODGER'S TAX-PROMOTIONAL FUND	353,179	2,067	0	0	0	213,750	141,496		141,496
	Total Revised Fund 16	353,179	2,067	0	0	0	213,750	141,496		141,496
17	POLICE COURT BOND	8,638	0	0	0	0	0	8,638		8,638
	Total Revised Fund 17	8,638	0	0	0	0	0	8,638		8,638
19	COURT AUTOMATION FUND	6,033	35,000	37,089	0	37,089	71,709	6,413		6,413
	Total Revised Fund 19	6,033	35,000	37,089	0	37,089	71,709	6,413		6,413
20	LODGER'S TAX-CITY	536,427	80,898	183,295	87,553	95,742	561,937	151,130		151,130
	Revision #3-Balloon Festival Additional Funding					0	5,000	(5,000)		(5,000)
	Total Revised Fund 20	536,427	80,898	183,295	87,553	95,742	566,937	146,130		146,130
21	D.A.R.E. DONATIONS FUND	21,005	2,195	0	0	0	5,092	18,108		18,108
	Revision #2-DARE Training & Community Relations Funding					0	8,000	(8,000)		(8,000)
	Total Revised Fund 21	21,005	2,195	0	0	0	13,092	10,108		10,108
24	GRANT CAPITAL IMPROVEMENT	0	5,505,565	49,500	0	49,500	5,046,231	508,834		508,834
	Revision #7-To Correct Error PD CIT Travel					0	(3,801)	3,801		3,801
	Revision #8-Golf Course Improvements House Bill 23-ZH9259		100,000			0	100,000	0		0
	Total Revised Fund 24	0	5,605,565	49,500	0	49,500	5,142,430	512,635		512,635
27	MUNICIPAL COURT OPERATIONS	5,000	13,000	506,000	0	506,000	523,517	483		483
	Total Revised Fund 27	5,000	13,000	506,000	0	506,000	523,517	483		483
28	POLICE CONTINGENCY	75,078	650	0	0	0	10,000	65,728		65,728
	Total Revised Fund 28	75,078	650	0	0	0	10,000	65,728		65,728
31	CEMETERY-PERPETUAL CARE	860,280	21,642	0	40,000	(40,000)	0	841,922		841,922
	Total Revised Fund 31	860,280	21,642	0	40,000	(40,000)	0	841,922		841,922
32	COMMUNITY SERVICES	13,775	445,854	6,592,485	0	6,592,485	6,944,518	107,596		107,596
	Revision #1-Community Services Admin. Salary/Benefit Correction			30,000		30,000	115,194	(85,194)		(85,194)
	Revision #4-Swimming Pool Revenues/Consulting Services		3,000			0	3,000	0		0
	Revision #13-Otero County Library Community Services Agrmt.		50,000			0	50,000	0		0
	Total Revised Fund 32	13,775	498,854	6,622,485	0	6,622,485	7,112,712	22,402		22,402

33	FIRE PROTECTION	1,113,851	747,324	0	0	0	1,824,265	36,910		36,910
	Total Revised Fund 33	1,113,851	747,324	0	0	0	1,824,265	36,910	0	36,910
35	HIDTA GRANT FUND	780	0	0	0	0	0	780		780
	Total Revised Fund 35	780	0	0	0	0	0	780		780
36	LAW ENFORCEMENT FUND	68,724	159,500	0	0	0	228,224	(0)		(0)
	Total Revised Fund 36	68,724	159,500	0	0	0	228,224	(0)		(0)
37	STATE HIGHWAY FUND	115,832	25,784	0	0	0	60,319	81,297		81,297
	Revision #20-NM Clean & Beautiful Grant FY24		25,496			0	25,496	0		0
	Total Revised Fund 37	115,832	51,280	0	0	0	85,815	81,297		81,297
38	TRAFFIC SAFETY FUND	77,507	14,581	0	0	0	10,000	82,088		82,088
	Total Revised Fund 38	77,507	14,581	0	0	0	10,000	82,088		82,088
39	STATE JUDICIAL	2,393	34,000	0	0	0	34,000	2,393		2,393
	Total Revised Fund 39	2,393	34,000	0	0	0	34,000	2,393		2,393
42	1984 GROSS RECEIPTS TAX	3,872,525	2,121,677	0	4,050,682	(4,050,682)	37,016	1,906,504	252,119	1,654,385
	Total Revised Fund 42	3,872,525	2,121,677	0	4,050,682	(4,050,682)	37,016	1,906,504	252,119	1,654,385
44	TRANSPORTATION FUND	22,581	1,200,328	4,607,339	361,436	4,245,903	5,461,560	7,252		7,252
	Revision #11-Street Department Surveillance Cameras					0	6,057	(6,057)		(6,057)
	Revision #18-Sediment Removal Griggs/Public Works Basin			500,000		500,000	500,000	0		0
	Total Revised Fund 44	22,581	1,200,328	5,107,339	361,436	4,745,903	5,967,617	1,195		1,195
48	NEW MEXICO C.D.B.G.	0	382,515	1,161,308	0	1,161,308	1,407,044	136,779		136,779
	Total Revised Fund 48	0	382,515	1,161,308	0	1,161,308	1,407,044	136,779		136,779
49	1986 GROSS RECEIPTS TAX	4,547,832	2,129,102	0	896,490	(896,490)	279,812	5,500,632	268,391	5,232,241
	Total Revised Fund 49	4,547,832	2,129,102	0	896,490	(896,490)	279,812	5,500,632	268,391	5,232,241
50	PROPERTY ACQUISITION	85,010	0	0	0	0	0	85,010		85,010
	Total Revised Fund 50	85,010	0	0	0	0	0	85,010		85,010
53	GENERAL OBLIGATION	989,996	1,201,162	0	0	0	1,183,245	1,007,913	557,029	450,884
	Total Revised Fund 53	989,996	1,201,162	0	0	0	1,183,245	1,007,913	557,029	450,884
54	REVERSE OSMOSIS PROJECT RSV	21,967	0	0	0	0	10,447	11,520		11,520
	Total Revised Fund 54	21,967	0	0	0	0	10,447	11,520		11,520
56	99 GRT FLOOD CONTROL BOND PROJ	8	0	269,404	0	269,404	269,404	8		8
	Total Revised Fund 56	8	0	269,404	0	269,404	269,404	8		8
59	REVENUE BOND P & I FUND	172,412	8,300	2,357,973	0	2,357,973	2,357,973	180,712		180,712
	Total Revised Fund 59	172,412	8,300	2,357,973	0	2,357,973	2,357,973	180,712		180,712
61	MUNICIPAL INFRASTRUCTURE .0625%	1,872,040	530,855	0	250,000	(250,000)	9,254	2,143,641		2,143,641
	Revision #15-Dudley School Project Carryover				10,000	(10,000)		(10,000)		(10,000)
	Total Revised Fund 61	1,872,040	530,855	0	260,000	(260,000)	9,254	2,133,641		2,133,641
63	COMMUNITY DEVELOPMENT	2,500	0	452,723	30,105	422,618	422,074	3,044		3,044
	Revision #15-Dudley School Project Carryover			10,000		10,000	10,000	0		0
	Total Revised Fund 63	2,500	0	462,723	30,105	432,618	432,074	3,044		3,044
69	1994 GROSS RECEIPTS	4,040,006	2,114,548	0	1,861,640	(1,861,640)	37,016	4,255,898	553,051	3,702,847
	Revision #10-APD Training Bldg. Gate & Surveillance System				40,000	(40,000)		(40,000)		(40,000)
	Revision #18-Sediment Removal Griggs/Public Works Basin				500,000	(500,000)		(500,000)		(500,000)
	Total Revised Fund 69	4,040,006	2,114,548	0	2,401,640	(2,401,640)	37,016	3,715,898	553,051	3,162,847
71	ALAMO SENIOR CENTER	14,430	771,978	785,907	0	785,907	1,563,593	8,722		8,722
	Revision #14-Otero County Grant HDM/Transportation		48,242			0	48,242	0		0
	Total Revised Fund 71	14,430	820,220	785,907	0	785,907	1,611,835	8,722		8,722
74	ALAMO SENIOR CENTER GIFT	136,021	11,078	0	0	0	26,286	120,813		120,813
	Total Revised Fund 74	136,021	11,078	0	0	0	26,286	120,813		120,813
75	SENIOR VOLUNTEER PROGRAM	10,107	139,307	1,400	0	1,400	150,427	387		387
	Total Revised Fund 75	10,107	139,307	1,400	0	1,400	150,427	387		387
81	WATER/SEWER OPERATING	16,271,347	11,262,553	658,461	2,295,718	(1,637,257)	13,738,385	12,158,258	1,463,850	10,694,408
	Revision #6-Oregon Ave. Engineering Design					0	115,000	(115,000)		(115,000)
	Total Revised Fund 81	16,271,347	11,262,553	658,461	2,295,718	(1,637,257)	13,853,385	12,043,258	1,463,850	10,579,408

82	98 JT WATER/SEWER BOND P&I	1,149,309	15,226	1,863,751	0	1,863,751	1,863,751	1,164,535	0	1,164,535
	Total Revised Fund 82	1,149,309	15,226	1,863,751	0	1,863,751	1,863,751	1,164,535	0	1,164,535
86	SOLID WASTE COLLECTION SYS.	996,061	2,495,198	240,000	158,629	81,371	2,770,215	802,415	178,583	623,832
	Total Revised Fund 86	996,061	2,495,198	240,000	158,629	81,371	2,770,215	802,415	178,583	623,832
88	BONITO CAMPGROUND	395,878	4,138	150,000	0	150,000	174,456	375,560		375,560
	Total Revised Fund 88	395,878	4,138	150,000	0	150,000	174,456	375,560	0	375,560
89	ESGRT .0625%	1,800,843	542,623	0	278,683	(278,683)	1,153,142	911,641		911,641
	Total Revised Fund 89	1,800,843	542,623	0	278,683	(278,683)	1,153,142	911,641	0	911,641
90	GOLF COURSE	0	1,715,450	246,082	0	246,082	1,957,734	3,798		3,798
	Total Revised Fund 90	0	1,715,450	246,082	0	246,082	1,957,734	3,798	0	3,798
91	AIRPORT	20,000	253,809	190,000	45,736	144,264	417,300	773	0	773
	Revision #5-Fleet Maintenance Funding			1,500		1,500	1,500	0		0
	Total Revised Fund 91	20,000	253,809	191,500	45,736	145,764	418,800	773	0	773
94	OTERO GREENTREE REG LANDFILL	3,444,133	1,418,772	0	5,000	(5,000)	2,635,200	2,222,705		2,222,705
	Total Revised Fund 94	3,444,133	1,418,772	0	5,000	(5,000)	2,635,200	2,222,705	0	2,222,705
96	SELF-INSURED FUND	581,219	85,667	0	276,600	(276,600)	84,970	305,316		305,316
	Revision #17-Insurance Proceeds/Deductible Fire Truck Accident		54,650			0	56,151	(1,501)		(1,501)
	Total Revised Fund 96	581,219	140,317	0	276,600	(276,600)	141,121	303,815	0	303,815
98	PAYROLL CLEARING	242,872	0	0	0	0	0	242,872		242,872
	Total Revised Fund 98	242,872	0	0	0	0	0	242,872	0	242,872
104	UTILITY DEPOSITS	628,617	0	0	0	0	0	628,617		628,617
	Total Revised Fund 104	628,617	0	0	0	0	0	628,617	0	628,617
105	ECONOMIC DEVELOPMENT	6,821,364	1,133,468	0	0	0	43,508	7,911,324		7,911,324
	Total Revised Fund 105	6,821,364	1,133,468	0	0	0	43,508	7,911,324		7,911,324
107	SELF INSURED/LIABILITY	1,081,582	8,050	0	0	0	535,000	554,632		554,632
	Total Revised Fund 107	1,081,582	8,050	0	0	0	535,000	554,632	0	554,632
109	2004 GRT CAPITAL OUTLAY	15,640,173	4,335,972	0	3,258,695	(3,258,695)	4,411,842	12,305,608	534,452	11,771,156
	Revision #21-Change Order #1-Ridgecrest Dr. Project					0	61,055	(61,055)		(61,055)
	Total Revised Fund 109	15,640,173	4,335,972	0	3,258,695	(3,258,695)	4,472,897	12,244,553	534,452	11,710,101
114	SIDEWALKS REVOLVING LOANS	146,446	1,722	0	0	0	0	148,168		148,168
	Total Revised Fund 114	146,446	1,722	0	0	0	0	148,168	0	148,168
115	CORP ESCROW ACCOUNT RESERVE	1,000	0	0	0	0	0	1,000		1,000
	Total Revised Fund 115	1,000	0	0	0	0	0	1,000	0	1,000
119	2012 GRT REF/IMP REVBD	199,317	3,085	0	0	0	192,557	9,845		9,845
	Total Revised Fund 119	199,317	3,085	0	0	0	192,557	9,845		9,845
121	2015 GO BONDS-FUN CENTER	92,226	1,081	0	0	0	0	93,307		93,307
	Total Revised Fund 121	92,226	1,081	0	0	0	0	93,307		93,307
122	2015 GO BONDS-STREETS	178,708	2,095	0	0	0	0	180,803		180,803
	Total Revised Fund 122	178,708	2,095	0	0	0	0	180,803		180,803
124	AMERICAN RESCUE PLAN ACT	7,226,672	75,043	0	0	0	99,524	7,202,191		7,202,191
	Revision #15-ARPA Carryovers					0	7,020,029	(7,020,029)		(7,020,029)
	Total Revised Fund 124	7,226,672	75,043	0	0	0	7,119,553	182,162		182,162
125	CANNABIS GRT	0	204,000	0	0	0	6,120	197,880		197,880
	Total Revised Fund 125	0	204,000	0	0	0	6,120	197,880		197,880
901	HOUSING LOW RENT OPERATING	899,290	0	0	0	0	0	899,290	86,881	812,409
	Total Revised Fund 901	899,290	0	0	0	0	0	899,290	86,881	812,409
903	HOUSING HOMEOWNERSHIP OPER	18	0	0	0	0	0	18		18
	Total Revised Fund 903	18	0	0	0	0	0	18	0	18
904	HOUSING CAPITAL FUND PROJECTS	563,966	0	0	0	0	0	563,966		563,966
	Total Revised Fund 904	563,966	0	0	0	0	0	563,966		563,966
TOTALS FY2024		92,951,619	63,962,996	26,298,153	26,298,153	0	93,076,876	63,837,739	6,085,861	57,751,878

FUND NO.	PROJECT NO.	LINE ITEM NO.	LINE ITEM DESCRIPTION	ORIGINAL BUDGET AMOUNT	INCREASE (DECREASE)	REVISED BUDGET AMOUNT
REVISION #1						
This budget revision is to correct the Salary & Benefit FY24 adjustment for the Community Service Administration Division.						
32	COMMUNITY SERVICES FUND					
		Transfers In				
1326		032.000.0000.0000.49011.	Trans fr (11) General	5,924,497	30,000	5,954,497
			Total Transfers In	5,924,497	30,000	5,954,497
		Expenditures	Administration			
1326		032.300.2400.0000.52002.	Salaries-Operational	(39,625)	75,164	35,539
1326		032.300.2400.0000.52010.	Benefits-Retirement	10,236	11,576	21,812
1326		032.300.2400.0000.52012.	Benefits-Retiree Health Care	1,330	1,503	2,833
1326		032.300.2400.0000.52015.	Benefits-FICA	6,313	5,521	11,834
1326		032.300.2400.0000.52025.	Benefits-Group Health Insurance	(4,672)	21,172	16,500
1326		032.300.2400.0000.52030.	Benefits-Worker's Compensation Insurance	420	240	660
1326		032.300.2400.0000.52031.	Benefits-Worker's Comp Fee	1	18	19
			Total Expenditures	(25,997)	115,194	89,197
11	GENERAL FUND					
		Transfers Out				
		011.000.0000.0000.59032.	Trans to (32) Community Services	5,924,497	30,000	5,954,497
			Total Transfers Out	5,924,497	30,000	5,954,497
REVISION #2						
This budget revision is to provide additional training funding for DARE Training and Community Relations.						
21	D.A.R.E. DONATIONS					
		Expenditures				
1397		021.400.2400.0000.56005.	Other-Travel	1,000	5,000	6,000
1397		021.400.2400.0000.56001.	Other-Community Relations	1,000	3,000	4,000
			Total Expenditures	2,000	8,000	10,000
REVISION #3						
This budget revision is to provide additional funding for Special Events for the Balloon Festival.						
20	LODGER'S TAX-CITY'S SHARE					
		Expenditures				
1435		020.800.0407.0000.56015.	Other-Special Events	110,000	5,000	115,000
			Total Expenditures	110,000	5,000	115,000
REVISION #4						
This budget revision is to account for expected additional swimming revenues which are being applied to Consultant Services.						
32	COMMUNITY SERVICES FUND					
		Revenues				
1244		032.300.6106.0000.40433.	User Fees-Swimming Pool	21,000	3,000	24,000
			Total Revenues	21,000	3,000	24,000
		Expenditures	Administration			
1244		032.300.6106.0000.54532.	Service-Consultants	4,000	3,000	7,000
			Total Expenditures	4,000	3,000	7,000
REVISION #5						
This budget revision is to add funding to the Airport budget for Fleet Maintenance and for Flight Tracking Software.						
91	AIRPORT FUND					
		Transfers In				
130		091.000.0000.0000.49011.	Trans fr (11) General	190,000	1,500	191,500
			Total Transfers In	190,000	1,500	191,500
		Expenditures	Administration			
130		091.300.2400.0000.53505.	Maintenance-Fleet Parts	1,800	1,500	3,300
			Total Expenditures	1,800	1,500	3,300
11	GENERAL FUND					
		Transfers Out				
130		011.000.0000.0000.59091.	Trans to (91) Airport	190,000	1,500	191,500
		011.000.0000.0000.59012.	Trans to (12) Internal Services	3,809,206	6,000	3,815,206
			Total Transfers Out	3,999,206	7,500	4,006,706
12	INTERNAL SERVICES FUND					
		Transfers Out				
130		012.000.0000.0000.49011.	Trans fr (11) General	3,809,206	6,000	3,815,206
			Total Transfers Out	3,809,206	6,000	3,815,206
		Expenditures				
130		012.200.3402.0000.55502.	Fees-Software Support Fees	423,430	6,000	429,430
			Total Transfers Out	423,430	6,000	429,430

REVISION #6

This budget revision is to provide funding for engineering design for Oregon Avenue.

81 WATER/SEWER FUND					
		Expenditures			
76	UC2401.SERV.ENGN	081.600.9303.0000.57002.	Capital-Engineering	223,171	115,000 338,171
			Total Expenditures	223,171	115,000 338,171

REVISION #7

This budget revision is to correct error in double posting Crisis Intervention Project (PD2102) in Travel Budget for FY24.

24 GRANT CAPITAL IMPROVEMENT FUND					
		Expenditures			
436		024.000.0000.0000.56005.	Other-Travel	7,607	(3,801) 3,806
			Total Expenditures	7,607	(3,801) 3,806

REVISION #8

This budget revision is to account for House Bill 23-ZH9259 for Golf Course Improvements.

24 GRANT CAPITAL IMPROVEMENT FUND					
		Revenues			
482	GC2401.GRNT.STTE	024.000.0000.0000.40702.	Grants-State	5,429,670	100,000 5,529,670
			Total Revenues	5,429,670	100,000 5,529,670
		Expenditures	Administration		
482	GR2401.CAPT.EQIP	024.000.0000.0000.57011.	Capital-Equipment	855,818	100,000 955,818
			Total Expenditures	855,818	100,000 955,818

REVISION #9

This budget revision is to account for .1250% GRT Increment for 4 months beginning in March 2024 and Salary Increases for the Police Department for 25PP.

11 GENERAL FUND					
		Revenues			
1015		011.000.0000.0000.40115.	Taxes-Gross Receipts .1250% Police	0	348,199 348,199
			Total Revenues	0	348,199 348,199
		Expenditures	Public Safety-Police		
1015		011.400.4104.0000.52001.	Salaries-Supervisory	1,135,243	95,866 1,231,109
1015		011.400.4104.0000.52002.	Salaries-Operational	2,297,558	680,385 2,977,943
1015		011.400.4104.0000.52010.	Benefits-Retirement	992,279	247,494 1,239,773
1015		011.400.4104.0000.52012.	Benefits-Retiree Health	82,495	19,346 101,841
1015		011.400.4104.0000.52015.	Benefits-FICA	101,840	5,734 107,574
1015		011.400.4104.0000.52025.	Benefits-Group Health	400,419	56,699 457,118
1015		011.400.4104.0000.52030.	Benefits-Worker's Comp	99,493	13,028 112,521
1015		011.400.4104.0000.52031.	Benefits-Worker's Comp Fee	607	45 652
			Total Expenditures	5,109,934	1,118,597 6,228,531
		Expenditures	Public Safety-APS Resource Program		
1015		011.400.4704.0000.52002.	Salaries-Operational	103,076	21,665 124,741
1015		011.400.4704.0000.52010.	Benefits-Retirement	33,139	6,965 40,104
1015		011.400.4704.0000.52012.	Benefits-Retiree Health	2,577	542 3,119
1015		011.400.4704.0000.52015.	Benefits-FICA	1,759	175 1,934
1015		011.400.4704.0000.52025.	Benefits-Group Health	13,861	(4,576) 9,285
1015		011.400.4704.0000.52030.	Benefits-Worker's Comp	3,759	185 3,944
			Total Expenditures	158,171	24,956 183,127
			Total Expenditures-Public Safety	5,268,105	1,143,553 6,411,658

REVISION #10

This budget revision is to provide additional funding for upgrading the current exit gate to the APD training building which inoperable and the security in the impound lot is poor. This project will upgrade the gate to an access control gate and install a surveillance system. The cameras will be monitored by the TBRDA and allow for more security of evidence and auction items.

11 GENERAL FUND					
		Transfers In			
778		011.000.0000.0000.49069.	Trans fr (69) 1994 GRT	205,977	40,000 245,977
			Total Transfers In	205,977	40,000 245,977
		Expenditures	Administration		
778		011.400.4104.0000.57006.	Capital-Building Improvement	634,856	40,000 674,856
			Total Expenditures	634,856	40,000 674,856
69 1994 GRT					
		Transfers Out			
778		069.000.0000.0000.59011.	Trans to (11) General	205,977	40,000 245,977
			Total Transfers Out	205,977	40,000 245,977

REVISION #11

This budget revision is to provide funding for the Street Department camera installation at their facility in the Public Works yard.

44 TRANSPORTATION FUND						
			<i>Expenditures</i>			
779		044.500.5203.0000.54520.	Services-Contract	73,986	6,057	80,043
			Total Expenditures	73,986	6,057	80,043

REVISION #12

This budget revision is to account for \$1,000 in additional Atari funds were deposited in December of 2022. The Railroad Park project was not revised at that time to reflect the additional funding. This revision is to correct that oversight

11 GENERAL FUND						
Expenditures						
780	PK2307.SERV.SITE.	011.000.2400.0000.54520.	Service-Contract	773,190	1,000	774,190
Total Expenditures				773,190	1,000	774,190

REVISION #13

This budget revision is to account for the Otero County Community Services Agreement grant in the amount of \$50,000 for the Alamogordo Public Library. City Commissioners approved acceptance at the September 12,2023 Commission Meeting.

32 COMMUNITY SERIVES FUND						

REVISION #14

This budget revision is to account for the Otero County Grant for Home Delivered Meals and Transportation Programs at the Senior Citizens Center.

71 SENIOR CENTER FUND						
Revenues						
878	SCHD24.GRNT.LOCL.HOMC	071.300.8020.0000.40703.	Grants-Other	16,093	28,397	44,490
878	SCTR24.GRNT.LOCL.TRNC	071.300.8020.0000.40703.	Grants-Other	44,490	19,845	64,335
Total Revenues				60,583	48,242	108,825
Expenditures						
Administration						
878	SCHD24.SUPP.PRGH.HOMC	071.300.8020.0000.53018.	Supplies-Program	148,899	28,397	177,296
878	SCTR24.SUPP.PRGH.CNTY	071.300.8020.0000.53018.	Supplies-Program	177,296	19,845	197,141
Total Expenditures				326,195	48,242	374,437

REVISION #15

This budget revision is to carryover the American Rescue Plan Act funding which was inadvertently left original carryover list.

11 GENERAL FUND						
			<i>Expenditures</i>			
981		124.000.0000.0000.54522.	Services-Utility Assistance	0	438,442	438,442
981		124.000.0000.0000.57008.	Capital-Communications	1,936	368,400	370,336
981		124.000.0000.0000.57027.	Capital-Tank Improvements	0	6,213,187	6,213,187
			Total Expenditures	1,936	7,020,029	7,021,965

REVISION #16

This budget revision is to carryover the Dudley School Project which was inadvertently left original carryover list from FY23.

11 GENERAL FUND						
		<i>Expenditures</i>				
982	CM2303.SERV.CNTR	011.000.2400.0000.54520.	Services-Contract	773,190	273,970	1,047,160
Total Expenditures				773,190	273,970	1,047,160
63 ENGINEERING						
		<i>Transfers In</i>				
982	CM2303.SERV.CNTR.LOCL	063.000.0000.0000.49061.	Trans fr (61) '91 GRT INF.	0	10,000	10,000
Total Transfers In				0	10,000	10,000
		<i>Expenditures</i>		<i>Administration</i>		
982		063.600.5005.0000.54520.	Services-Contract	32,119	10,000	42,119
Total Expenditures				32,119	10,000	42,119
61 91 GRT INFRASTRUCTURE (.0625%)						
		<i>Transfers Out</i>				
982		061.000.0000.0000.59063.	Trans to (63) Engineering	0	10,000	10,000
Total Transfers Out				0	10,000	10,000

REVISION #17

This budget revision is to recognize insurance proceeds and provide additional funding for deductible for an accident involving a fire truck which requires extensive body work.

96 SELF-INSURED FUND					
Revenues					
983	096.000.0000.0000.40610.	Misc. Revenue-Insurance	30,232	54,650	84,882
Total Revenues			30,232	54,650	84,882
Expenditures					
Administration					
983	096.000.0000.0000.55010.	Insurance-Self Paid Claims	84,970	56,151	141,121
Total Expenditures			84,970	56,151	141,121

REVISION #18

This budget revision is to provide funding for removal of accumulated sediment at the Griggs and Public Works Yards Basins, respectively.

44 TRANSPORTATION FUND					
Transfers In					
984	044.000.0000.0000.49069.	Trans fr (69) 1994 Gross Receipts	0	500,000	500,000
Total Transfers In			0	500,000	500,000
Expenditures					
Administration					
984	044.500.5303.0000.57019.	Capital-Drainage Improvements	0	500,000	500,000
Total Expenditures			0	500,000	500,000
69 1994 GRT					
Transfers Out					
984	069.000.0000.0000.59044.	Trans to (44) Transportation	0	500,000	500,000
Total Transfers Out			0	500,000	500,000

REVISION #19

This budget revision is to provide funding for installation of HVAC Units at Oregon School to serve City Clerk Records Area and the Training Room. The current system is cost prohibitive.

12 INTERNAL SERVICES FUND					
Transfers In					
985	012.000.0000.0000.49011.	Trans fr (11) General	3,809,206	24,000	3,833,206
Total Transfers In			3,809,206	24,000	3,833,206
Expenditures					
Administration					
985	012.200.3303.0000.57006.	Capital-Building Improvements	0	24,000	24,000
Total Expenditures			0	24,000	24,000
11 GENERAL FUND					
Transfers Out					
985	011.000.0000.0000.59012.	Trans to (11) General	3,809,206	24,000	3,833,206
Total Transfers Out			3,809,206	24,000	3,833,206

REVISION #20

This budget revision is to account for NM Transportation Department Clean & Beautiful Grant and related expenditures for FY24.

37 STATE HIGHWAY CLEANUP					
Revenues					
770	SE2401.GRNT.STTE.	037.800.3105.0000.40708.	Grants-KAB	0	25,496
Total Revenues				0	25,496
Expenditures					
Public Safety-Police					
770	SE2401.SALR.TEMP	037.800.3105.0000.52003.	Salaries-Temp/Part-Time	24,990	11,383
770	SE2401.BENE.RETH	037.800.3105.0000.52012.	Benefits-Retiree Health	0	851
770	SE2401.BENE.FICA	037.800.3105.0000.52015.	Benefits-FICA	1,886	223
770	SE2401.BENE.WKCO	037.800.3105.0000.52030.	Benefits-Worker's Comp	377	36
770	SE2401.BENE.WKCF	037.800.3105.0000.52031.	Benefits-Worker's Comp Fee	46	10
770	SE2401.FEES.MEMB	037.800.3105.0000.55505.	Fees-Memberships & Dues	0	170
770	SE2401.MISC.TRVL	037.800.3105.0000.56005.	Other-Travel	0	2,695
770	SE2401.SUPP.PRG	037.800.3105.0000.53018.	Supplies-Program	0	10,128
Total Expenditures			27,299	25,496	52,795

REVISION #21

This budget revision is to account for Change Order #1 for the Ridgcrest Dr. Street Project. This Change Order was approved by the Commission at the September 12, 2023 Commission meeting.

109 STREET CAPITAL GRT FUND					
Expenditures					
956	PW2001.CAPT.STRT	109.500.9003.0000.57018.	Capital-Streets	3,912,583	61,055
Total Expenditures			3,912,583	61,055	3,973,638

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 9/26/2023

Report Date: 09/19/2023

Report No: 9.

Submitted By: Josh Sides

Subject: Consider, and act upon, Resolution 2023-46, declaring 801 Virginia Avenue to be so ruined, damaged, and dilapidated that it is a menace to the public comfort, health, peace, or safety and ordering its abatement. (*Josh Sides, Code Enforcement Manager*) **(Roll Call Vote Required)**

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation: Approve and order the property's abatement.

Background: 801 Virginia Ave. is so ruined and dilapidated that it is currently a risk to public health and safety.

RESOLUTION NO. 2023-46

A RESOLUTION DECLARING THE BUILDING OR STRUCTURE, OR THE PREMISES LOCATED AT 801 VIRGINIA AVENUE ALAMOGORDO, OTERO COUNTY, NEW MEXICO, TO BE RUINED, DAMAGED, AND DILAPIDATED TO BE A MENACE TO THE PUBLIC COMFORT, HEALTH, PEACE, OR SAFETY, AND ORDERING ITS ABATEMENT

WHEREAS, the governing body of the City of Alamogordo, New Mexico, finds that there is located within the City a certain building, structure, or premises at 801 Virginia Avenue, as more particularly described on the attached Exhibit 1 (the “Property”); and,

WHEREAS, the governing body does further find that the Code Enforcement Manager has investigated the condition of the Property and has found the same to be so ruined, damaged, and dilapidated, or covered with ruins, rubbish, wreckage, or debris, that it constitutes a menace to the public comfort, health, peace or safety so as to warrant abatement.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION:

Section 1. That the findings of said Code Enforcement Manager, in regard to the Property, attached hereto as Exhibit 2, are hereby approved and adopted, and that the Property is found to be ruined, damaged, and dilapidated, so as to constitute a menace to the public comfort, health, peace or safety pursuant to Section 3-18-5, NMSA, 1978.

Section 2. That Mrs. Sharon L. Carle, the record owner of the Property, is hereby ordered to commence removal of the building or structure from the Property within ten (10) days after service of a copy of this Resolution, or within said ten (10) day period, file written objection to findings herein with the City Clerk of the City of Alamogordo, asking for a hearing before the City Commission.

Section 3. That if there is a failure of compliance with the provision of Section 2 herein, the City of Alamogordo shall proceed to remove said building or structure from the Property and abate said unsafe condition, at the cost and expense of said record, with said cost and expense constituting a lien against the building or structure so removed, and against the Property, as allowed by law.

Section 4. **SEVERABILITY CLAUSE.** If any section, paragraph, sentence, clause, word, or phrase of this resolution is for any reason held to be invalid or unenforceable by any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this resolution. The Commission hereby declares that it would have passed this resolution and each section, paragraph, sentence, clause, word, or phrase thereof, irrespective of any provisions being declared unconstitutional or otherwise invalid.

PASSED, APPROVED AND ADOPTED, this ____ day of September 2023.

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

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Exhibit "1"

Account: R010980

Location

Account Number *R010980*

Situs Address 801 VIRGINIA AVE

Previous Parcel ID 01-01314

Parcel Sequence

Neighborhood A1 - South Central Alamogordo

Tax Area 01_R

Parcel Number 01N4055094216242

Legal Summary Subd: ALAMO BLOCKS Lot:
12 Block: 30

Appraiser Sheldon Compton

Owner Information

Owner Name MORALES, CRUZ

Owner Address 1001 POSEY
TULAROSA, NM 88352

Assessment History

Actual (2023 - Residential Cap applied) \$40,083

Primary Taxable \$13,361

Tax Area: 01_R **Mill Levy:** 26.030000

Type	Actual	Assessed	Acres	SQFT
Residential Land	\$21,977	\$7,326	0.172	
Residential Improvement	\$18,106	\$6,035		2746.000

Transfers

Sale Date

Sale Price

Doc Description

[Deed](#)

[Deed](#)

[Deed](#)

[Deed](#)

[Deed](#)

[Deed](#)

[Deed](#)

[04/16/2021](#)

[Warranty Deed](#)

[Separate Property Agreement](#)

[07/30/2021](#)

[Real Estate Contract](#)

Tax History

Images

Tax Year

Taxes

*2023

\$347.80

2022

\$337.68

* Estimated

- [Map](#)
- [Photo](#)
- [Sketch](#)
- [GIS](#)

Focusing On: 801 VIRGINIA AVE ALAMOGORDO 88310



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Exhibit "2"

Case #: 202301500
Case Date: 09/06/23
Address Number: 801
Street Name: Virginia
Description: Dilapidated Structure
Complainant Phone: 5754393337
Complainant Address: 2010 Oregon Ave
Complainant Name: Sides
Reinspection: 09/22/2023
Property Owners : Cruz Morales
DOB:
ID #:
Court case number:
Court Date:
Compliance Inspection :
Certified Mail #:
Status: Draft Resolution
Assigned To: JOSH SIDES

Property

Parcel #	Address	Legal Description	Owner Name	Owner Phone	Zoning
01N4055094216242	801 VIRGINIA AVE	Subd: ALAMO BLOCKS Lot: 12 Block: 30	Morales, Cruz		

Activities

Date	Activity Type	Description	Employee	Status
06/28/2023	Inspection	On 06/28/2023, I, Code Enforcement Manager Josh Sides, while on patrol, observed a residence located at 801 Virginia Avenue, City of Alamogordo, Otero County, New Mexico, to be dilapidated.	JOSH SIDES	Non-Compliance
		Upon further inspection of the property, I observed multiple violations of the International Property Maintenance Code, including:		
		304.1 General		
		304.2 Protective Treatment		
		304.6 Exterior Walls		
		304.7 Roofs and Drainage		
		304.13 Windows, Skylight, and Door Frames.		
		I photographed the condition of the property and uploaded the pictures to iWorq.		
		I drafted an International Property Maintenance Code Letter and mailed it certified to the property owner, Mr. Cruz Morales.		

08/23/2023	Supplement	On 08/23/2023, I, Code Enforcement Manager Josh Sides received the International Property Maintenance Letter I mailed to Mr. Morales unclaimed. I proceeded to 801 Virginia where I posted the letter on the front door.	JOSH SIDES	Closed
08/28/2023	Supplement	On 08/28/2023, I, Code Enforcement Manager Josh Sides, applied for and was granted an Administrative Search Warrant by 12th Judicial District Court Judge Jessen for the property at 801 Virginia.	JOSH SIDES	Closed
08/30/2023	Supplement	On 08/30/2023, I, Code Enforcement Manager Josh Sides, along with Code Enforcement Officers Otero, Payan, and Chavez, Facility Maintenance Manager Paul Bennett, and APD Officer Guinn, executed the search warrant on 801 Virginia. Photographs of the property inside and out were taken and uploaded to iWorQs. Manager Bennett completed a report on his findings, which was also uploaded to iWorQs. A resolution to declare 801 Virginia dilapidated will be drafted to take before the Commission.	JOSH SIDES	Closed

Violations

Date	Violation	Description	Notes	Status
09/19/2023	IPMC 304.1 - General	The exterior of a structure shall be maintained in good repair, structurally sound and sanitary so as not to pose a threat to the public health, safety or welfare.	The exterior of the property is not in good repair, showing signs of deterioration.	*Open
09/19/2023	IPMC 304.13 Window, skylight and door frames	Every window, skylight, door and frame shall be kept in sound condition, good repair and weather tight.	Windows and door frames are not kept in sound condition, good repair, or weather-tight.	*Open
09/19/2023	IPMC 304.2 - Protective Treatment	Exterior surfaces, including but not limited to, doors, door and window frames, cornices, porches, trim, balconies, decks and fences, shall be maintained in good condition. Exterior wood surfaces, other than decay-resistant woods, shall be protected from the elements and decay by painting or other protective covering or treatment. Peeling, flaking and chipped paint shall be eliminated and surfaces repainted. Siding and masonry joints, as well as those between the building envelope and the perimeter of windows, doors and skylights, shall be maintained weather resistant and water tight. Metal surfaces subject to rust or corrosion shall be coated to inhibit such rust and corrosion, and surfaces with rust or corrosion shall be stabilized and coated to inhibit future rust and corrosion. Oxidation stains shall be removed from exterior surfaces. Surfaces designed for stabilization by oxidation are exempt from this requirement.	The exterior surfaces have peeling and missing paint.	*Open
09/19/2023	IPMC 304.6 - Exterior Walls	All exterior walls shall be free from holes, breaks, and loose or rotting materials; and maintained weatherproof and properly surface-coated where required to prevent deterioration.	The exterior wall have rotting materials.	*Open
09/19/2023	IPMC 304.7 - Roofs and Drainage	The roof and flashing shall be sound, tight and not have defects that admit rain. Roof drainage shall be adequate to prevent dampness or deterioration in the walls or interior portion of the structure. roof drains, gutters and downspouts shall be maintained in good repair and free from obstructions. Roof water shall not be discharged in a manner that creates a public nuisance.	The structure's roof is not sound, tight, or free of defects that admit rain.	*Open

Uploaded Files

Date	File Name
09/19/2023	16918179-IMG_9857.JPG
09/19/2023	16918173-IMG_9850.JPG
09/19/2023	16918174-IMG_9851.JPG
09/19/2023	16918175-IMG_9853.JPG
09/19/2023	16918176-IMG_9854.JPG
09/19/2023	16918177-IMG_9855.JPG
09/19/2023	16918178-IMG_9856.JPG
09/19/2023	16918167-IMG_9844.JPG
09/19/2023	16918168-IMG_9845.JPG
09/19/2023	16918169-IMG_9846.JPG
09/19/2023	16918170-IMG_9847.JPG
09/19/2023	16918171-IMG_9848.JPG
09/19/2023	16918172-IMG_9849.JPG
09/19/2023	16917698-100_0993.JPG
09/19/2023	16917699-IMG_9709.JPG
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09/19/2023	16917674-IMG_9851.JPG
09/19/2023	16917482-FILED Search Warrant 801 Virginia.pdf
09/19/2023	16917481-801 Virginia Tax Record.pdf
09/19/2023	16917479-801 Virginia Administrative Warrant Report.pdf
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09/19/2023	16917081-JoshSides-06-28-2023-20-53-57-UTC-801_Virginia.jpg

Dilapidated Structure

801 Virginia Avenue



Laws and Codes

- 3-18-5 NMSA 1978- Dangerous building or debris-
 - Property owner has ten (10) days to commence demolition or file a written objection to appear before the governing body of the municipality.
- 8-03-170- Unsafe Structure or debris-
 - Property owner has ten (10) days to commence demolition or file a written objection to appear before the City Commission.
- IPMC 113.1 General-
 - Property owner may board up the structure for future repair or demolition for one (1) year. Property owner has two (2) years to complete rehabilitation or demolition.

Timeline

801 Virginia Avenue

- On 06/28/2023, Code Enforcement Officer was made aware of a potentially dilapidated structure and conducted an investigation.
- On 07/28/2023, a certified International Property Maintenance Code (IPMC) letter was sent to the owner listing seven violations of IPMC and how to correct them, as well as my contact information.
- On 08/28/2023, the certified IPMC letter was returned unclaimed and was posted on the front door of the property.
- On 08/28/2023, 12th Judicial District Court Judge Jessen granted an Administrative Search Warrant.
- On 08/30/2023, the Administrative Search Warrant was executed on the property.

International Property Maintenance Code Violations

801 Virginia Avenue

- 304.1 General- Exterior of the structure shall be maintained in a good repair, structurally sound, and sanitary.
- 304.2 Protective Treatment- Exterior surfaces shall be maintained in good condition with a paint or protective sealant applied.
- 304.6 Exterior Walls- Shall be free from holes, breaks, and loose or rotting materials.
- 304.7 Roofs and Drainage- shall be sound, tight, and not have defects that admit rain.
- 304.13- Windows, Skylights, and Door Frames- Kept in sound condition, good repair, and weather tight.

Condition of the Property at 801 Virginia Avenue



Condition of the Property at 801 Virginia Avenue



Condition of the Property at 801 Virginia Avenue



Condition of the Property at 801 Virginia Avenue



Condition of the Property at 801 Virginia Avenue



Condition of the Property at 801 Virginia Avenue



Condition of the Property at 801 Virginia Avenue



Condition of the Property at 801 Virginia Avenue



AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 9/26/2023

Report Date: 09/20/2023

Report No: 10.

Submitted By: Susan Payne

Subject: Consider, and act upon, Resolution 2023-49 supporting the second amendment of the United States Constitution and Opposing Governor Michelle Lujan Grisham's Executive Order 2023-130 ordering a public health emergency. (*Susan Payne, Mayor*) **(Roll Call Vote Required)**

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation:

Background:

RESOLUTION NO. 2023-49

A RESOLUTION SUPPORTING THE SECOND AMENDMENT OF THE UNITED STATES CONSTITUTION AND OPPOSING GOVERNOR MICHELLE LUJAN GRISHAM'S EXECUTIVE ORDER 2023-130 ORDERING A PUBLIC HEALTH EMERGENCY

WHEREAS On September 7th, 2023, Governor Lujan Grisham ordered executive order 2023-130, "Declaring state of Public Health Emergency due to Gun Violence".

WHEREAS, On September 8th, 2023, the Department of Health Secretary issued a public health order citing Executive Order 2023-130, declaring that gun violence constitutes conditions of public health importance, banning citizens from possessing openly or concealed firearms within cities or counties averaging 1,000 or more violent crimes per 100,000 residents per year since 2021 according to Federal Bureau of Investigation's Uniform Crime Reporting Program AND more than 90 firearm-related emergency department visits per 100,000 residents from July 2022 to June 2023 according to the New Mexico Department of Public Health for 30 days.

WHEREAS, On September 13th, 2023, US District Judge David Urias temporarily blocked the emergency order, ruling that the governor's gun ban flouted the Supreme Court's 2022 decision in New York State Rifle & Pistol Association v. Bruen, which made clear that the Second Amendment protects a right to carry a handgun outside the home for self-defense.

WHEREAS, On September 15th, 2023, the Department of Health Secretary amended the health order, stating no citizen shall openly or concealed possess a firearm in public parks or playgrounds, or other public areas provided for children to play in,

WHEREAS, The Otero County Commission passed resolution #09-14-23/112-14, safeguarding the Second Amendment of the United States Constitution,

WHEREAS, the Alamogordo City Commission passed 2019-12, March 12th, 2019, declaring the City of Alamogordo a Second Amendment Sanctuary City.

WHEREAS the Alamogordo City Commission recognizes the paramount importance of the Second Amendment to the United States Constitution, which safeguards the individual right of law-abiding citizens to keep and bear arms, and reaffirms its steadfast support for the Constitution of the United States as the supreme law of the land, defending the rights and freedoms of all American citizens;

WHEREAS, the Alamogordo City Commission strongly opposes the actions taken by Governor Michelle Lujan Grisham, which have unjustly abolished the rights of legal, law-abiding concealed and open-carry citizens.

THEREFORE BE IT RESOLVED,

1. the Alamogordo City Commission reaffirms its support for the Second Amendment of the United States Constitution.

2. The Alamogordo City Commission stands with the Otero County Commission in expressing profound concern about Governor Lujan Grisham's emergency orders to abolish the rights of law-abiding citizens.
3. The Alamogordo City Commission stands with the Otero County Commission in calling for Governor Michelle Lujan Grisham to immediately terminate the executive order and all associated health orders.

THEREFORE BE IT RESOLVED, The Alamogordo City Commission urges Governor Michelle Lujan Grisham to engage in constructive dialogue with citizens and the New Mexico Legislative Branch to develop balanced policies and address the issues of illegal firearm possession, bail reform, and monitoring of defendants while on conditions of release.

THEREFORE BE IT FURTHER RESOLVED That the Alamogordo City Commission will not authorize or appropriate government funds, resources, employees, agencies, contractors, buildings, detention centers, or officers to enforce laws that unconstitutionally infringe on the right of the people to keep and bear arms.

PASSED, APPROVED, AND ADOPTED this _____ day of _____, 2023.

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



State of New Mexico

Michelle Lujan Grisham
Governor

EXECUTIVE ORDER 2023-130

DECLARING STATE OF PUBLIC HEALTH EMERGENCY DUE TO GUN VIOLENCE

WHEREAS, New Mexico consistently has some of the highest rates of gun violence in the nation;

WHEREAS, the rate of gun deaths in New Mexico increased 43% from 2009 to 2018, compared to an 18% increase over this same time period nationwide;

WHEREAS, guns are the leading cause of death among children and teens in New Mexico, and have led to the deaths of a thirteen-year-old girl on July 28, a five-year-old girl on August 14, and an eleven-year-old boy on September 6;

WHEREAS, New Mexico has recently experienced an increasing amount of mass shootings, including mass shootings in Farmington and Red River this year;

WHEREAS, these gun-related deaths and injuries have resulted in devastating physical and emotional consequences for individuals, families, and communities throughout the State;

WHEREAS, the impact of gun violence extends beyond physical injuries and fatalities—causing emotional trauma, economic burdens, and long-lasting consequences for those affected individuals and their families;

WHEREAS, the increasing number of gunshot victims strains our already over-burdened healthcare system and places undue pressure on medical professionals and resources;

WHEREAS, after consulting with the Secretary of the Department of Health, I have determined that the foregoing situation constitutes a statewide public health emergency of unknown duration, as defined by the Public Health Emergency Response Act; and

WHEREAS, the foregoing situation also constitutes a man-made disaster causing or threatening widespread physical or economic harm that is beyond local control and requiring the resources of the State pursuant to the All Hazard Emergency Management Act.

NOW, THEREFORE, I, Michelle Lujan Grisham, Governor of the State of New Mexico, by the authority vested in me by the Constitution and laws of the State of New Mexico, do hereby **DECLARE** that a state of public emergency exists throughout the State due to gun violence and **ORDER** and **DIRECT** as follows:

1. The Department of Public Health, Department of Homeland Security and Emergency Management, and Department of Public Safety shall immediately begin collaborating with my Office to provide an effective and coordinated response to this public health emergency.

2. The Department of Finance and Administration shall make available emergency financial resources in an amount not to exceed seven hundred fifty thousand dollars (\$750,000.00) to the to the Department of Health, Department of Homeland Security and Emergency Management, and/or Department of Public Safety, in accordance with NMSA 1978, Sections 12-11-23 to -25. Funds shall be expended for the purpose of complying with this Order and shall be expended specifically to avoid and minimize economic or physical harm and to protect the public health, safety, and welfare. Funds shall be paid out upon warrants drawn by the Secretary of Finance and Administration upon vouchers approved by the Governor or an agent or agency designated by her for that purpose.

3. All mayors, sheriffs, and members of governing bodies of municipalities or counties are encouraged to request, if necessary, an emergency proclamation and implementation of temporary additional restrictions to address this public health emergency pursuant to the Riot Control Act.

4. All political subdivisions of the State shall comply with and enforce all directives issued pursuant to this Order.

I FURTHER ORDER and DIRECT as follows:

1. This Order supersedes any previous orders, proclamations, or directives to the extent they are in conflict.

2. This Order shall take effect immediately and shall remain in effect until October 6, 2023.

ATTEST:

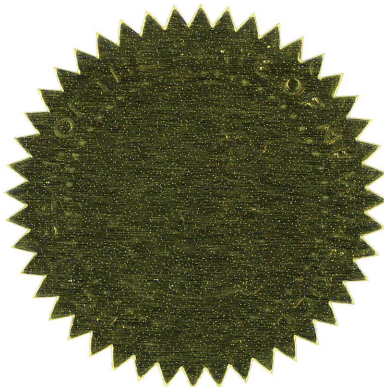
Maggie Toulouse Oliver

MAGGIE TOULOUSE OLIVER
SECRETARY OF STATE

DONE AT THE EXECUTIVE OFFICE
THIS 7TH DAY OF SEPTEMBER 2023

WITNESS MY HAND AND THE GREAT
SEAL OF THE STATE OF NEW MEXICO

Michelle Lujan Grisham
MICHELLE LUJAN GRISHAM
GOVERNOR



PUBLIC HEALTH ORDER
NEW MEXICO DEPARTMENT OF HEALTH
SECRETARY PATRICK M. ALLEN

September 8, 2023

**Public Health Emergency Order Imposing Temporary Firearm
Restrictions, Drug Monitoring and Other Public Safety Measures**

WHEREAS, for the reasons stated in Governor Michelle Lujan Grisham's Executive Orders 2023-130 and 2023-132, gun violence and drug abuse currently constitute statewide public health emergencies, as defined in the Public Health Emergency Response Act;

WHEREAS, pursuant to those Executive Orders, I have begun collaborating with the New Mexico Department of Homeland Security and Emergency Management, the New Mexico Department of Public Safety, and the Governor's Office to provide an effective and coordinated response to these public health emergencies;

WHEREAS, the New Mexico Department of Health possesses legal authority pursuant to the Public Health Act, NMSA 1978, Sections 24-1-1 to -40, the Public Health Emergency Response Act, NMSA 1978, Sections 12-10A-1 to -19, the Department of Health Act, NMSA 1978, Sections 9-7-1 to -18, and inherent constitutional police powers of the New Mexico state government to preserve and promote public health and safety, to maintain and enforce rules for the control of a condition of public health importance; and

WHEREAS, temporary firearm restrictions, drug monitoring, and other public safety measures are necessary to address the current public health emergencies.

NOW, THEREFORE, I, Patrick M. Allen, Secretary of the New Mexico Department of Health, in accordance with authority vested in me by the Constitution and the Laws of the State of New Mexico, and as directed by the Governor pursuant to the full scope of emergency powers under the All Hazard Emergency Management Act, do hereby **DECLARE** that gun violence and drug use constitute conditions of public health importance, as defined in NMSA 1978, Section 24-1-2(A), and hereby **ORDER** and **DIRECT** as follows:

(1) No person, other than a law enforcement officer or licensed security officer, shall possess a firearm, as defined in NMSA 1978, Section 30-7-4.1, either openly or concealed, within cities or counties averaging 1,000 or more violent crimes per 100,000 residents per year since 2021 according to Federal Bureau of Investigation's Uniform Crime Reporting Program AND more than 90 firearm-related emergency department visits per 100,000 residents from July 2022 to June 2023 according to the New Mexico Department of Public Health, except:

A. On private property owned or immediately controlled by the person;

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B. On private property that is not open to the public with the express permission of the person who owns or immediately controls such property;

C. While on the premises of a licensed firearms dealer or gunsmith for the purpose of lawful transfer or repair of a firearm;

D. While engaged in the legal use of a firearm at a properly licensed firing range or sport shooting competition venue; or

E. While traveling to or from a location listed in Paragraphs (1) through (4) of this section; provided that the firearm is in a locked container or locked with a firearm safety device that renders the firearm inoperable, such as a trigger lock.

(2) The New Mexico Regulation and Licensing Department shall conduct monthly inspections of licensed firearms dealers in the State to ensure compliance with all sales and storage laws.

(3) The Department of Health shall, within 20 days, compile and issue a comprehensive report on gunshot victims presenting at hospitals in New Mexico, which shall include (if available): demographic data of gunshot victims, including age, gender, race, and ethnicity; data on gunshot victim's healthcare outcomes; the brand and caliber of the firearm used; the general circumstances leading to the injury; the impact of gunshot victims on New Mexico's healthcare system; and any other pertinent information.

(4) No person, other than a law enforcement officer or licensed security officer, shall possess a firearm on state property, public schools, and public parks.

(5) The New Mexico Department of Health and the New Mexico Environmental Department shall develop a program to conduct wastewater testing for illicit substances, such as fentanyl, at all public schools.

(6) The Children, Youth and Families Department shall immediately suspend the Juvenile Detention Alternative Initiative and evaluate juvenile probation protocols.

(7) The Department of Public Safety shall dispatch additional officers and resources to Bernalillo County and work with the Albuquerque Police Department and Bernalillo County Sheriff to determine the best use of those resources.

(8) The Department of Public Safety shall coordinate with local law enforcement agencies and the district attorneys' offices and assist in apprehension of individuals with outstanding arrest warrants.

I FURTHER DIRECT as follows:

(1) This Order shall be broadly disseminated in English, Spanish, and other appropriate languages to the citizens of the State of New Mexico.

(2) Trigger locks shall be made available free of charge to all firearm owners; provided that each firearm owner shall only be entitled to one free trigger lock. Firearm owners wishing to obtain a free trigger lock should call 505-984-3085 or email info@newmexicanstoppreventgunviolence.org.

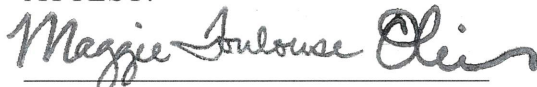
(3) The New Mexico Department of Health, the New Mexico Department of Public Safety, the New Mexico Department of Homeland Security and Emergency Management, and all other State departments and agencies are authorized to take all appropriate steps to ensure compliance with this Order.

(4) Any person or entity who willfully violates this Order may be subject to civil administrative penalties available at law.

(5) This Order shall take effect on September 8, 2023, and remain in effect for the duration of the public health emergencies declared in Executive Orders 2023-130 and 2023-132 and any subsequent renewals of those public health emergency declarations, unless otherwise rescinded.

(6) Should any provision of this Order or its application to any person or circumstances be held invalid by a court of law, the remainder of this Order or the application of its provisions to other persons or circumstances shall remain in full force and effect.

ATTEST:



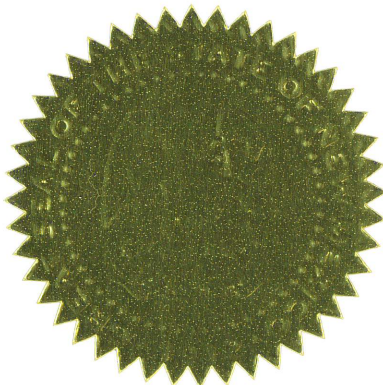
MAGGIE TOULOUSE OLIVER
SECRETARY OF STATE

DONE AT THE EXECUTIVE OFFICE
THIS 8TH DAY OF SEPTEMBER 2023

WITNESS MY HAND AND THE GREAT
SEAL OF THE STATE OF NEW MEXICO



PATRICK M. ALLEN
SECRETARY OF THE
NEW MEXICO DEPARTMENT OF HEALTH



PUBLIC HEALTH ORDER
NEW MEXICO DEPARTMENT OF HEALTH
SECRETARY PATRICK M. ALLEN

September 15, 2023

**Amended Public Health Emergency Order Imposing Temporary Firearm
Restrictions, Drug Monitoring and Other Public Safety Measures**

WHEREAS, for the reasons stated in Governor Michelle Lujan Grisham's Executive Orders 2023-130 and 2023-132, gun violence and drug abuse currently constitute statewide public health emergencies, as defined in the Public Health Emergency Response Act;

WHEREAS, pursuant to those Executive Orders, I have begun collaborating with the New Mexico Department of Homeland Security and Emergency Management, the New Mexico Department of Public Safety, and the Governor's Office to provide an effective and coordinated response to these public health emergencies;

WHEREAS, both the Bernalillo County Sheriff and Chief of the Albuquerque Police Department have identified the Bernalillo County Metropolitan Detention's lack of staffing, space, and prompt screening of arrested individuals as a significant contributor to these public health emergencies by keeping police officers off the streets while they wait for arrestees to be processed;

WHEREAS, according to the New Mexico Department of Health, child firearm emergency department visits in New Mexico increased by 100% for youth ages 0-13 between 2018 and 2022.

WHEREAS, the New Mexico Department of Health possesses legal authority pursuant to the Public Health Act, NMSA 1978, Sections 24-1-1 to -40, the Public Health Emergency Response Act, NMSA 1978, Sections 12-10A-1 to -19, the Department of Health Act, NMSA 1978, Sections 9-7-1 to -18, and inherent constitutional police powers of the New Mexico state government to preserve and promote public health and safety, to maintain and enforce rules for the control of a condition of public health importance; and

WHEREAS, temporary firearm restrictions, drug monitoring, and other public safety measures are necessary to address the current public health emergencies.

NOW, THEREFORE, I, Patrick M. Allen, Secretary of the New Mexico Department of Health, in accordance with authority vested in me by the Constitution and the Laws of the State of New Mexico, and as directed by the Governor pursuant to the full scope of emergency powers under the All Hazard Emergency Management Act, do hereby **DECLARE** that gun violence and drug use constitute conditions of public health importance, as defined in NMSA 1978, Section 24-1-2(A), and hereby **ORDER** and **DIRECT** as follows:

OFFICE OF THE SECRETARY

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(1) No person, other than a law enforcement officer or licensed security officer, or active duty military personnel shall possess a firearm, as defined in NMSA 1978, Section 30-7-4.1, either openly or concealed in public parks or playgrounds, or other public area provided for children to play in, within cities or counties averaging 1,000 or more violent crimes per 100,000 residents per year since 2021 according to Federal Bureau of Investigation's Uniform Crime Reporting Program AND more than 90 firearm-related emergency department visits per 100,000 residents from July 2022 to June 2023 according to the New Mexico Department of Public Health, except:

- A. While traveling to or from a location listed in Paragraph (B) of this section; provided that the firearm is in a locked container or locked with a firearm safety device that renders the firearm inoperable, such as a trigger lock.
- B. In areas designated as a state park within the state parks system and owned or managed by the New Mexico Energy, Minerals and Natural Resources Department State Parks Division, or the State Land Office.

(2) The New Mexico Regulation and Licensing Department shall conduct monthly inspections of licensed firearms dealers in the State to ensure compliance with all sales and storage laws.

(3) The Department of Health shall, no later than September 28, compile and issue a comprehensive report on gunshot victims presenting at hospitals in New Mexico, which shall include (if available): demographic data of gunshot victims, including age, gender, race, and ethnicity; data on gunshot victim's healthcare outcomes; the brand and caliber of the firearm used; the general circumstances leading to the injury; the impact of gunshot victims on New Mexico's healthcare system; and any other pertinent information.

(4) The New Mexico Department of Health and the New Mexico Environmental Department shall develop a program to conduct wastewater testing for illicit substances, such as fentanyl, at all public schools. NMED has the authority to independently test the wastewaters of the state, and perform any other acts authorized by the Public Health Act (Section 24-1-3) necessary to address the public health emergency as outlined herein and within the Executive Order 2023-132, and also to receive funds directly from DFA pursuant to Sections 12-11-23 through 12-11-25, to promptly address the public health emergency.

(5) The New Mexico Children, Youth and Families Department shall immediately suspend the Juvenile Detention Alternative Initiative and evaluate juvenile probation protocols.

(6) The New Mexico Department of Public Safety shall dispatch additional officers and resources to Bernalillo County and work with the Albuquerque Police Department and Bernalillo County Sheriff to determine the best use of those resources.

(7) The Department of Public Safety shall coordinate with local law enforcement agencies and the district attorneys' offices and assist in apprehension of individuals with outstanding arrest warrants.

(8) All participating New Mexico Managed Care Organizations shall immediately ensure that individuals who need drug or alcohol treatment have received a permanent, adequate treatment placement within 24 hours of the request.

(9) The New Mexico Human Services Department shall send relevant Managed Care Organizations letters of direction requiring them to provide their plans to achieve continual behavioral health network adequacy.

(10) The New Mexico Department of Corrections and the Department of Homeland Security shall provide assistance to the Bernalillo County Metropolitan Detention Center and its contractors to ensure adequate staffing, space, and screening for arrested and incarcerated individuals; provided that nothing in this provision shall be construed to limit the authority and responsibility of Bernalillo County Metropolitan Detention Center in managing its operations.

I FURTHER DIRECT as follows:

(1) This Order shall be broadly disseminated in English, Spanish, and other appropriate languages to the citizens of the State of New Mexico.

(2) Trigger locks shall be made available free of charge to all firearm owners; provided that each firearm owner shall only be entitled to one free trigger lock. Firearm owners wishing to obtain a free trigger lock should call 505-984-3085 or email info@newmexicanstoppreventgunviolence.org.

(3) The New Mexico Department of Health, the New Mexico Department of Public Safety, the New Mexico Department of Homeland Security and Emergency Management, and all other State departments and agencies are authorized to take all appropriate steps to ensure compliance with this Order.

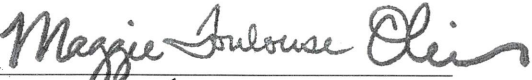
(4) Any person or entity who willfully violates this Order may be subject to civil administrative penalties available at law.

(5) This Order supersedes any previous Order to the extent it is in conflict and shall take effect on September 15, 2023, and remain in effect for the duration of the public health emergencies declared in Executive Orders 2023-130 and 2023-132 and any subsequent renewals of those public health emergency declarations, unless otherwise rescinded.

(6) Should any provision of this Order or its application to any person or circumstances be held invalid by a court of law, the remainder of this Order or the application of its provisions to other persons or circumstances shall remain in full force and effect.

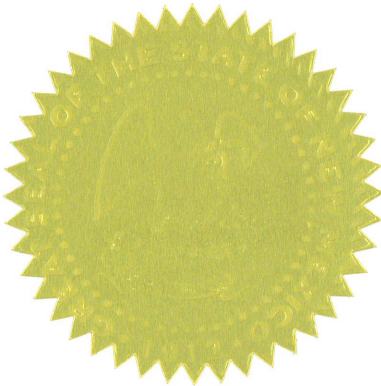
(7) Nothing in this Order shall be construed to contradict or evade any court orders temporarily enjoining provisions in previous public health emergency orders that remain in this Order. Any court order regarding such provisions shall apply to the same provisions found herein.

ATTEST:


MAGGIE TOULOUSE OLIVER
SECRETARY OF STATE

DONE AT THE EXECUTIVE OFFICE
THIS 15TH DAY OF SEPTEMBER 2023

WITNESS MY HAND AND THE GREAT
SEAL OF THE STATE OF NEW MEXICO



PATRICK M. ALLEN
SECRETARY OF THE
NEW MEXICO DEPARTMENT OF HEALTH

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 9/26/2023

Report Date: 09/20/2023

Report No: 11.

Submitted By: Dylan Aleshire

Subject: Appointments to Boards and Committees. (*Susan Payne, Mayor*)

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation: Three applications were received. Staff recommends two appointments to the Senior Volunteer Programs Advisory Council. Unfortunately, one applicant will not be appointed due to a lack of available vacancies, but the City Clerk's Office will keep their application on file in case of another vacancy.

Background: Senior Volunteer Programs Advisory Council

- Two current vacancies. Applications by Brandi Ferebee, Lara Bentley, and Shonna Lawson were received. All would serve their 1st term if appointed. There are three applicants and only two vacancies.

Airport Zoning Board

- Three current vacancies.

If interested in serving on a Board or Committee, you may apply in person at the City Clerk's office, or online via the City website.

URL Link: <https://ci.alamogordo.nm.us/353/Boards-Committees>

[Print](#)**Application to Serve on a Board/Committee - Submission #6575****Date Submitted: 9/19/2023****City of
ALAMOGORDO****City of Alamogordo Application to Serve on a City
Board/Committee****First Name:***

Lara

Last Name:*

Bentley

Phone Number:*

937-207-5216

Email Address:*

lara2425@att.net

Physical Address:*

566 Tierra Bella Dr

City:*

Alamogordo

State:*

NM

Zip Code:*

88310

Is the above address within City Limits?*☒ Yes☐ No**Mailing Address:***

566 Tierra Bella Drive

City:*

Alamogordo

State:*

NM

Zip Code:*

88310

Present Employer:*

WeCare Connect

Job Title:

Client Success Manager

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

Senior Volunteer Programs Advisory Council ▼

Are you related to anyone who is presently employed by the City of Alamogordo?*☐ Yes☒ No**Board/Committee you would like to serve on (2nd choice):**

-- Select One -- ▼

If so, what is their relation to you?**Are you related to an Elected Official of the City of Alamogordo?***☐ Yes☒ No**Is so, what is their relation to you?****Experience and education relating to the Board/Committee:***

I have worked in the field of aging services for over 11 years- I was the Corporate Director of Human Resources for a non-profit senior living provider for almost 11 years, and now work for an organization that surveys the resident, patients, and employees of senior living providers across the US and Canada

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

I have always enjoyed working with our aging population and would love to serve on the Board that facilitates the programming to support our older residents of Alamogordo.

[Print](#)**Application to Serve on a Board/Committee - Submission #6581****Date Submitted: 9/20/2023****City of
ALAMOGORDO****City of Alamogordo Application to Serve on a City
Board/Committee****First Name:***

Brandi

Last Name:*

Ferebee

Phone Number:*

2819084620

Email Address:*

brandilynnferebee@gmail.com

Physical Address:*

3031 El Dorado

City:*

Alamogordo

State:*

NM

Zip Code:*

88310

Is the above address within City Limits?*☒ Yes☐ No**Mailing Address:***

3031 El Dorado

City:*

Alamogordo

State:*

NM

Zip Code:*

88310

Present Employer:*

USAF

Job Title:

Casualty Assistance Representative

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

Senior Volunteer Programs Advisory Council ▼

**Are you related to anyone who is
presently employed by the City of
Alamogordo?***☐ Yes☒ No**Board/Committee you would like to serve on
(2nd choice):**

Public Library Board ▼

If so, what is their relation to you?**Are you related to an Elected Official of
the City of Alamogordo?***☐ Yes☒ No**Is so, what is their relation to you?****Experience and education relating to the Board/Committee:***

Served on 7 USAF Boards and 3 Top three committees while serving active duty.

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

I moved to Alamogordo June 2019 and my family and I loved our county and would like to be part of the the City Board/Committee. Thank you.

Print**Application to Serve on a Board/Committee - Submission #6583****Date Submitted: 9/20/2023****City of
ALAMOGORDO****City of Alamogordo Application to Serve on a City
Board/Committee****First Name:***

Shonna

Last Name:*

Lawson

Phone Number:*

8067592371

Email Address:*

shonnalawson@beehivehomesnm.com

Physical Address:*

1277 Mesquite ST

City:*

ALAMOGORDO

State:*

NM

Zip Code:*

88310

Is the above address within City Limits?*☒ Yes☐ No**Mailing Address:***

1277 Mesquite ST

City:*

ALAMOGORDO

State:*

NM

Zip Code:*

88310

Present Employer:*

Beehive Homes of Alamogordo

Job Title:

Administrator

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

Senior Volunteer Programs Advisory Council ▼

**Are you related to anyone who is
presently employed by the City of
Alamogordo?***☐ Yes☒ No**Board/Committee you would like to serve on
(2nd choice):**

Mayor's Committee on Aging ▼

If so, what is their relation to you?**Are you related to an Elected Official of
the City of Alamogordo?***☐ Yes☒ No**Is so, what is their relation to you?****Experience and education relating to the Board/Committee:***

BA in Healthcare Administration 2012
Activities Director 2001
Certified Dementia Care Practioner 2019
Manager Beehive Homes Assisted Living 2012
BeeHive Homes Administrator 2022

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

I would like to serve on a committee to help ensure that our Seniors have the ability to continue serving others as well as bringing my knowledge and input to strengthen an already successful program