



Alamogordo City Commission

NOTICE OF MEETING

Regular Meeting Agenda

August 13, 2024 - 6:30 PM

Donald E. Carroll City Commission Chambers
City Hall, 1376 E. Ninth Street

Susan L. Payne Mayor
Sharon McDonald Mayor Pro-Tem, District 5
Nick Paul District 1
Stephen Burnett District 2
Warren Robinson District 3
Josh Rardin District 4
Mark Tapley District 6

Rick Holden 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 east bulletin board located in the south of the City Hall and in the glass case located outside the north entrance of the City Hall, distributed to the appropriate news media, and posted on the City website: <http://ci.alamogordo.nm.us> within the required time frame. As a courtesy, the entire Agenda Packet has also been posted on the City of Alamogordo website: <http://ci.alamogordo.nm.us>

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

CALL TO ORDER & ROLL CALL

Announce the presence of a Quorum.

INVOCATION & PLEDGE OF ALLEGIANCE

APPROVAL OF AGENDA

PRESENTATIONS

1. Presentation Regarding City of Alamogordo's F4 Fighter Jet and the Gateway Monument. (*Jerrett Perry, and the F4 Action Committee*)

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 July 23, 2024, and the Special Commission Meeting on July 30, 2024. *(Rachel Hughes, City Clerk)*
3. Consider, and act upon, Ordinance 1699 for adoption and final publication, repealing Article 09-02 Cemetery Board and Article 02-04-120 through 02-04-180 Mayor's Youth Advisory Council of the Alamogordo Code of Ordinances. *(Stephanie Hernandez, Assistant City Manager)* **(Roll Call Vote Required)**
4. Consider, an act upon, Ordinance 1705 for adoption and final publication, approving a loan from the New Mexico Finance Authority regarding the Yearout Contract and EPC project. *(Evelyn Huff, Finance Director, and Chris Muirhead)* **(Roll Call Vote Required)**
5. Consider, and act upon, Resolution No. 2024-52 authorizing the Mayor to execute the agreement with the Southeastern New Mexico Economic Development District/Council of Governments to include the annual contribution of \$9,125. *(Rachel Hughes, City Clerk)* **(Roll Call Vote Required)**
6. Consider, and act upon, agreement with Otero County for receipt of the \$35,000 reimbursable grant award for the Alamogordo Public Library services to County residents. *(Kim Underwood, Library Manager)*
7. Consider, and act upon, Resolution 2024-53, declaring 405 Delaware Ave. to be so ruined, damaged, and dilapidated that it is a menace to public comfort, health, peace, or safety. *(Josh Sides, Code Enforcement Manager)* **(Roll Call Vote Required)**
8. Consider, and act upon, Resolution 2024-54, declaring 502 S. Canyon Rd. to be so ruined, damaged, and dilapidated that it is a menace to public comfort, health, peace, or safety. *(Josh Sides, Code Enforcement Manager)* **(Roll Call Vote Required)**
9. Consider, and act upon, the award of Public Works Bid No. 2024-003, New York SMP-8th to 10th Project No. EN2305, to General Hydronics Utilities LLC, related to the Alamogordo New York SMP-8th to 10th project for an amount not to exceed \$1,823,734.45, including NMGR. *(Justen Boyle, Project Manager)*
10. Consider, an act upon, the award of PW Bid 2024-004 Rehabilitate Taxiway A to Mesa Verde Enterprises, Inc. in the amount of \$1,285,875.00, excluding NMGR. *(Troy Orr, Airport Manager)*
11. Consider, and act upon, an amendment to the funding from the New Mexico Economic Development District, Non-Metro Area Agency on Aging for the Nutrition Services Incentive Program (NSIP). The amendment revises the original FY23-24 contract amount from \$61,016.00 to \$60,644.67, thereby decreasing the total dollar amount by \$371.33 *(Magdalena Morales, ASC Manager and Veronica Ortega, Community Services Director)*.
12. Consider, and act upon, acceptance of FAA grant award number 3-35-0001-036-2024, to Alamogordo-White Sands Regional Airport, in the amount of \$547,208, to Reseal Taxiway A Pavement. *(Troy Orr, Airport Manager)*
13. Consider, and act upon, acceptance of FAA grant award number 3-35-0001-035-2024, to

Alamogordo-White Sands Regional Airport, in the amount of \$448,000 FAA, to Reseal Taxiway A Pavement. (*Troy Orr, Airport Manager*)

14. Consider, and act upon, acceptance of NMDOT-AD grant award number ALM-2501 to Alamogordo-White Sands Regional Airport, in the amount of \$453,120, to Reseal Taxiway A Pavement. (*Troy Orr, Airport Manager*)

15. Consider, and act upon, an agreement with Otero County for Alamo Senior Center services to County residents. The total amount budgeted is \$49,834.00 (\$29,334.00 for home-delivered meals and \$20,500.00 for transportation). (*Magdalena Morales, ASC Manager and Veronica Ortega, Community Services Director*)

ITEMS REMOVED FROM CONSENT AGENDA

NEW BUSINESS

16. Consider, and act upon, Ordinance 1706 for first publication, approving a loan agreement in the amount of 32,500,000 with the New Mexico Finance Authority for repairing, replacing, extending, and upgrading water and sewer infrastructure. (*Stephanie Hernandez, Assistant City Manager, Chris Muirhead, Modrall Sperling, and John Archuleta, Bosque Advisors*)

17. Consider, and act upon, Resolution 2024-56, approving the location of the City of Alamogordo's F-4 Fighter Jet. (*Rick Holden, City Manager, and Stephanie Hernandez, Assistant City Manager*) **(Roll Call Vote Required)**

18. Consider, and act upon, Resolution 2024-55, a Resolution Encouraging Governor Lujan-Grisham and State Legislators to Prioritize Public Safety for the Citizens of New Mexico. (*Susan L. Payne, Mayor*) **(Roll Call Vote Required)**

19. Consider, and discuss providing staff with directions to set up a Town Hall Meeting with Governor Lujan-Grisham and state legislators to discuss crime and mental health. (*Susan L. Payne, Mayor*)

EXECUTIVE SESSION (Roll Call Vote Required)

20. Recess into Executive Closed Session in compliance with 10-15-1(H)(8) NMSA (as amended) to discuss: Real Property land acquisition of Mountain Park Trout Farm located at 1086 US Highway 82 and the Flores Property located at 1020 US Highway 82, High Rolls, NM. **(Roll Call Vote Required)**

RECONVENE INTO OPEN SESSION

21. Take any action as a result from the Executive Closed Session.

ADJOURNMENT

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 8/13/2024

Report Date: 08/07/2024

Report No: 1.

Submitted By:

Subject: Presentation Regarding City of Alamogordo's F4 Fighter Jet and the Gateway Monument. (*Jerrett Perry, and the F4 Action Committee*)

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation:

Background:

GATEWAY FREEDOM MONUMENT

PHANTOM II PHOREVER



HISTORY

PHANTOM II PHOREVER

The 49th Tactical Fighter Wing commenced its transition from the F-105 Thunderchief to the F-4D Phantom II on March 9, 1967. The wing was then stationed at Spangdahlem Air Base, West Germany, where it played a crucial role in supporting NATO commitments. In July 1968, the 49th relocated to Holloman, turning Holloman AFB from primarily a missile development center into a major jet fighter operating location - a role it has maintained to this day. The 7th, 8th and 9th Fighter Squadrons flew F-4s from 1967 to 1978. The 49th TFW continued to support NATO through multiple Crested Cap deployments to West Germany. In addition, the wing deployed 72 F-4's and 2,600 personnel to Takhli Royal Thai Air Base from May to October 1972. They flew 22,000 combat hours and delivered over 41 million pounds of bombs on targets throughout North and South Vietnam.

In 1977, the wing began the transition from the F-4 to the F-15, followed in later years with transitions to the F-117, the F-22 and the F-16. During these years, F-4s were still a common sight on Holloman AFB and in the local airspace. This was due to operational deployments supporting the F-15s as well as extensive flight test and test support missions accomplished by the Test Group.

However, on June 5, 1992, 15 years after the F-4 left Holloman AFB, Phantoms began their return as the 20th Fighter Squadron relocation here from George AFB. The 20th FS's mission was to train German fighter pilots in initial through advanced courses in the operation of the German Luftwaffe T-4F air superiority jet fighter. Upon its deactivation on December 20th, 2004, the 20th FS was the last active-duty USAF fighter squadron to fly the F-4 Phantom.

Yet the Phantom continued to grace the skies of southern New Mexico having been converted to full-scale QF-4 drones in the mid 1990's. The 82nd Aerial Target Squadron conducted manned and unmanned missions on White Sands Missile Range for a multitude of developmental and operational test missions until the final flight of the F-4 in the United States on December 21st, 2016. With that flight, the F-4 Phantom II's time at Holloman AFB had finally come to a close after almost a half century of service in the vast skies of the Tularosa Basin.

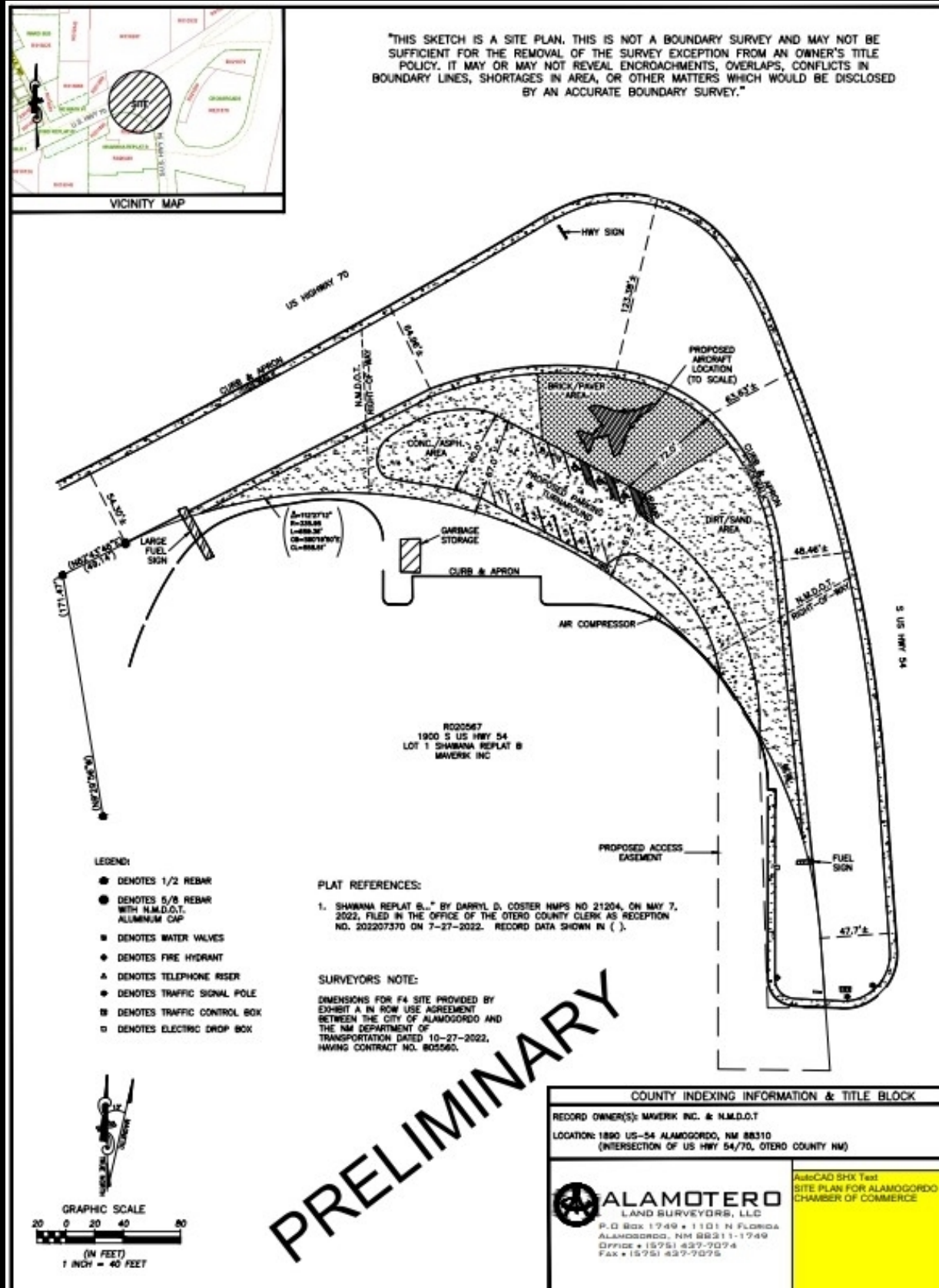




MISSION STATEMENT

We're off with one helluva roar on a mission to elevate our city's legacy to new heights! Our F-4 Phantom II - once the world's premier jet fighter and now the iconic fighter of the jet age - pitches upward as a visual representation of Alamogordo and Holloman's path forward - focused on target. Beneath are the names and personal stories, preserved phoevery, from individuals that were connected with this awesome aircraft

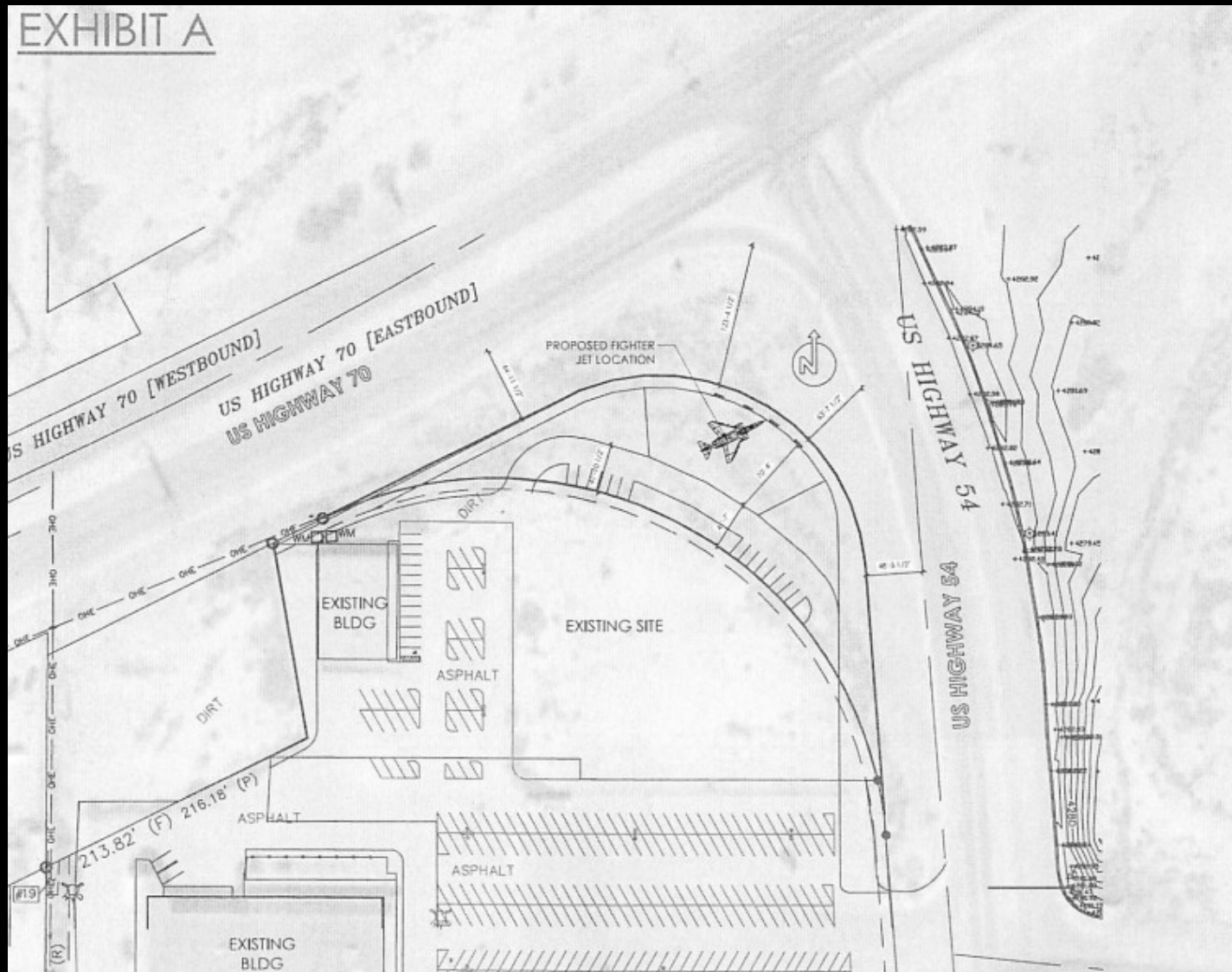
Alamo, Hard Right, Bandit 11 O'Clock High, Fox 1!"



SITE PLANS PRELIM

SITE PLANS

EXHIBIT A



DocuSign Envelope ID: 655A3DDF-5BBF-4380-ADCD-AFF8A90C183C

EXHIBIT B



F-4 STAND RENDERING



INDIVIDUAL Sponsorship Levels

GET A SIGNATURE BRICK WITH YOUR NAME/LOGO ETCHED FOR A LASTING IMPRESSION

Step 1. Pick your Affiliation



PHANATIC

I'm a fan of the F-4



PHRIENDS & PHAMILY

I have a friend or family member
that served



PHYLERS & PHIXERS

I served in the Military

Step 2. Pick your Brick Size

\$150 - Small

\$300 - Medium

\$500 - Large

Step 3. Share your story

Send your story to
adam.hoppes@alamogordo.com

CORPORATE Sponsorship Levels

GET A SIGNATURE BRICK WITH YOUR NAME/LOGO ETCHED FOR A LASTING IMPRESSION

Step 1. Pick your Affiliation

Your Benefits



PIERCE

Donations of \$5000 or more

Logo on website, T-shirts, banner, mention in press release, social media partnership with digital banners



PHOCUS

Donations of \$3000 or more

Logo on website, T-shirts, banner, mention in press release



PHAST

Donations of \$1500 or more

Logo on website, and T-shirt

Step 2. Share your story

Send your story to
adam.hoppes@alamogordo.com

““The willingness of America's veterans to sacrifice for our country has earned them our lasting gratitude.””

JEFF MILLER

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 8/13/2024

Report Date: 08/07/2024

Report No: 2.

Submitted By: Rachel Hughs

Subject: Approve the minutes for the Regular Commission meeting on July 23, 2024, and the Special Commission Meeting on July 30, 2024. *(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
July 23, 2024**

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

**MARK TAPLEY, COMMISSIONER
WARREN ROBINSON, COMMISSIONER
RICK HOLDEN, 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 6:29 p.m. Roll Call was taken by the City Clerk. City Attorney Ashley Smith was absent. City Clerk Hughs announced there was a quorum present. The Invocation was given by Pastor Anthony Torres of Mountain View Church, and the Pledge of Allegiance was led by Commissioner Burnett.

APPROVAL OF AGENDA

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

PUBLIC COMMENT

Shari Atkinson said she lived at Desert Palms Mobile Estates on 1st Street. It is senior-only, meaning the age of fifty-five or over. On June 13th, a leak was discovered in our gas lines, and the State of New Mexico and New Mexico Gas shut off service to the entire park. There are seventy-four homes in the park. The gas provider is Desert Palms. We were billed monthly with space rental payments per our lease agreement. The corporate owners have been investigating options after discovering that reworking all the existing gas lines would take months or years. They investigated an option with Pinnacle Propane. A contract was negotiated, and the project could be completed before winter. Last Thursday, July 18th, the City of Alamogordo served notice to the park and tenants that installing propane in a mobile home park violated city ordinances. So, we are back at square one with no gas service or resolution in sight. At a tenant meeting, we were informed that upgrading to an all-electric home would require extensive installation of transformers in the park, and homeowners would have to purchase new appliances, wiring, and breakers. Few of the residents would be able to do that financially. It appears we are left with no viable options. We cannot connect propane per the City of Alamogordo, we cannot convert to electric service without expensive upgrades, and we cannot do a major repair of the current leaks in a replacement of the gas lines. It is unknown whether any of these could be completed before winter. We understand that White Sands Mobile Home Parks has been waiting for a contractor to repair their lines. They are in the same situation. They have been without gas service for five months and have not broken ground. We cannot ethically sell our homes with our substandard utilities. We are homeowners who only rent our spaces and cannot just walk away. We see two solutions available to us. One is repairing the existing leaks, testing them, turning service back on to the park, and replacing all gas lines in a phased manner. The second option is for the City Commission to grant an exception to the propane rule. Winter will soon be here, and senior citizens will be huddling around electric space heaters to stay warm.

Danielle Hill said her mother-in-law was a new resident of the park that Ms. Atkinson spoke of. We moved my mother-in-law here last October, and our family has over \$100,000 invested in the move.

She is an eighty-eight-year-old in a situation where she has no heat or hot water. I am her caregiver, and I am contracted to Vet Assist through the Veteran's Administration. At some point, I am going to have to report to the Veteran's Administration that my mother-in-law is living in substandard conditions. She has had no gas, hot water, or way to cook for a month. We have a person in hospice at the park and several with home health agencies. When does it become elder abuse? When does someone have to step in and do something? Ms. Atkinson spoke of the solutions. I would challenge the Commission and Mayor to be our advocates for the State and find conflict resolution with either the State of New Mexico or New Mexico Gas. This system has limped along for twenty years with two gas leaks. I understand this is a nationwide issue, and the State of New Mexico is shutting them down all over. Could we get the State and New Mexico Gas to agree to put a band-aid on the two leaks, have it pressure tested, come back, and monitor it every month? Then, get the owners and the State to come up with a comprehensive plan on how they are going to phase into a new gas system, or figure out a green energy solar system. I challenge you to turn this terrible thing into something positive and figure out how we get sustainable energy for these fifty-five-plus parks. How are we going to keep these people warm and comfortable? It was fifty-eight degrees this morning. The showers were ice-cold this morning. I would request that you put this on the agenda to discuss this in-depth, and we can find out what you have found out.

REMARKS AND INQUIRIES BY THE CITY COMMISSION

Mayor Payne changed the order of the agenda by having the Remarks and Inquiries by the City Commission take place before the City Manager's Report.

Mayor Payne said this started back in April with White Sands Community, which has had no natural gas since April. Neither White Sands Community nor Desert Palms owners have reached out to the City. To me, that's a huge issue. I do not see how this is the City's fault, and I believe it is the fault of the owners of the parks. In my opinion, our citizens deserve better. I find it hard to believe that the parks have not been able to get materials, supplies, or contractors since April. We had someone from the Attorney General's Office reach out to us, and I met with an investigator looking into this. I already called Adult Protective Services. In my opinion, it is elder abuse, but it is not their definition of elder abuse. I reached out to state legislators and had a long conversation with one, and I sent him a bunch of information and letters. I believe the propane solution was brought up because it is cheaper for the owner. You will spend more on propane, which is not safe. The owners or managers need to reach out to the City of Alamogordo. This needs to be fixed properly, and the propane goes against our ordinances. I have been watching this for months, and I am very disappointed it has not been fixed. Supposedly, they will start next month at White Sands Community. I think this is more about money than being unable to get a contractor, but I do not know for sure because they haven't reached out to us.

We just had the graduation for our first Ferguson Academy on Friday. There were fifteen graduates.

Commissioner Rardin asked if we are going to bring a plan forward regarding how we intend to spend the money from the water rate increase? I asked about it at the last meeting. City Manager Holden said yes sir. Commissioner Rardin asked if there was a timeline. On Facebook, some people's bills were considerably higher. Some were double or triple. City Manager Holden said he would share his remarks in the upcoming City Manager's Report.

The gas issue is a civil one between the owners and the gas company. The City should not get involved other than our ordinance. The only thing we could possibly do is put an item on the next agenda to give these two parks a variance on our ordinance for six months to a year, allowing them to switch to propane temporarily so the residents have heat, water, and a place to cook. Then, hold the owner's feet to the fire. I was talking to a guy from New Mexico Gas on a separate issue, and it is a substantial amount of money to do White Sands Community. As soon as you cross the city limits, it is legal to use

propane. It is not unsafe. Some areas in town do not have natural gas available, and they are allowed to use propane within city limits. If the owners do not have it fixed after our timeline, then we enforce our ordinance. It's a quick fix so the residents have heat and hot water. Mayor Payne said we do that too often. How does that work with their heater? Commissioner Rardin said the heater will still work. They change the orifice in their heater, stove, and water heater and switch over to it. She asked what would happen in the winter when they spent a ridiculous amount on propane. He said it is better than not having heat. It is safer to use propane than space heaters. We will have fires if we have space heaters in all their homes. She said she was aware of that, but the owners need to take responsibility. He said he agreed with the owners needing to take responsibility. She said the owners should have reached out to the City by now. They were served with a cease-and-desist letter. He said the City needs stay out of it, and it is not our place other than safety and welfare. She asked if he had gotten phone calls. He said he had not. She said she has received many. He said the easy fix we could give as the governing body is the temporary variance on the ordinance. The State does not care; the plumbing for natural gas and propane is the same. It uses the same lines. I don't understand why it is safe to use in the county but not in the city. Am I breaking the law if I am firing up my propane barbecue?

Commissioner Paul said I am not an attorney, but tenants have rights under State law. If you are not offered a habitable place, you can withhold rent. The quickest way to get an owner to address an issue is by not receiving income generated from an investment. Both Amber Skies and your park are investments for the owners. It is tough for the City to step in and provide a resolution because we are talking about private parties. I would suggest you, or as a group, reach out to legal counsel and see what remedies are available to you. When owners are unwilling to do stuff like this, it is a long slog until you get the group together to take action and show you are serious. Mayor Payne said we talked about that. There was the New Mexico Mobile Home Act, but nobody in the State knew how to enforce that or read it.

Commissioner Paul asked Mayor Pro-Tem McDonald if we know who won the trash cleanup. Mayor Pro-Tem McDonald said she would claim herself the winner. There were four roll offs filled at Dudley School and we were working on number five. One hundred and twenty yards of trash were collected on that day. The people doing work stayed and did up and beyond the work that was required. It was appreciated. From the bottom of my heart, thank you to everyone that made it possible.

CITY MANAGER'S REPORT

City Manager Holden made the following remarks:

1. Staff visited with Mr. Cerna last week, an investigator with the Attorney General's Office. He is investigating all three mobile home parks. That is good news.
2. We are not attorneys and cannot give legal advice, but the Mobile Home Act spells out that every owner of these parks is responsible for maintaining the utilities within those parks. That includes water, sewer, gas, and electric as required. There are definite civil penalties involved in those. From a staff standpoint, we will continue to look at those situations and figure out what will work. I have spent time in the gas business myself, and I have seen explosions and loss of life. I do not want to think about that happening here. That is why New Mexico Gas was specific in needing to turn the gas off. They can no longer afford to have gas going into homes, leaking, and creating those possible disasters. We will work on some things to try to get there. I will tell you that propane is not a good option for mobile home parks, especially because of its density and closeness. A lot of that is covered under the International Fire Code we use, as well as the ordinance which specifically deals with mobile homes.
3. Addressing Commissioner Rardin regarding money and water rates, we have met with the bond council and expect to have a project list ready in August. We are shooting for an October approval of the bonding capacity, which will roughly equal \$30,000,000 for the first issue. The Walker area, that quadrant of town, will be our first target area. The work will involve tanks, parallel lines, pressure, and pipeline issues. That will be coming to the Commission for approval during this coming period. The

first \$30,000,000 of that bond issue corresponds with the rate increase we just passed. The water bills are out for the new rates. We also saw a lot of the Facebook posts. Assistant City Manager Hernandez went through about thirty of those. We looked them up by name and usage. Yes, the bills went up, but you need to be aware that the water consumption also went up significantly between May and June. You would expect water bills to go up during this time of the year. Back to the bond council, the decision you make as a Commission is important because to even have the opportunity to get bonding capacity, you need to have a plan in place. We are in a position to begin to lock ourselves into that structure, which will be the basis for how we get this funding. If we start toying with the rate structure to modify it, we will severely interrupt that revenue stream to the point where we may have to put other assets out there to cover the bond capacity. The decision has been made, and we are moving forward with expediency. We have already identified many of the projects and will have them ready for the Commission to see.

4. The Great Blocks project for Downtown New York was estimated at about \$1,900,000. Bids will be coming in and open on July 31st. We expect the bids to be more than the amount funded. We have proactively met with MainStreet New Mexico and are looking at potential funding through them.

5. We have revised building plans for Patriot Point, the coming apartment complex. They had some of their funding take place and finally got approvals through HUD. Our Fire Department has worked with them and devised alternative ways to conduct fire suppression that work equally well and reduce some of their costs.

CONSENT AGENDA

1. Approve the minutes for the Regular Commission meeting on July 9, 2024. (Rachel Hughs, City Clerk)

2. Approve the statements related to the Executive Closed Sessions held on June 11, 2024, and on July 9, 2024. (Rachel Hughs, City Clerk)

3. Consider, and act upon, Ordinance 1703 for adoption and final publication, to amend Chapter 24, Articles 01-010; 01-020; 13-060 Additional Parking restrictions and 12-12-1.3 of the Alamogordo Code of Ordinances Concerning Schedule of Penalty Assessments, Penalty Assessment Misdemeanors; Additional Fees, Mandatory Fees upon Conviction, and Texting While Driving. (Ashley Smith, City Attorney) (Roll Call Vote Required)

5. Consider, and act upon, award of Public Works Bid No. 2024-005, E. 10th Street Remediation Project No. PW2404, to General Hydronics Concrete LLC, related to the Alamogordo E. 10th Street CBC Remediation project for an amount not to exceed \$518,394.47 including NMGR. (Justen Boyle, Project Manager)

6. Consider, and act upon appointing the Mayor as the Voting Delegate for the New Mexico Municipal League's 67th Annual Conference. (Rachel Hughs, City Clerk)

7. Consider, and act upon, Resolution 2024-49, declaring 123 Railroad Ave. to be so ruined, damaged, and dilapidated that it is a menace to public comfort, health, peace, or safety and ordering its abatement. (Josh Sides, Code Enforcement Manager) (Roll Call Vote Required)

Commissioner Tapley removed Item 4 from the Consent Agenda.

Commissioner Robinson moved to approve the Consent Agenda as amended.

Commissioner Tapley seconded the motion.

Roll Call Vote was taken.

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

ITEMS REMOVED FROM CONSENT AGENDA

4. Consider, and act upon, Ordinance 1704 Case Z-2024-0004(A) for adoption and final publication of a map amendment to rezone 916 & 918 South Florida Ave. from R-1 Single Family Dwelling to C-1 Neighborhood Business. (Stella Rael, City Planner) (Roll Call Vote Required)

Commissioner Tapley said he pulled this because he voted no last time. Commissioner Robinson said he would not vote on this. Mayor Payne said Commissioner Robinson would be recusing himself because he serves on the COPE board.

Commissioner Rardin moved to approve.

Mayor Pro-Tem McDonald seconded the motion.

Roll Call Vote was taken.

Motion carried with a vote of 5-1-1. Commissioner Tapley voted nay. Commissioner Robinson abstained.

NEW BUSINESS

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

Mayor Payne reappointed Cynthia Stevenson to her second term on the Alamogordo Public Library Board, and Linda Gilliland to her first term on the Parks and Recreation Board. No one was opposed.

Mayor Pro-Tem McDonald moved to adjourn at 7:14 p.m.

Commissioner Burnett 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 August 13, 2024.

CITY OF ALAMOGORDO, NEW MEXICO
CITY COMMISSION SPECIAL MEETING MINUTES
6:30 PM, DONALD E. CARROLL COMMISSION CHAMBERS
July 30, 2024

SUSAN PAYNE, MAYOR
SHARON MCDONALD, MAYOR PRO-TEM
NICHOLAS PAUL, COMMISSIONER
STEPHEN BURNETT, COMMISSIONER
WARREN ROBINSON, COMMISSIONER

JOSHUA RARDIN, COMMISSIONER
MARK TAPLEY, COMMISSIONER
RICK HOLDEN, CITY MANAGER
ASHLEY SMITH, CITY ATTORNEY
RACHEL HUGHS, CITY CLERK

CALL TO ORDER & ROLL CALL

Mayor Pro-Tem McDonald called the meeting to order at 6:29 PM. Roll Call was taken by the City Clerk. Mayor Payne was absent. City Clerk Hughes announced there was a quorum present.

INVOCATION & PLEDGE OF ALLEGIANCE

Invocation was given by Commissioner Robinson and the Pledge of Allegiance was led by Commissioner Rardin.

APPROVAL OF AGENDA

Commissioner Burnett moved to Approve.
Commissioner Tapley seconded the motion.
Motion Passed with a vote of 6 - 0 - 0.

PUBLIC COMMENT

None.

NEW BUSINESS

1. Consider and act upon, Resolution 2024-50 approving the Department of Finance Authority Quarterly Report for the period ending June 30, 2024. (Evelyn Huff, Finance Director). (Roll Call Vote Required)

Finance Director Huff said we are required to approve this resolution every year. It allows us to submit the final quarterly report for Fiscal Year 2024. This will be the balances as of June 30, 2024. As a recap, we began the year with \$92,900,000, brought in \$69,700,000 of revenue, expended \$63,800,000 in expenditures, and we will end the year with \$98,800,000 spread over liquid cash and investments.

Commissioner Rardin asked for sheets with a breakdown in the future, like when we do the budget. Finance Director Huff said we could include the recap. He said it looks like this is everything. She said it was every line.

Commissioner Robinson moved to Approve.
Commissioner Rardin seconded the motion.
Motion Passed with a vote of 6 - 0 - 0.

2. Consider and act upon, the approval of Resolution 2024-51 amending the Preliminary FY 2024-2025 Budget with carry-over fund balances, and adopting the Final Budget for 2024-2025. (Evelyn Huff, Finance Director). (Roll Call Vote Required)

Finance Director Huff said this is an annual resolution where we bring the actual cash balances as of July 1st.

Revision One is that we are revising our estimated cash balances presented at the Budget Hearings; the balances were \$61,700,000, and are being revised up by \$33,100,000 to an ending cash balance of \$94,800,000. The difference between this and the last item is that the New Mexico Finance Authority reserve accounts are included in our monthly reporting, but not in our budgeted cash.

Revision Two is carrying over any revenues, expenditures, transfers-in, and transfers-out that were not completed in FY24. We currently have one hundred and ninety-two open projects. These are not just capital improvement or construction-type projects, but also operating projects that carry over every year that we use to track financials. We go through every projects and see if there are any balances left to be transferred over. Departments can submit to

have their purchase orders carried over from the previous fiscal year as long as they have an outstanding invoice or work pending per that purchase order. This revision is a long one with all the different funds and projects that were carried over. The total being carried over is \$8,400,000 in revenues, \$4,700,000 in transfers in between funds, and \$35,500,00 in expenditures. The largest portion of the expenditures is the capital improvement projects. There is also our typical State carry over with the State Fire Fund, where they are allowed to carry balances over. The Law Enforcement Protection Fund is also allowed to carry balances over.

Revision Three is to add the Cannabis GRT budget for FY25. At the Preliminary Budget Hearings, we had not developed that budget at that point. For our final budget, we are budgeting \$269,000,000 in Cannabis GRT revenue. The bulk of that will go to our Capital Equipment line. This year, we are looking to use the Cannabis GRT to help jump start our Equipment Replacement Program for all departments that do not have a revenue or funding stream for capital equipment. Specific examples include Parks & Recreation and Community Services. Those are the two big ones that are severely lacking in equipment replacement. Some of the trucks they drive are over twenty years old. We have been working with the Fleet department so we can start replacing those vehicles and come up with a revolving replacement program rather than just trying to piecemeal it every year.

Commissioner Robinson said if we did not have the cannabis money, would we have to continue to limp along and patch things? Finance Director Huff said either that, or look at a re-dedication of gross receipts tax. We may still need to look at a re-dedication of gross receipts tax because we are budgeted to bring in \$269,000, but this is only the second full year we are receiving the cannabis money. It is still a little in the air; this is an average for the first two years. We hope it exceeds expectations, but we may need to add more funding. Trucks are getting close to \$100,000 for even a regular F-150.

Commissioner Rardin asked if the cannabis money was no longer going to be used for the Police Department's sign-on bonuses. Finance Director Huff said we do not recommend that this year. Once we pass the budget today, it can still be revised. We can bring it back at any point in time. There is a cash balance of \$43,175 still earmarked for sign-on bonuses. He said that was just two bonuses; the bonuses are \$20,000 or \$25,000. She said it depends on if they come in fully certified or not. He said the cannabis money was dedicated to be used for that purpose. She said that was what we recommended for the last year and a half. We have not seen a fully staffed Police Department, and we still have people coming and going. We recommend trying to do something else with it. He asked if they put almost \$300,000 in there last time. She said the FY23 actual for cannabis was \$224,000. The FY24 original budget was \$204,000, and we adjusted that up to \$275,000, and then our final number was \$310,000. He asked if that was all already spent on bonuses. She said yes. He said he didn't want to see that fund dry up so you have to bring a budget adjustment forward. She said we spent \$296,372 in FY23, which was all on retention bonuses. In FY24, we tried to move that over to sign-on bonuses, and we spent \$290,000 on that. He asked what would happen if we use up the \$43,175 for sign-on bonuses. Where would we get the money? She said that would come from the vacancy savings; we are not filling up all the police officer spots we have budgeted. It would come out of Fund 11, 4104. They still have over \$1,000,000 worth of vacancy savings. He asked what would happen if we fill the vacancies. She said that would be amazing, and we would come back with a new plan. He said concerning Parks, have we looked at putting truck replacements on the ICIP? We do that with police cars. She said for the last several years, the Legislatures in the ICIP meetings indicated they prefer we focus on infrastructure projects. That is why we were putting infrastructure projects forward. ICIP says that whatever you buy must have a lifespan of ten years. If you don't meet the lifespan of ten years, you are supposed to pay the money back to the State. Vehicles can be touchy in that ten year lifespan.

Revision Four is a correction to the Library contract services. We accidentally removed their budget twice during the budget process, and we need to add that back.

Revision Five adds funds to engineer improvements to the road to the Water Filter Plant.

Revisions Six, Eight, and Nine are to bring the Senior Center awards up to what they were actually awarded. We projected what they would receive from the State, Federal Government, and Federal NSIP program.

Revision Seven adds funds to the New York SMP. The lowest bidder was higher than the projected costs. We are adding \$450,000 to complete the SMP. That project is going in front of the Great Blocks project that MainStreet received the grant for. The Great Blocks bid will open tomorrow.

Commissioner Rardin asked if the \$450,000 was just being moved. She said the New York SMP, which is our match for Great Blocks, is funded out of Fund 81 for water and sewer pipes, and Fund 109 for the streets. Water/sewer is adding an additional \$290,000, and streets is adding an additional \$160,000. That is to the \$1,500,000 already allocated. The project will go from \$1,500,000 to \$1,950,000. The Great Blocks have \$1,900,000 in grant funds. We will see tomorrow what it comes in at. He asked if she was referring to what the bids come in at. She said yes. We talked to New Mexico MainStreet, and they do have additional funding we could apply for. We have a meeting with them scheduled for Friday. Once we have the bids, we can see if they are over \$1,900,000 and if the difference can be made up. He said we could phase the project to where we can afford it.

Revision Eleven is to bring the project for the Blue 2 Fire recovery at Bonito Lake. NRCS agreed to provide \$206,000 of additional funding.

The **Final Revision** is our usual true up revision. This is where we are adjusting our transfer-outs to the subsidized fund. Once we look at carry overs, like projects and PO's, we almost always have to do a true up. In this case, we had to increase the transfer into Community Services, the Senior Center, the Golf Course, Streets Maintenance, and Engineering.

Commissioner Rardin moved to Approve.
Commissioner Burnett seconded the motion.
Motion Passed with a vote of 6 - 0 - 0.

ADJOURNMENT

Commissioner Rardin moved to Adjourn at 6:55 PM.
Commissioner Robinson seconded the motion.
Motion Passed with a vote of 6 - 0 - 0.

ATTEST:

Mayor Susan Payne

City Clerk Rachel Hughs

(Prepared by Dylan Aleshire, Deputy Clerk)
Approved at the Regular Meeting held on August 13, 2024.

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 8/13/2024

Report Date: 08/06/2024

Report No: 3.

Submitted By: Stephanie Hernandez

Subject: Consider, and act upon, Ordinance 1699 for adoption and final publication, repealing Article 09-02 Cemetery Board and Article 02-04-120 through 02-04-180 Mayor's Youth Advisory Council of the Alamogordo Code of Ordinances. (*Stephanie Hernandez, Assistant City Manager*) **(Roll Call Vote Required)**

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation: Approve for first publication.

Background:

many effective decisions can be made. They are slowly but surely solving many of the housing problems there. It was inspiring. Mayor Payne said it was inspiring, but the Village of Ruidoso is in a private-public partnership and bringing in modular homes for rent for people with income. Those homes are not available to people without jobs or with low incomes, so a certain income requirement must be met. They were renting them out for \$1,200 a month. Is that affordable housing? It may meet some needs, but not all of them.

CONSENT AGENDA

2. Approve the minutes for the Regular Commission meeting on March 12, 2024. (Rachel Hughs, City Clerk)

3. Consider, and act upon, Resolution 2024-20 establishing a six-month moratorium on new off-premise billboards for the City of Alamogordo. (Rick Holden, City Manager). (Roll Call Vote Required)

Mayor Pro-Tem McDonald moved to approve the Consent Agenda.

Commissioner Robinson seconded the motion.

Roll Call Vote was taken.

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

NEW BUSINESS

4. Consider, and act upon, approval of the Annual Reports from City Boards and Committees for Fiscal Year 2024. (Rachel Hughs, City Clerk and Stephanie Hernandez, Assistant City Manager)

Deputy City Clerk Aleshire said the staff liaisons for each board and committee were present tonight and they would present their annual written reports.

Executive Assistant Tony Gonzalez said he was the staff liaison for the Airport Advisory Board and Airport Zoning Board. The Airport Zoning Board has not met in some time, at least for the last two years, yet we need to keep that Board. The Airport Advisory Board meets on the first Thursday of every month. The Airport Advisory Board makes recommendations and advice about the airport's daily operations. The given report details what went on in the year.

City Planner Stella Rael said she was the staff liaison for the Alamogordo Disability Council. This Council was created by resolution in 1988. Its purpose is to advise regarding the review of city projects and ADA compliance. It consists of five members with a term of two years. No more than two members may live outside City limits. Currently, there are three members. I became the liaison in 2022, and there were four members at that time. We had a meeting in May 2022, but there were no meetings in June, July, or August due to a lack of participation. There have been no meetings since May 2022, so I have no activities for this annual report. Mayor Payne said she remembered that everybody wanted the Alamogordo Disability Council previously. There was a lot of discussion. I guess they found that they did not have as much authority as they thought, and that is why there is a lack of participation. Do we have to keep this? City Manager Holden said he did not think we do. Mayor Payne said if we are not doing anything and no one is participating, I do not think this is necessary. Commissioner Rardin said we could have staff look at these boards and committees and, within the next couple of meetings, tell us if we have to have them or not. If we do not have to have them, we can suspend or disband them. City Manager Holden said we could do that. We could give the Commission a list. Advisory committees may sometimes not understand that they are in an advisory capacity. They do not establish hours, budgets, or any of those things. At the staff level, we need to do some training

and share that with them; we need to help those boards and committees because we value their time and effort. We want to maximize the opportunities for those committees so the Commission can make decisions based on their advice. The biggest advisory committee of all is City staff. We have well-trained, qualified people. Mayor Payne said her biggest concern is that boards and committees need to understand they are advisory.

Librarian Missy Garcia said she was the staff liaison for the Alamogordo Public Library Board. The Board has seven members, met seven times within the last eight months, and the included report lists topics we hit.

Executive Assistant Sven Sears said he was the staff liaison for the Cemetery Board and Parks and Recreation Advisory Board. The Cemetery Board has been suspended for a few years, and I have nothing to report on that other than it is to have three members. The Parks and Recreation Advisory Board advises the Commission and Parks and Recreation Department on matters related to parks and open spaces within the city. It has five members appointed by the Mayor, and two additional members appointed by Alamogordo Public Schools. We are full and have been so since March 2023.

Grants Coordinator Debbie Osborne said she was the staff liaison for the Community Development Advisory Committee. The Committee was originally formed to identify funding needs for the City and to provide citizen participation in the CDBG grant program. The Committee was to help determine funding request priorities, attend public hearings to discuss funding needs and assist in door-to-door surveys to determine neighborhood income and funding eligibility. There are supposed to be seven members on the committee. The last meeting was held in 2013. When we were applying for our current CDBG grant, I called the Department of Finance Administration and the Southern New Mexico Economic Development to see if this committee was necessary. They said we were the only applicant with this committee, and they do not mandate it. However, they do mandate public hearings, which we have. There is really no need for the Committee anymore. City Manager Holden said he wholeheartedly agrees. There are sufficient public hearings to receive input. Both staff and the Commission have a role in helping determine and pick those projects. I do not think we need this committee. Mayor Payne said she agreed.

Administrative Assistant Britney Ybarra said she was the staff liaison for the Mayor's Committee on Aging. The Committee meets once a month, and members typically work on larger items that would require the City Commission's approval. The last thing they were working on was a senior respite at the Senior Center, which is really not feasible. My recommendation would be to disband the Committee. Mayor Payne said that one could be added to the disband list.

Mayor Payne said next is the Mayor's Youth Advisory Board. This is not an active board, and there is nothing to report with that. Deputy City Clerk Aleshire said that was correct. Commissioner Rardin said he remembered the last time a group became active at the high school, which is why we kept this, but I guess they never did. Mayor Payne said that never panned out. Add it to the list of things to review. City Manager Holden said we will review these from a staff perspective and give you a list of recommendations.

Senior Volunteer Program Specialist Renee Reynolds said she was the staff liaison for the Senior Volunteer Programs Advisory Council. Grants for senior companions and foster grandparents mandate the Council. We meet quarterly and have a full board with eight members, plus one of the foster grandparents is a liaison between them.

Commissioner Burnett moved to approve.

Mayor Pro-Tem McDonald seconded the motion.

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

ORDINANCE NO. 1699**AN ORDINANCE REPEALING ARTICLE 9-02 CEMETERY BOARD AND ARTICLE 02-04-120 THROUGH 02-04-180 MAYOR'S YOUTH ADVISORY COUNCIL OF THE ALAMOGORDO CODE OF ORDINANCES**

WHEREAS, the City Commission at the March 26, 2024, regular meeting, requested that staff present information regarding the dissolution of inactive boards and committees.

WHEREAS, Ordinance 496 established the Cemetery board in 1973; however, it has been inactive since 2018 and was suspended in an open meeting by the city commission on March 8, 2022.

WHEREAS, Ordinance 1339 established the Mayor's Youth Advisory Council in 2008; however, the council has been in active since 2012.

WHEREAS the City Commission affirm that the open meetings provide every citizen with the opportunity to engage in dialogue with the city commission for matters of concern and consideration by the governing body.

NOW, THEREFORE BE IT ORDAINED by the City Commission of the City of Alamogordo, New Mexico that Article 9-02 Cemetery Board and Article 02-04-120 through 02-04-180 Mayor's Youth Advisory Council of the Code of Ordinances be repealed in their entirety.

~~ARTICLE 9-02. CEMETERY BOARD~~**~~9-02-010. Created.~~**

~~There is hereby created an organization within and for the city which shall be known as the "cemetery board."~~

~~9-02-020. Purpose.~~

~~The purpose of the cemetery board shall be to make recommendations to the city commission regarding the operation, maintenance and capital improvements of the cemetery owned and operated by the city.~~

~~9-02-030. Membership.~~

~~The cemetery board shall consist of three (3) members plus the city manager or his appointed representative as an ex-officio member.~~

~~9-02-040. Appointment and terms.~~

~~The members of the cemetery board, with the exception of the ex-officio member, shall be appointed by the mayor with the advice and approval of a majority of the remaining members of the city commission, and shall serve for a term of two (2) years after their appointment.~~

9-02-050. Organization and meetings.

- (a) — ~~The cemetery board shall elect from its membership a chairman and a secretary and shall hold regular meetings at such times as it may determine, and shall file a copy of all minutes of such meetings with the city clerk for presentation to the city commission.~~
- (b) — ~~All meetings of the cemetery board shall be held at city hall or such other public building as may be designated.~~
- (c) — ~~A majority of all the members of the cemetery board shall constitute a quorum for the transacting of business. A motion shall carry upon the affirmative vote of the majority of the members present at any meeting.~~

9-02-060. Removal.

~~The mayor, with approval of a majority of the remaining members of the city commission may remove any member of the cemetery board by affirmative vote of four (4) members for any reason whatsoever.~~

ARTICLE 2-04. - BOARDS, COMMISSIONS AND COMMITTEES

2-04-120. Mayor's Youth Advisory Council created.

~~There is hereby created an organization within and for the city, which shall be known as the "Mayor's Youth Advisory Council."~~

2-04-130. Mayor's Youth Advisory Council—Duties and responsibilities.

- ~~The youth advisory council shall have no executive or administrative powers or authority except as herein provided, and sections 2-04-120—2-04-180 shall not be construed as depriving city elected or appointed officials of any power they may have under the laws of the state or the charter of the city. The youth advisory council shall be advisory and is created for the purpose of providing a youthful viewpoint of community affairs. The powers, duties and functions of the council shall be as follows:~~
- (1) — ~~Make recommendations and advise the city commission concerning solutions to specific problems involving the youth activities of the community.~~
- (2) — ~~Assist in planning and implementing social, educational, cultural and recreational activities for youth.~~
- (3) — ~~Inform and educate other youth of issues facing the city and opportunities for youth involvement in city and community affairs.~~
- (4) — ~~To instill a feeling of positive self worth and esteem, to teach teamwork and respect for the rights and property of others, to promote community pride and to eliminate violence and other negative influences among our future community leaders.~~
- (5) — ~~To provide an opportunity for the youth of the city to acquire a greater knowledge of and appreciation for the American political system through active participation in the local government.~~
- (6) — ~~To allow the youth of the city to make a difference through their participation and contributions to city government and in service to the people of the city.~~

~~2-04-140. Mayor's Youth Advisory Council—Membership.~~

- ~~(a) — The mayor's youth advisory council shall consist of members selected by the city commission, who shall be residents of the city or shall be a high school or middle school student enrolled in the Alamogordo Public School District or actively home schooled, participating at the equivalent level of a ninth grade through twelfth grade level and have demonstrated an interest in local community issues and government. Candidates must not have attained the age of eighteen (18) years at the time of appointment.~~
- ~~(b) — To be eligible to serve on the youth advisory council, students must complete an application for membership.~~
- ~~(c) — Along with the application, potential youth would commit to attend regular meetings as well as attend a portion of the city commission meeting at least one (1) time every quarter, and participate in council community service projects and activities.~~
- ~~(d) — Applicants must have a teacher or parent recommendation.~~
- ~~(e) — The youth leadership will consist of seven (7) members and be recommended by the general youth members and adult advisors. The official seven (7) youth leadership representatives shall be appointed by the mayor.~~
- ~~(f) — Council members shall serve without pay.~~
- ~~(g) — The mayor, a representative of the department of public safety and community members will serve on the council as adult advisors and the city clerk will serve as the staff liaison for the council. The city clerk shall keep and maintain membership records used in connection with the youth advisory council.~~

~~2-04-150. Mayor's Youth Advisory Council—Appointment and terms.~~

~~Youth advisory council members shall be appointed for one year terms and can be extended if so desired until graduation.~~

~~2-04-160. Mayor's Youth Advisory Council—Organization and meetings.~~

~~At the first meeting of the council in September of each year, the youth advisory council shall elect from among its members a chairperson, a vice chairperson, and a secretary to serve for a one year term. The chairperson or vice chairperson, in the event of the absence of the chairperson, shall conduct the meeting. The secretary shall be responsible for taking minutes of the meetings.~~

~~2-04-170. Mayor's Youth Advisory Council—Advisory capacity.~~

~~The youth advisory council shall be an advisory committee to the city commission and shall make recommendations and reports to the city commission regarding issues of concern to youth in the community. Final determination for all matters pertaining to recommendations from the youth advisory committee shall remain the responsibility of the city commission.~~

~~2-04-180. Mayor's Youth Advisory Council—Removal.~~

~~The governing body of the city may remove any member of the mayor's youth advisory council by affirmative vote of four (4) members of the governing body upon the grounds of malfeasance or nonfeasance in office, or for any reason whatsoever upon the affirmative vote of all the members of the governing body.~~

PASSED, APPROVED AND ADOPTED this _____ day of _____, 2024.

CITY OF ALAMOGORDO, NEW MEXICO
a New Mexico municipal corporation

By: _____

ATTEST:

Rachel Hughs, City Clerk

APPROVED AS TO FORM:

Ashley Smith, City Attorney

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 8/13/2024

Report Date: 08/06/2024

Report No: 4.

Submitted By: Stephanie Hernandez

Subject: Consider, an act upon, Ordinance 1705 for adoption and final publication, approving a loan from the New Mexico Finance Authority regarding the Yearout Contract and EPC project. (*Evelyn Huff, Finance Director, and Chris Muirhead*) **(Roll Call Vote Required)**

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation: Adopt the Ordinance.

Background:

CITY OF ALAMOGORDO, NEW MEXICO
ORDINANCE NO. 1705

AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT AND INTERCEPT AGREEMENT BY AND BETWEEN THE CITY OF ALAMOGORDO, NEW MEXICO (THE "GOVERNMENTAL UNIT") AND THE NEW MEXICO FINANCE AUTHORITY (THE "FINANCE AUTHORITY"), EVIDENCING A SPECIAL, LIMITED OBLIGATION OF THE GOVERNMENTAL UNIT TO PAY A PRINCIPAL AMOUNT OF NOT TO EXCEED \$5,000,000, TOGETHER WITH INTEREST THEREON, FOR THE PURPOSE OF FINANCING (1) ACQUIRING, CONSTRUCTING AND IMPROVING ENERGY EFFICIENCY PROJECTS ASSOCIATED WITH CITY FACILITIES, (2) FUNDING A LOAN AGREEMENT RESERVE ACCOUNT, AND (3) PAYING COSTS OF ISSUANCE OF THE LOAN; APPROVING THE DELEGATION OF AUTHORITY TO MAKE CERTAIN DETERMINATIONS REGARDING THE LOAN PURSUANT TO THE SUPPLEMENTAL PUBLIC SECURITIES ACT; PROVIDING FOR THE PAYMENT OF THE BONDS FROM THE REVENUES OF THE 1/4 OF ONE PERCENT (0.25%) INCREMENT OF MUNICIPAL GROSS RECEIPTS TAX IMPOSED ON ALL PERSONS ENGAGING IN BUSINESS IN THE CITY PURSUANT TO SECTION 7-19D-9 NMSA 1978 AND CITY ORDINANCE NO. 620-81 ADOPTED _____, 1981 ("MUNICIPAL GROSS RECEIPTS TAX"); PROVIDING FOR THE DISTRIBUTIONS OF THE REVENUES OF THE MUNICIPAL GROSS RECEIPTS TAX FROM THE STATE TAXATION AND REVENUE DEPARTMENT TO BE REDIRECTED TO THE FINANCE AUTHORITY OR ITS ASSIGNS PURSUANT TO THE INTERCEPT AGREEMENT FOR THE PAYMENT OF PRINCIPAL AND INTEREST DUE ON THE LOAN AGREEMENT; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS ORDINANCE; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE LOAN AGREEMENT AND THE INTERCEPT AGREEMENT.

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

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

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

WHEREAS, the Governmental Unit may use the Pledged Revenues to finance the Project and the Project will provide for the public health, peace and safety of the Governmental Unit and its residents; and

WHEREAS, the City has imposed a one-fourth of one percent (1/4%) increment of municipal gross receipts tax imposed on all persons engaging in business in the City pursuant to City Ordinance No. 620-81, adopted _____, 1981, with an effective date of January 1 1982, which tax equals, subject to the exemptions specified in Section 7-19D-11 NMSA 1978, one-fourth of one percent (1/4%) of the gross receipts of all persons engaging in business in the City for the month in which the tax is distributed to the City, which provides for the Pledged Revenues; and

WHEREAS, pursuant to Sections 7-1-6.1 NMSA 1978 and Section 7-1-6.46, the City receives monthly distributions from the New Mexico Taxation and Revenue Department in lieu of gross receipts tax revenue that the City would have received but for the deductions provided by Sections 7-9-92 and 7-9-93 NMSA 1978, which are included within Pledged Revenues; and

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

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

WHEREAS, the Loan Agreement shall be a special, limited obligation of the Governmental Unit, payable solely from the Pledged Revenues and shall not constitute a general obligation of the Governmental Unit, or a debt or pledge of the faith and credit of the Governmental Unit or the State; and

WHEREAS, the Governmental Unit desires to provide that distributions of the Pledged Revenues be redirected to the Finance Authority or its assigns pursuant to an Intercept Agreement between the Governmental Unit and the Finance Authority (the "Intercept Agreement") for the payment of amounts due under the Loan Agreement; and

WHEREAS, the Loan Agreement shall be executed and delivered pursuant to Sections 3-31-1 through 3-31-12, NMSA 1978, as amended, and with an irrevocable first lien, but not necessarily an exclusive first lien, on the Pledged Revenues; and

WHEREAS, the Governing Body intends by this Ordinance to authorize the execution and delivery of the Loan Agreement in the amount and for the purposes set forth herein; and

WHEREAS, there have been presented to the Governing Body and there presently are on file with the City Clerk this Ordinance and the forms of the Loan Agreement and Intercept Agreement, which are incorporated by reference and considered to be a part hereof; and

WHEREAS, the Governing Body hereby determines that the Project to be financed with the Loan is to be used for governmental purposes of the Governmental Unit and will not be used for purposes which would cause the Loan Agreement to be deemed a "private activity bond" as defined by the Internal Revenue Code of 1986, as amended; and

WHEREAS, pursuant to Sections 6-14-8 through 6-14-12 NMSA 1978, as amended (the “Supplemental Public Securities Act”), the Commission is authorized to adopt an ordinance delegating to one or more of its members, Governmental Unit officers, or Governmental Unit employees the authority to sign a contract for the purchase or sale of public securities or to accept a binding bid for public securities and to determine the sale for public securities to be issued so long as such sale is within the parameters established by an authorizing ordinance adopted in conformity with the Supplemental Public Securities Act; and

WHEREAS, in order to, among other things, allow the Governmental Unit flexibility in setting the pricing date of the Loan and optimize debt service costs to the Governmental Unit, the Governing Body desires to grant to the Mayor, Manager, Finance Director or any other employee of the Village when designated by a certificate signed by the Mayor (collectively, the “Designated Officers”), the authority (a) to determine any or all of the following terms of the Loan: (i) the interest and principal payment dates, (ii) the principal amounts, denominations, and maturity dates, (iii) the sale prices, (iv) the interest rates, (v) the interest payment periods, (vi) the redemption and tender provisions, (vii) the procurement of municipal bond insurance and any related covenants or agreements, (viii) the creation of any capitalized interest or debt service reserve funds, including the size and funding of such funds, and (ix) the amount of underwriting discount, if any; and (b) to make any changes with respect thereto from those terms which were before the Governing Body at the time of adoption of this Ordinance, provided such terms do not exceed the parameters set forth for such terms in this Ordinance (the “Parameters,” as further described herein); and

WHEREAS, the Governmental Unit will approve the specific terms of the sale of the Loan in the Sale Certificate; and

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

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF ALAMOGORDO THAT:

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

“Act” means the general laws of the State, including Sections 3-31-1 through 3-31-12, NMSA 1978, as amended, Sections 6-14-8 through 6-14-12, NMSA 1978, as amended, Sections 6-21-1 through 6-21-31, NMSA 1978, as amended, and Sections 7-1-6.4, 7-1-6.15 and 7-9-4, NMSA 1978, as amended, and enactments of the Governing Body relating to the Loan Agreement and the Intercept Agreement, including this Ordinance.

“Aggregate Annual Debt Service Requirement” means the total principal and interest payments due and payable pursuant to the Loan Agreement and on all Parity Obligations secured by a pledge of the Pledged Revenues for any one Fiscal Year.

“Authorized Officers” means the Mayor, City Manager, City Clerk, and City Finance Director of the Governmental Unit.

“Bonds” means public project revolving fund revenue bonds, if any, issued hereafter by the Finance Authority to fund or reimburse the Loan Agreement.

“Closing Date” means the date of execution, delivery and funding of the Loan Agreement.

“Code” means the Internal Revenue Code of 1986, as amended, and the applicable regulations thereunder.

“Completion Date” means the date of final payment of the cost of the Project.

“Distributing State Agency” means the department or agency of the State, as described on the Term Sheet, authorized to distribute the Pledged Revenues on behalf of the Governmental Unit.

“Expenses” means the cost of execution of the Loan Agreement and the costs of issuance of the Bonds, if any, and the periodic and regular fees and expenses incurred by the Finance Authority and the Trustee in administering the Loan Agreement, including legal fees.

“Finance Authority” means the New Mexico Finance Authority.

“Finance Authority Debt Service Account” means the debt service account in the name of the Governmental Unit established under the Indenture and held by the Finance Authority to pay principal and interest on the Loan Agreement as the same become due.

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

“Governing Body” means the City Commission of the Governmental Unit, or any future successor governing body of the Governmental Unit.

“Governmental Unit” means the City of Alamogordo, New Mexico.

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

“Indenture” means the General Indenture of Trust and Pledge dated as of June 1, 1995, as amended and supplemented, by and between the Finance Authority and the Trustee, or the Subordinated General Indenture of Trust and Pledge dated as of March 1, 2005, as supplemented, by and between the Finance Authority and the Trustee, as determined by the Finance Authority pursuant to a Pledge Notification or Supplemental Indenture (as defined in the Indenture).

“Intercept Agreement” means the Intercept Agreement dated the Closing Date between the Governmental Unit and Finance Authority providing for the direct payment by the Distributing State Agency to the Finance Authority of Pledged Revenues in amounts sufficient to pay principal and interest due on the Loan Agreement, and any amendments or supplements to the Intercept Agreement.

“Loan” means the funds to be loaned to the Governmental Unit by the Finance Authority pursuant to the Loan Agreement.

“Loan Agreement” means the Loan Agreement dated the Closing Date between the Finance Authority and the Governmental Unit which provides for the financing of the Project and requires payments by or on behalf of the Governmental Unit to the Finance Authority and/or the Trustee and any amendments or supplements thereto, and including the exhibits attached to the Loan Agreement.

“Loan Agreement Principal Amount” means the original principal amount of the Loan Agreement as shown on the Term Sheet.

“Loan Agreement Reserve Account” means the loan agreement reserve account in the name of the Governmental Unit established under the Indenture, funded from the proceeds of the Loan Agreement, and administered by the Trustee pursuant to the Indenture.

“Loan Agreement Reserve Requirement” means, with respect to the Loan, the amount shown as the Loan Agreement Reserve Account Deposit on the Term Sheet, which amount shall not to exceed the least of (i) ten percent (10%) of the Loan Agreement Principal Amount, (ii) 125% of the average annual principal and interest requirements under the Loan Agreement, or (iii) the maximum annual principal and interest requirements under the Loan Agreement.

“NMSA 1978” means the New Mexico Statutes Annotated, 1978 compilation, as amended and supplemented.

“Ordinance” means this Ordinance as adopted by the Governing Body on June 6, 2024, approving the Loan Agreement and pledging the Pledged Revenues to the payment of the Loan Agreement, as amended from time to time.

“Parity Obligations” means the Loan Agreement and any other obligations, now or hereafter issued or incurred, payable from or secured by a lien or pledge of the Pledged Revenues and issued with a lien on the Pledged Revenues on parity with the Loan Agreement, including those obligations described on the Term Sheet, if any.

“Pledged Revenues” means the revenues derived from (i) the one-fourth of one percent (1/4%) increment of municipal gross receipts tax imposed on all persons engaging in business in the City by City Ordinance No. 620-81, adopted _____, 1981, with an effective date of January 1 1982, which tax equals, subject to the exemptions specified in Section 7-19D-11 NMSA 1978, one-fourth of one percent (1/4%) of the gross receipts of all persons engaging in business in the City for the month in which the tax is distributed to the City and (ii) the distribution to the City made pursuant to Section 7-1-6.46 NMSA 1978, as that distribution relates to the one-fourth of one percent (1/4%) increment of municipal gross receipts tax imposed on all persons engaging in

business in the City by Ordinance No. 620-81, which revenues are reduced pursuant to the deductions under Sections 7-9-92 and 7-9-93 NMSA 1978; provided that the City intends that Section 3-31-6(C) NMSA 1978 applies expressly to the amount of revenues pledged pursuant to this Ordinance (the City is not pledging and the term “Pledged Revenues” does not include the state-shared gross receipts tax or any other local option gross receipts tax income received by the City).

“Program Account” means the account in the name of the Governmental Unit established pursuant to the Indenture and held by the Trustee for the deposit of the net proceeds of the Loan Agreement for disbursement to the Governmental Unit for payment of the costs of the Project.

“Project” means acquiring, constructing, installing, and improving energy efficiency projects associated with City facilities and paying Expenses related to issuance of the Series 2024 Bonds, all within the Governmental Unit, as described in the Term Sheet.

“Sale Certificate” means one or more certificates executed by the Mayor, Manager or Finance Director dated on or before the date of delivery of the Loan, setting forth the following final terms of the Loan: (i) the interest and principal payment dates; (ii) the principal amounts, denominations and maturity amortization; (iii) the sale prices; (iv) the interest rate or rates; (v) the interest payment periods; (vi) the redemption and tender provisions; (vii) the creation of any capitalized interest fund or a debt service reserve account, including the size and funding of such fund(s); (viii) the amount of underwriting discount, if any; and (ix) the final terms of agreements, if any, with agents or service providers required for the purchase, sale, issuance and delivery of the Loan, all subject to the parameters and conditions contained in this Ordinance; provided that in no event shall the Sale Certificate specify a net effective interest rate on the Loan in excess of the statutory maximum of twelve percent (12%) per annum.

“State” means the State of New Mexico.

“Term Sheet” means Exhibit “A” to the Loan Agreement.

“Trustee” means BOKF, NA, or any successor trustee company, national or state banking association or financial institution at the time appointed Trustee by the Finance Authority.

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

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

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

A. The Project is needed to meet the needs of the Governmental Unit and its residents and the issuance, execution and delivery of the Loan Agreement is necessary and advisable.

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

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

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

E. The Project and the execution and delivery of the Loan Agreement and the Intercept Agreement pursuant to the Act to provide funds for the financing of the Project are necessary and in the interest of the public health, safety, and welfare of the residents of the Governmental Unit.

F. The Governmental Unit will finance the Project, in whole or in part, with the net proceeds of the Loan.

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

H. The net effective interest rate on the Loan shall be less than 12% per annum, the maximum rate permitted by State law as specified in the Sale Certificate.

Section 5. Loan Agreement and Intercept Agreement - Authorization and Detail.

A. Authorization. This Ordinance has been adopted by the affirmative vote of a three-fourths majority of all of the members of the Governing Body. For the purpose of protecting the public health, conserving the property, protecting the general welfare and prosperity of the residents of the Governmental Unit and completing the Project, it is hereby declared necessary that the Governmental Unit, pursuant to the Act, execute and deliver the Loan Agreement and the Intercept Agreement evidencing a special, limited obligation of the Governmental Unit to pay a principal amount of not to exceed \$5,000,000, plus interest, and the execution and delivery of the Loan Agreement and the Intercept Agreement are hereby authorized. The Governmental Unit shall use the proceeds of the Loan to (i) finance the Project, (ii) fund the Loan Agreement Reserve Account and (iii) pay the Expenses. The terms of the Loan shall be approved in the Sale Certificate. The Governmental Unit shall use the proceeds of the Loan to finance the Project. The final maturity of the Loan shall not be greater than twenty years.

B. Detail. The Loan Agreement and Intercept Agreement shall be in substantially the forms presented at the meeting of the Governing Body at which this Ordinance was adopted. The Loan shall be in an aggregate principal amount of not to exceed \$5,000,000, shall be payable in installments of principal due on the dates designated in Exhibit "B" to the Loan

Agreement and bear interest payable on the dates and at the rates designated in Exhibit "B" to the Loan Agreement.

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

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

Section 8. Disposition of Proceeds: Completion of the Project.

A. Program Account, Loan Agreement Reserve Account, and Finance Authority Debt Service Account. The Governmental Unit hereby consents to creation of the Finance Authority Debt Service Account to be held and maintained by the Finance Authority and to the Program Account and Loan Agreement Reserve Account to be held and maintained by the Trustee pursuant to the Indenture, each in connection with the Loan. The Governmental Unit hereby approves the deposit of the proceeds of the Loan Agreement in the Program Account and Loan Agreement Reserve Account.

The proceeds derived from the execution and delivery of the Loan Agreement shall be deposited promptly upon the receipt thereof in the Program Account and the Loan Agreement Reserve Account, all as provided in the Loan Agreement, Sale Certificate and the Indenture.

Until the Completion Date, the money in the Program Account shall be used and paid out solely for the Project in compliance with applicable law and the provisions of the Loan Agreement and the Indenture.

The Governmental Unit will complete the Project with all due diligence.

B. Completion of the Project. Upon the Completion Date, the Governmental Unit shall execute and send to the Finance Authority a certificate stating that payment for the Project has been completed. As soon as practicable after the Completion Date, and, in any event, not more than sixty (60) days from the Completion Date, any balance remaining in the Program Account shall be transferred and deposited into the Finance Authority Debt Service Account, as provided in the Loan Agreement and the Indenture.

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

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

A. Deposit of Pledged Revenues. Pursuant to the Intercept Agreement, the Pledged Revenues shall be paid directly by the Distributing State Agency to the Finance Authority for deposit in the Finance Authority Debt Service Account and remittance to the Trustee in an amount sufficient to pay principal, interest, premium, if any, and other amounts due under the Loan Agreement.

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

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

Section 10. Lien on Pledged Revenues. Pursuant to this Ordinance and the Loan Agreement, the Pledged Revenues are hereby authorized to be pledged to, and are hereby pledged, and the Governmental Unit grants a security interest therein for, the payment of the principal, interest, and any other amounts due under the Loan Agreement subject to the uses thereof permitted by and the priorities set forth in this Ordinance. The Loan Agreement constitutes an irrevocable and

first lien, but not necessarily an exclusive first lien, on the Pledged Revenues with the lien thereon of the Parity Obligations as set forth herein and in the Loan Agreement. The Governmental Unit shall not create a lien on the Pledged Revenues superior to that of the Loan Agreement.

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

Pursuant to the Supplemental Public Securities Act, Section 6-14-8 et seq., NMSA 1978, the Mayor and Manager are each hereby delegated authority to execute the Sale Certificate and to determine any or all of the final terms of the Loan, subject to the parameters and conditions contained in this Ordinance. The Mayor or Manager shall present the Sale Certificate to the Governing Body in a timely manner, before or after execution and delivery of the Loan Agreement, at a regularly scheduled public meeting of the Governing Body.

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

Section 13. Ordinance Irrepealable. After the Loan Agreement and Intercept Agreement have been executed and delivered, this Ordinance shall be and remain irrepealable until all obligations due under the Loan Agreement shall be fully paid, canceled and discharged, as provided therein.

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

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

Section 16. Effective Date. Upon due adoption of this Ordinance, it shall be recorded in the book of the Governmental Unit kept for that purpose, authenticated by the signatures of the

Mayor and the City Clerk of the Governmental Unit, and the title and general summary of the subject matter contained in this Ordinance (set out in Section 17 below) shall be published in a newspaper which maintains an office and is of general circulation in the Governmental Unit, or posted in accordance with law, and such Ordinance shall be in full force and effect thereafter, in accordance with law.

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

(Form of Summary of Ordinance for Publication)

City of Alamogordo, New Mexico
Notice of Adoption of Ordinance

Notice is hereby given of the title and of a general summary of the subject matter contained in Ordinance No. _____ duly adopted and approved by the City Commission of the City of Alamogordo, New Mexico, on August __, 2024. A complete copy of the Ordinance is available for public inspection during the normal and regular business hours of the City Clerk, 1376 East Ninth Street, Alamogordo, New Mexico.

The title of the Ordinance is:

CITY OF ALAMOGORDO, NEW MEXICO
ORDINANCE NO. _____

AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT AND INTERCEPT AGREEMENT BY AND BETWEEN THE CITY OF ALAMOGORDO, NEW MEXICO (THE "GOVERNMENTAL UNIT") AND THE NEW MEXICO FINANCE AUTHORITY (THE "FINANCE AUTHORITY"), EVIDENCING A SPECIAL, LIMITED OBLIGATION OF THE GOVERNMENTAL UNIT TO PAY A PRINCIPAL AMOUNT OF NOT TO EXCEED \$5,000,000, TOGETHER WITH INTEREST THEREON, FOR THE PURPOSE OF FINANCING (1) ACQUIRING, CONSTRUCTING AND IMPROVING ENERGY EFFICIENCY PROJECTS ASSOCIATED WITH CITY FACILITIES, (2) FUNDING A LOAN AGREEMENT RESERVE ACCOUNT, AND (3) PAYING COSTS OF ISSUANCE OF THE LOAN; APPROVING THE DELEGATION OF AUTHORITY TO MAKE CERTAIN DETERMINATIONS REGARDING THE LOAN PURSUANT TO THE SUPPLEMENTAL PUBLIC SECURITIES ACT; PROVIDING FOR THE PAYMENT OF THE BONDS FROM THE REVENUES OF THE 1/4 OF ONE PERCENT (0.25%) INCREMENT OF MUNICIPAL GROSS RECEIPTS TAX IMPOSED ON ALL PERSONS ENGAGING IN BUSINESS IN THE CITY PURSUANT TO SECTION 7-19D-9 NMSA 1978 AND CITY ORDINANCE NO. 620-81 ADOPTED _____, 1981 ("MUNICIPAL GROSS RECEIPTS TAX"); PROVIDING FOR THE DISTRIBUTIONS OF THE REVENUES OF THE MUNICIPAL GROSS RECEIPTS TAX FROM THE STATE TAXATION AND REVENUE

DEPARTMENT TO BE REDIRECTED TO THE FINANCE AUTHORITY OR ITS ASSIGNS PURSUANT TO THE INTERCEPT AGREEMENT FOR THE PAYMENT OF PRINCIPAL AND INTEREST DUE ON THE LOAN AGREEMENT; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS ORDINANCE; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE LOAN AGREEMENT AND THE INTERCEPT AGREEMENT.

A summary of the subject matter of the Ordinance is contained in its title. This notice constitutes compliance with Section 6-14-6, NMSA 1978.

(End of Form of Summary for Publication)

PASSED, APPROVED, AND ADOPTED THIS ____ DAY OF AUGUST, 2024.

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

Susan L. Payne, Mayor

SEAL

ATTEST:

Rachel Hughs, City Clerk

APPROVED AS TO FORM:

Ashley Smith, City Attorney

City of Alamogordo Energy Savings Project

Certified Scopes and Savings Presentation

June 25, 2024

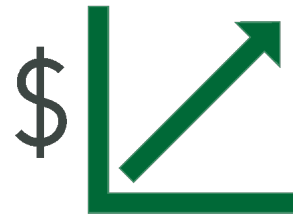
Project Background

ALAMOGORDO PUBLIC LIBRARY

Objectives



Improve comfort levels in City buildings and reduce the amount of time spent by City staff addressing cold/hot calls.



Mitigate escalating utility costs.



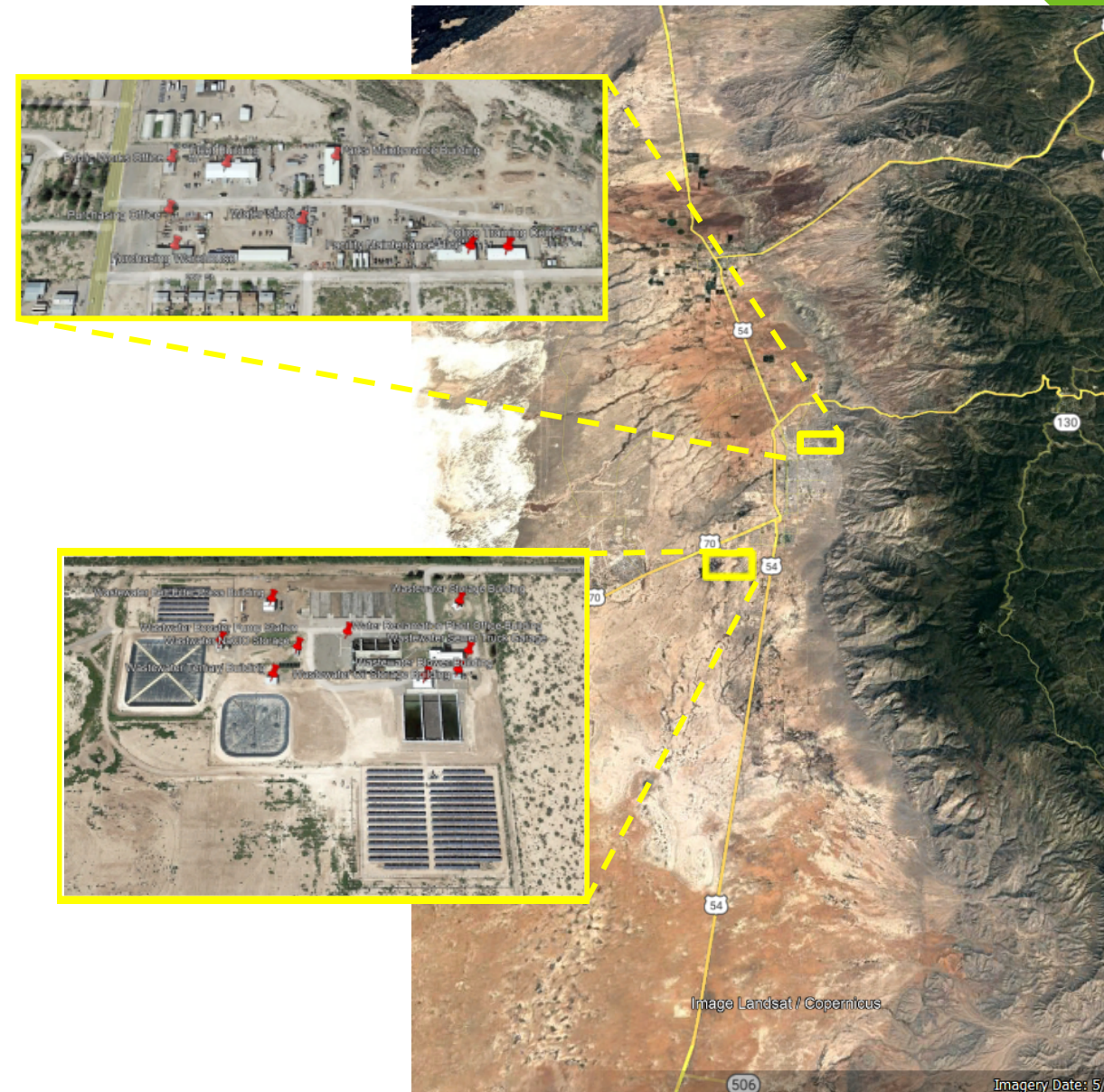
Improve amenities for staff and constituents.

112 sites included in audit

373,565 ft² of building area audited

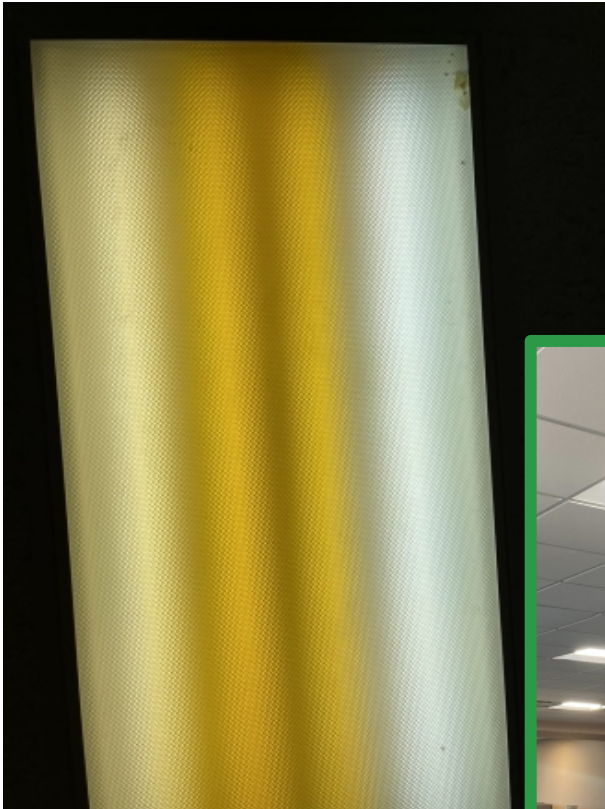
167 utility meters evaluated

213 cost/benefit analyses performed



Project Scope

LED Lighting

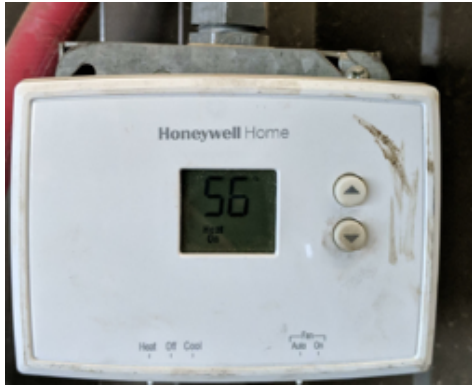


Police Department



- Replacing, relamping, and retrofitting **1,300+ fixtures** at 19 sites
- High-End Trim (Occupied), Dimming, and Daylight Harvesting

HVAC Controls



Fleet Building



Senior Center

- Replacing **123 thermostats** at 26 sites
- This system allows for
 - Scheduling
 - Remote monitoring
 - Programmable dead-band

High Efficiency, Low Voltage Transformers



Fire Station 5

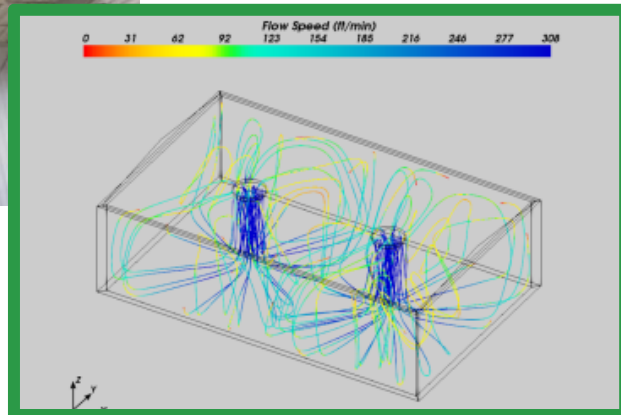
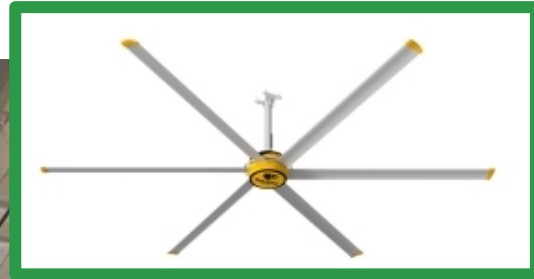


- Replacing **19 transformers** totaling 825 kVA.
- Modern high-efficiency transformers that meeting current DOE regulations and improve energy system resiliency.

Air Destratification

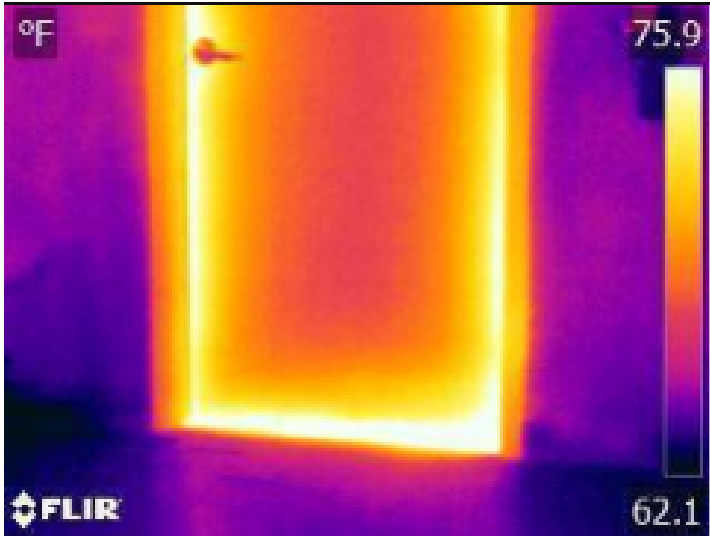


Family Rec Center

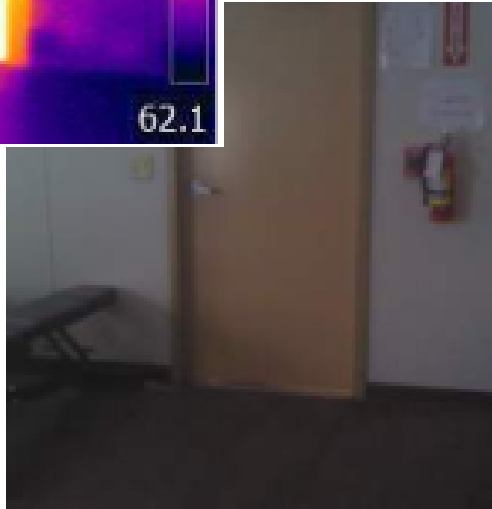


- Install **2 Destratification Fans** at the Family Recreation Center
- Improve air flow for more efficient heating/cooling
 - 100% fan speed can cause a person to feel up to 12 degrees colder
 - Air temperature can raise by up to 10 degrees on a 20-ft ceiling
 - Reduce setpoint in winter, raise it in summer

Building Weatherization

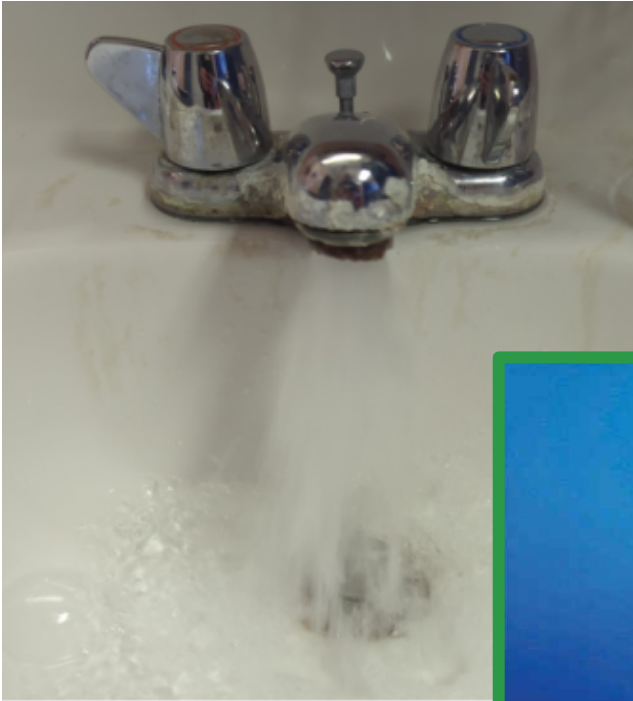


Senior Center –
Exercise Room



- **Remediate ~47.3 ft²** of wall cracks and gaps around window and door frames and vents at 19 facilities.
- Install/replace window seals, door sweeps, and astragals
- Seal gaps around outlets, lights, water connections, etc.

Water Conservation



Fire Station 7



- Reduce water consumption for **8 sites** in anticipation of rate increase.
 - Component replacements, system tuning, toilet and sink retrofits.
- **45,000 gallons** of water saved annually.

Renewable Energy – Solar PV



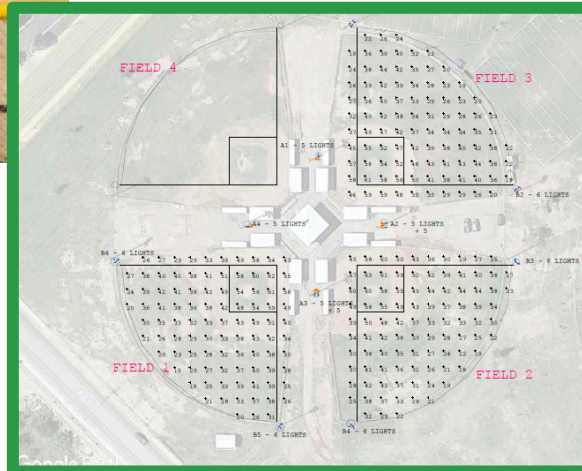
Prather Well

Location	Size of Array (kW)
Fire Station 1	24
Fire Station 5	27
Fire Station 6	11
Fleet Building	19
Police Training Center	10
Public Library	64.5
Purchasing Warehouse	22
Griggs Booster Pump	19
Hooser Booster Pump	12
Prather Well 1	77
TOTAL	285.5

Sports Lighting



Griggs Fields



- Replacing Sports Lights at **4 of Griggs Fields** with LED Technology

- Fields 1, 2, 3 and 7
- Includes Wireless and Remote Controls

Project Financials

Project Financials

	20-Year Term
Turn-Key Project Cost	\$4,586,309
Year 1 Total Annual Savings	\$123,351
Estimated Inflation Reduction Act Direct Payment	\$712,550
Grant Funding	\$76,060
Estimated Rebates	\$27,374
Annual Interest Rate	4.500%
Upfront Capital Contribution	\$1,750,000
Useful Life of Project	23 Years
Savings Over Useful Life	\$5,477,955

Timeline Going Forward

Implementation

- Construction Kick-Off Meeting
 - Within a few weeks of contract execution
- Pre-Construction Phase – 3 months
- Construction Phase – 12 months
- Performance Assurance Phase
 - Post-construction monitoring phase where actual project performance is measured against guaranteed values.



Gary Verlinden
Project Manager



Chris Conway
Superintendent



Tara Trafton
Account Executive

Thank you!

Tara Trafton

Account Executive

tara.trafton@yearoutenergy.com

YEAROUT
ENERGY

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 8/13/2024

Report Date: 07/27/2024

Report No: 5.

Submitted By: Rachel Hughs

Subject: Consider, and act upon, Resolution No. 2024-52 authorizing the Mayor to execute the agreement with the Southeastern New Mexico Economic Development District/Council of Governments to include the annual contribution of \$9,125. *(Rachel Hughs, City Clerk)* **(Roll Call Vote Required)**

Fiscal Impact: 9,121.00
Amount Budgeted: \$9,125
Fund: 011.000.2400.0000.55505.

Additional Fiscal Impact:

Recommendation: Approve the Resolution and Agreement.

Background:

The City is a member of SNMEDD/COG, and the Resolution will continue the membership. The Agreement is for an annual contribution of \$9,121. This resolution is required by SNMEDD/COG and approved annually by the City Commission.



Dora Batista
Executive Director

**SOUTHEASTERN NEW MEXICO
ECONOMIC DEVELOPMENT DISTRICT**

COUNCIL OF GOVERNMENTS

1600 SE Main, Suite D
Roswell, NM 88203
Phone: (575) 624-6131
Fax: (575) 624-6134
www.snmedd.com

July 3, 2024

Susan Payne, Mayor
City of Alamogordo
1376 E. Ninth
Alamogordo, NM 88310-5855

Dear Mayor Susan Payne:

With regard to your annual membership in the District for the 2024-2025 fiscal year, we have enclosed the following:

- I. **AGREEMENT** – required by the Department of Finance and Administration for disbursement of local funds and which conforms to state regulations. Two copies are enclosed. After the Agreement has been executed, please keep one copy and return one to our office.
- II. **RESOLUTION** – upon approval by your council or commission, it is to be signed, attached to and distributed with the attached Agreement.
- III. **2024-2025 ASSESSMENT SCHEDULE AND BUDGET FOR 2024-2025** enclosed for your information.
- IV. **WORK PROGRAM FOR STATE APPROPRIATED FUNDS** – enclosed for your information.
- V. **INVOICE** – enclosed for billing and bookkeeping purposes. Please return one copy with your check.

The most recent audit and financial statements are available upon request.

As you know, we are in the process of finalizing the SNMEDD/COG budget for the coming year and your prompt attention is greatly appreciated.

If you have any questions or require further information, please feel free to contact me. Thank you for your support and letting us serve you.

Sincerely,

Dora Batista
Executive Director

DB/pm
Enclosures

AGREEMENT

This Agreement, entered into by and between the Southeastern New Mexico Economic Development District/COG (hereinafter known as the "District") and the City of Alamogordo a member of said District (hereinafter known as the "Member") is as follows:

I. The District agrees to provide the following services to the Member upon request and final approval of the District budget:

- A. Undertake studies, collect data and develop regional plans and programs pertaining to such subjects as human and natural resource development, community facilities and the general improvement of living and working environments.
- B. Furnish technical and management assistance in the development of planning activities.
- C. Coordinate local planning with that of other Members of the District and the State.
- D. Assist in community and economic development, transportation and public works projects.
- E. Assist member governments with their legislative activities.
- F. Assist in the preparation of applications for funding under various state, federal and private grant programs. Contracts for administration may be entered into between Member and District if Member requires or desires District to administrate project.
- G. Provide a Comprehensive Economic Development Strategy at the direction of the Board.
- H. Engage in such other activities as are necessary to improve area development and address regional problems.

II. The Member agrees to the following:

- A. To remain an active member of the District.
- B. To make an annual contribution of \$ 9,121.00 to the District as recognition of active membership.

Entered into this _____ day of _____, 2024, at

New Mexico

ATTEST:

Clerk

Mayor/Commission Chairman

ATTEST:

SOUTHEASTERN NEW MEXICO
ECONOMIC DEVELOPMENT DISTRICT/COG

Dora Batista
Dora Batista, Board Secretary

Sam Seely
Sam Seely, Board President

RESOLUTION NO. 2024-52

APPROVING THE AGREEMENT BETWEEN THE CITY AND SOUTHEASTERN NEW MEXICO ECONOMIC DEVELOPMENT DISTRICT/COG (SNMEDD)

WHEREAS, the City Commission for the City of Alamogordo, New Mexico, hereinafter referred to as the Municipality, is a member of and desires the services of the Southeastern New Mexico Economic Development District/COG; and,

WHEREAS, in accordance with Article 58, §4-58-1 to §4-58-6 NMSA 1978, an agreement setting forth the terms and conditions of active membership in the Southeastern New Mexico Economic Development District/COG is required; and,

WHEREAS, it is the desire of the Municipality to continue as an active member of the Southeastern New Mexico Economic Development District/COG.

NOW, THEREFORE, BE IT RESOLVED, by the City Commission for the City of Alamogordo, New Mexico that:

1. The Agreement attached to this Resolution expresses the desires and intent of the Municipality.
2. The Agreement attached is hereby ratified and approved and the proper officials of the Municipality are hereby authorized and instructed to affix their signatures thereto.
3. A copy of this Resolution (together with the referenced Agreement) shall be filed with the State of New Mexico department of Finance and Administration, Local Government Division and the Southeastern New Mexico Economic Development District/COG and shall be made a part of the budget documentation of the Municipality.

DONE this _____ day of _____, 2024.

CITY OF ALAMOGORDO, NEW MEXICO
a New Mexico municipal corporation

By: _____
Susan L. Payne, Mayor

ATTEST:

APPROVED AS TO FORM:

Rachel Hughs, City Clerk

Ashley Smith, City Attorney

SNMEDD APPROVED BUDGET 2024-2025

	Budget
Income	
DFA Grant Writing Reimb '24	\$74,267.31
Legis Tech Cap Grant Reimb '24	\$79,824.04
Legis Tech Capacity Grant '25	\$320,000.00
NM GRO Admin	\$800,000.00
PED Community Schools	\$375,000.00
PED Community Schools Admin	\$30,000.00
DFA NM Govt. Approp.	\$99,000.00
EDA Fed Gov't	\$70,000.00
EDA Disaster Recovery Grant	\$250,000.00
Contracts & Fees Fiscal Agent	\$30,000.00
Grant Administration	\$130,000.00
Member Dues	\$102,790.00
Interest Income	\$100.00
Reimbursement Income	\$100.00
Unbudgeted Revenue	\$0.00
Total Income	\$2,361,081.35
Expense	
Advertising	\$1,000.00
Audit	\$16,703.00
Total Communication	\$15,000.00
Contract Services	\$200,000.00
Equip Lease/Repair	\$7,500.00
Equip. Purchases	\$4,000.00
Legis Tech Cap Grant '25	\$320,000.00
Payroll Taxes and Expense	\$49,498.36
NM GRO Operations	\$100,000.00
NM GRO Working Fund Transfer	\$300,000.00
Fringe Benefits	\$100,000.00
Program Operations	\$75,000.00
Salary and Wages	\$628,295.93
Travel	\$25,000.00
Unbudgeted Balance	\$519,084.06
Total Expense	\$2,361,081.35

Southeastern New Mexico Economic Development District/ Council of Governments

FY 2024-2025 DFA ANNUAL WORK PLAN

State of New Mexico Grant-In-Aid Program

The following are functions, measures, targets, and tasks the Southeastern New Mexico Economic Development District/Council of Governments (SNMEDD/COG) will complete in fulfillment of its obligation to its member governments and the State of New Mexico Department of Finance and Administration-Local Government Division to provide planning, technical assistance and capacity building services to local governments in southeastern New Mexico.

Function 1. Submit reports, budgets, and planning outcomes to the Local Government Division.

- Task 1.1** Prior to July 1, 2024 submit a Board approved Annual Work and Operations Budget to the Local Government Division
- Task 1.2** Submit payment reimbursement invoices to the Local Government Division no later than the 15th day of the month (January, April, July, October) following the close of each quarter
- Task 1.3** Provide professional development training opportunities to staff
- Task 1.4** Schedule and include as an agenda item for each quarterly meeting of the Board of Directors training or information to benefit local elected officials such as speakers from relevant agencies or upcoming trainings or meetings
- Task 1.5** Attend, when possible, regularly scheduled meetings of member governments; special purpose meetings; provide technical assistance, conduct public hearings and assist in whatever capacity we are able
- Task 1.6** Participate in NewMarc (NM Association of Regional Councils); SWREDA (Southwest Regional Executive Directors Association); and the National Association of Development Organizations (NADO)

Function 2. Provide local governments with application and general technical assistance on federal and state available funding

- Task 2.1** Inform members of CDBG, EDA, USDA, CIF and other funding programs, rule changes and Notifications of Funding Assistance (NOFA) including Disaster Recovery and Stimulus funds when available
- Task 2.2** Inform members of State available funds such as Matching Funds, Cost Overruns, Outdoor Recreation; etc
- Task 2.3** Assist with funding assistance applications for members upon their request including the conducting of public hearings if necessary. Coordinate presentations to the Community Development Council and Colonias Infrastructure Fund Board by our member governments seeking CDBG or CIF funding
- Task 2.4** Provide Grant Administration and Technical Assistance to member governments upon approval of a contractual agreement between the local government and the funding agency. A contract between SNMEDD and the local municipality/county can be negotiated for grant administration
- Task 2.5** Act as Fiscal Agent to those municipalities/counties that have deficiencies in their audit and would not be able to receive funding from capital outlay or grants otherwise
- Task 2.6** Assist local governments with the seeking of funds for updating comprehensive plans and participate in public input meetings

Function 3. Infrastructure Planning—Coordinate the ICIP process regionally.

- Task 3.1** Assist with ICIP training to the extent needed that will be presented to local governments and others by DFA/LGD staff
- Task 3.2** Assist and provide local governments technical assistance with the development and submittal of the ICIP as needed. Encourage the submission and participation of the ICIP to our municipalities/counties and its relevance to the Capital Outlay process
- Task 3.3** Encourage local municipal, county governments and other entities to include operation and maintenance costs in the ICIP
- Task 3.4** Encourage members to develop financing plans for each of their top five ICIP priorities, including a project description, secured sources of funding and, where applicable, utility rate structure and asset management plans

Task 3.5 Have staff attend and encourage local government members to attend, the annual New Mexico Infrastructure Finance Conference and other relevant conferences

Task 3.6 Conduct regional clearinghouse review, as may be necessary for all applications per the Intergovernmental Cooperation Act of 1968 and Section 204 of the Demonstration Cities and Metropolitan Act of 1966, as amended, a grant applicant requesting federal funding should send its proposed project to the States' planning agencies

Function 4. Capital Outlay—Increase quality of project planning, legislative representation and administration.

Task 4.1 Assist local entities seeking assistance in the preparation and submission of capital outlay request forms through informational workshops and direct application technical assistance

Task 4.2 Work with Legislators throughout the region on locally established capital improvement priorities by holding county project vetting hearings in each county and allowing municipalities and counties the opportunity to present potential projects to their legislators. Assist with reauthorizations

Task 4.3 Prepare a preliminary list of projects submitted by local entities and submit list to local legislators

Task 4.4 Track capital outlay legislation relevant to community development, infrastructure improvement projects and project planning and programming

Task 4.5 Participate in State funding programs such as NM Gro to the extent mandated by the State

Function 5. Rural Support—Build capacity of local governments, rural water associations and other rural organizations.

Task 5.1 Provide assistance to rural water associations, community ditches, acequias and other non-members on capital project planning. Assistance may be based on a Board approved fee for service schedule

Task 5.2 Engage rural members and non-members requesting assistance in "project prospectus development", develop, review and vet projects seeking funding sources to meet specific project needs

Task 5.3 Invite rural water associations and other non-member organizations in each county to capital improvement hearings or meetings that would be beneficial

- Task 5.4** Provide opportunities and information for local government staff and/or elected officials to attend capacity building training, workshops and conferences sponsored by state, regional and national planning and development organizations and funding sources
- Task 5.5** Provide US Census data information and support for the region as a US Census Bureau Affiliate
- Task 5.6** Provide public relations for the SNMEDD and local governments through continuous media dissemination
- Task 5.7** Meet with community elected and appointed officials and key community leaders to increase community capacity building foundation

Function 6. Transportation—Provide local governments with assistance to improve the region's transportation system for the efficient movement of goods, services, and people.

- Task 6.1** Compile and maintain a database of transportation-related projects that may be contemplated or that are ready to be implemented for local governments within the region
- Task 6.2** Maintain transportation-related technical information on the website, as available, to assist local governments and others in packaging applications that improve the infrastructure of the region
- Task 6.3** Provide orientations or similar training to newly appointed RPO members representing local governments, preparing them in their roles on the Regional Transportation Policy and Technical Committees
- Task 6.4** Meet with local elected officials, informing them of the transportation-related programs and activities available to them through the Southeastern Regional Planning Organization (SERTPO) and encourage their input in regional transportation planning
- Task 6.5** Maintain and provide the SERTPO regional transportation planning function in concert with the New Mexico Department of Transportation
- Task 6.6** Organize, schedule and host SERTPO Policy Committee and Technical Committee meetings

Function 7. Provide resources toward the development of new business or business expansions to retain and create jobs.

- Task 7.1** Prepare a Comprehensive Economic Development Strategy update for submittal to our local government members and the Economic Development Administration (EDA) under the guidance and rules established by EDA.
- Task 7.2** Post results of studies or analysis on SNMEDD website and make data available to our region for applications and reports
- Task 7.3** Meet regularly with the region's five economic development corporation/entities to gather and share information.
- Task 7.4** Support the top five industry clusters in our region: Energy; Agriculture; Tourism; Defense & Security; and Transportation
- Task 7.5** Support and promote local agriculture and related value added industries
- Task 7.6** Work with the Small Business Development Centers in our region
- Task 7.7** Attend Eastern Area Workforce Board Meetings and provide information to the chief elected officials

SOUTHEASTERN NEW MEXICO ECONOMIC DEVELOPMENT DISTRICT/COG

DUES STRUCTURE

MEMBER	<u>2023-2024</u> <u>CURRENT</u>	<u>2024-2025</u> <u>PROPOSED</u>
--------	------------------------------------	-------------------------------------

Chaves County	\$8,000	\$8,000
Eddy County	\$8,000	\$8,000
Lea County	\$8,000	\$8,000
Lincoln County	\$7,000	\$7,000
Otero County	\$8,000	\$8,000
Town of Dexter	\$1,000	\$1,000
Town of Hagerman	\$1,000	\$1,000
Town of Lake Arthur	\$1,000	\$1,000
City of Roswell	\$13,588	\$13,588
City of Artesia	\$3,450	\$3,450
City of Carlsbad	\$7,641	\$7,641
Village of Hope	\$1,000	\$1,000
Village of Loving	\$1,000	\$1,000
City of Eunice	\$1,000	\$1,000
City of Hobbs	\$10,237	\$10,237
City of Jal	\$1,000	\$1,000
City of Lovington	\$3,303	\$3,303
Town of Tatum	\$1,000	\$1,000
Village of Capitan	\$1,000	\$1,000
Town of Carrizozo	\$1,000	\$1,000
Village of Corona	\$1,000	\$1,000
Village of Ruidoso	\$2,450	\$2,450
City of Ruidoso Downs	\$1,000	\$1,000
City of Alamogordo	\$9,121	\$9,121
Village of Cloudcroft	\$1,000	\$1,000
Village of Tularosa	\$1,000	\$1,000
Mescalero Apache Tribe	\$1,000	\$1,000
TOTALS:	\$103,790	\$103,790



Dora Batista
Executive Director

**SOUTHEASTERN NEW MEXICO
ECONOMIC DEVELOPMENT DISTRICT**

COUNCIL OF GOVERNMENTS

1600 SE Main, Suite D
Roswell, NM 88203
Phone: (575) 624-6131
Fax: (575) 624-6134
www.snmedd.com

Invoice

Invoice Date: July 3, 2024

Susan Payne, Mayor
City of Alamogordo
1376 E. Ninth
Alamogordo, NM 88310-5855

DESCRIPTION

AMOUNT

FY 2024-2025 MEMBER GOVERNMENT CONTRIBUTION	\$9,121.00
	Total Due \$9,121.00

- Please make checks payable to Southeastern New Mexico Economic Development District.

T h a n k Y o u

"Leadership to enhance the region's quality of life, services and jobs"

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 8/13/2024

Report Date: 07/31/2024

Report No: 6.

Submitted By: Veronica Ortega

Subject: Consider, and act upon, agreement with Otero County for receipt of the \$35,000 reimbursable grant award for the Alamogordo Public Library services to County residents. *(Kim Underwood, Library Manager)*

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact: Increase of \$35,000 to FY25 approved revenue/expenditure budgets for the Alamogordo Public Library to provide library materials to the benefit of Otero County residents.

Recommendation: Approve award of \$35,000 for library materials to Otero County residents.

Background: This Community Services Agreement is a Memorandum of Understanding provisioning library materials for Otero County residents.

ADMINISTRATION
1101 NEW YORK AVENUE
ALAMOGORDO, NM 88310



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

**Agreement for Reimbursable Community Services Funding
Between the Board of County Commissioners of
Otero County, New Mexico,
and
Alamogordo Public Library**

I. General Provisions.

A. Parties

The parties to this agreement are:

1. the Board of County Commissioners of Otero County, New Mexico, a political subdivision of the State of New Mexico established under N.M.S.A. 1978, § 4-19-1 (1899), to be referred to as "Otero County," and
2. **Alamogordo Public Library**, a unit of Local Government/A Local Non-profit, to be referred to as "Recipient."

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

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

C. Purpose

The purpose of this agreement for Otero County to provide community services funding to Recipient so that it may provide community services in Otero County in accordance with the legislative premise established by NMSA 4-38-13.2. These services are detailed in Exhibit A, which is attached to this agreement.

II. Essential Provisions.

A. Term & Effective Date

The term of this agreement shall be a term of one year, which shall be Otero County's fiscal year 2025.

This agreement shall commence upon July 1st, 2024, and this agreement shall terminate on June 30th, 2025, the last day of Otero County's fiscal year 2024. This agreement is not renewable.

B. Amount of Funding

The parties agree that the community services reimbursable funding shall not exceed **\$35,000.00** for the fiscal year.

C. Payments

Otero County will make payments by check or warrant.

D. No Use of County Purchasing Department

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

E. Receipts for Payments

The Recipient agrees to submit receipts to Otero County for the reimbursement of payment paragraph II-C. The receipt shall reference this agreement's approved expenses, recipient's name, and the mailing address to which payment is to be sent. Receipts shall be sent to:

County of Otero
Attn: Sylvia Tillbrook, Contract Monitor
1101 New York Avenue
Alamogordo, New Mexico 88310

Receipts must be must be dated prior to June 30, 2025 and submitted to Otero County no later than 7/17/2025.

Recipient agrees to supply additional information to the Finance Department if the invoice information submitted is determined to be deficient. Such additional information shall be supplied by Recipient within fourteen days of the request.

F. Report on Activities

During the months of September 2024, December 2024, March 2025, and June 2025, in addition to Recipient's submission of receipts/invoices, an activities report shall be submitted to Otero County describing the use of funding during the corresponding quarter as described under this agreement. The receipts/invoices and the activities report must reflect the services provided to the community as outlined in the approved application.

The report shall be submitted to:

County of Otero
Attn: Sylvia Tillbrook, Contract Monitor
1101 New York Avenue
Alamogordo, New Mexico 88310

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

G. W-9 and Vendor ID Forms

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

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

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

H. No Receipts Accepted After June 30th, 2025

Recipient agrees that no request for payment shall be honored by Otero County if it is invoice documentation is dated after June 30th, 2025.

Recipient understands that Otero County must close its fiscal year on June 30th, 2025 and is unable to accept invoices dated after June 30th, 2025.

Recipient agrees that any receipts dated prior to July 1, 2025 or dated after June 30th, 2025 will be rejected.

Recipient agrees any request for payment received after July 17, 2025, will be rejected.

Recipient agrees that any balance under this agreement that was unpaid due to failure to submit timely requests for payment will be forfeited.

I. Non-transferrable

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

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

J. Termination

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

III. Compliance with Laws.

A. Taxes

Recipient acknowledges that it may be subject to Federal, state, and local taxes. Recipient agrees that it is solely responsible for paying such taxes as well as any interest and penalties that may arise from its failure to do so.

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

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

B. Licenses and Permits

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

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

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

C. Corporate Status

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

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

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

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

D. Non-profit Tax Status

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

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

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

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

E. Anti-discrimination Laws

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

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

F. Federal, State, and Local Laws

Recipient acknowledges that it is subject to Federal, state, and local laws and will comply with them.

Recipient agrees that will indemnify Otero County for any violation of Federal, state, or local law committed by it.

IV. Contract Interpretation Provisions.

A. Entire Agreement

The parties agree that this document constitutes the entire agreement between them and any prior agreements or understandings between them have been merged into this document.

B. Amendments

The parties agree that amendments to this agreement shall be done in writing and signed by representatives of them in the same manner that this contract was executed.

C. Severability

The parties agree that if any part of this agreement is found to be unenforceable under present laws or those enacted during the term of this agreement, then the illegal parts of this agreement shall be severed from the agreement and the remaining parts shall continue in force.

D. Waivers

No waiver or any breach or default by Recipient shall constitute a waiver of any subsequent default or breach by it.

E. Choice of Law

The parties agree that the laws of the State of New Mexico shall govern the interpretation of this agreement.

F. Forum-Selection

The parties agree that the exclusive forum for disputes under this agreement shall be the Twelfth Judicial District Court of the State of New Mexico sitting in Otero County.

If the Twelfth Judicial District Court finds that the amount in question in the suit is below its jurisdictional limits, the parties agree that the exclusive forum for disputes shall lie instead with the Otero County Magistrate Court.

G. Submission to Jurisdiction

The parties agree to submit to the jurisdiction of both the Twelfth Judicial District Court and the Otero County Magistrate Court.

H. Federal Court

The parties hereby waive their rights to file in or remove to Federal court any suit brought under this agreement.

J. Running of Time

If the deadline for any act required under this agreement falls upon a Saturday, Sunday, legal holiday, or other day that the Otero County offices are closed, then the act shall be timely if done on the next weekday that Otero County offices are open.

K. Non-appropriation

If the performance of Otero County is contingent upon sufficient appropriations and authorizations being made by the Legislature of New Mexico and sufficient appropriations and authorizations are not made by the Legislature of New Mexico, this agreement shall terminate upon written notice being provided by the Otero County to Recipient. Otero County's decision as to whether sufficient appropriations are available shall be accepted by Recipient and shall be final.

L. Status of Recipient

Recipient agrees that it is an independent contractor of Otero County.

Recipient agrees that none of its employees or volunteers are employees of Otero County and therefore they shall not be entitled to any salary or benefits from Otero County.

M. Notices

The parties agree to make any notices required under this agreement in writing. Any notices declaring a default or terminating this agreement shall be sent to the parties at the addresses below by the U.S. Postal Service or commercial carrier using a method of delivery that requires the addressee to sign for the item. Examples of such methods are certified mail, registered mail, and express mail.

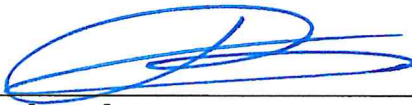
Notices shall be sent to Otero County as follows:

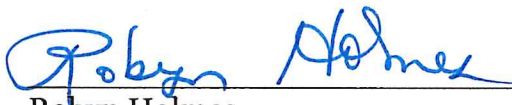
County of Otero
Attn: Sylvia Tillbrook, Contract Monitor
Otero County Administration Building
1101 New York Avenue
Alamogordo, New Mexico 88310

Notices shall be sent to Recipient as follows:

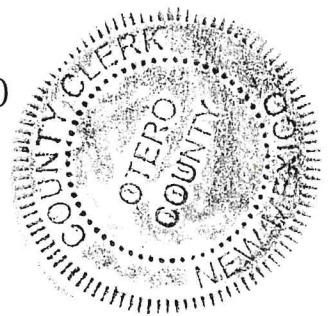
Alamogordo Public Library
Attn: Kim Underwood
920 Oregon Avenue
Alamogordo, NM 88310

OTERO COUNTY, NEW MEXICO

By:  Date: 7-18-24
Pamela Heltner
County Manager

Attest: 
Robyn Holmes
Otero County Clerk

(SEAL)



Alamogordo Public Library

By: _____ Date: _____
Authorized Representative

Exhibit A

Recipient agrees to provide community services as follows:

(See Attached Pages)

**OTERO COUNTY
COMMUNITY SERVICES GRANT APPLICATION
FY 2024-2025**

All grant applications will be reviewed and considered for approval by the Otero County Board of County Commissioners.

Grants will be paid on a reimbursement basis.

Please complete the following information:

Organization Name: Alamogordo Public Library

Mailing Address: 920 Oregon Avenue
Alamogordo, NM 88310

Primary Contact Name: Kim Underwood, Library Manager
Phone: 575.439.4140 #4165
Email: kunderwood@ci.alamogordo.nm.us

Secondary Contact Name: Evelyn Huff, Finance Director
Phone: 575.439.4268
Email: ehuff@ci.alamogordo.nm.us

Federal TIN: 85-6000099

Amount of Funding
Requested: \$ 50,000.00

What is the mission of your organization? (attach add'l page if needed)

(see attached)

What services do you provide to Otero County citizens? (attach add'l page if needed)

(see attached)

OTERO COUNTY COMMUNITY SERVICES GRANT FUNDING FY25

Please provide a breakdown of how the grant funds will be used, (dollar amount by program or expense type):

	Amount	Program/Project
1.	\$ 50,000.00	Public library materials: books (all genres); youth STEAM kits; DVDs; databases, periodicals;
2.		subscriptions; braille materials; large type books; eBooks; and audiobooks.
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		
	\$ 50,000.00	Total Funding Request

The following items will be **required** to be submitted as part of your application packet:

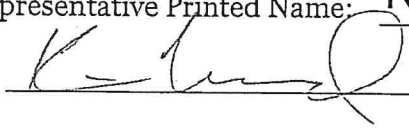
- Completed W-9 Form
- Completed Vendor Master Request Form
- Copy of IRS Determination Letter designating your organization as tax-exempt (not applicable for units of local/state/tribal government)
- Amounts and description of other current funding sources and how they are used by your organization, (grants, etc...)

The following items are **optional** to submit with your application packet:

- Letters of support or endorsement of your organization
- Photos/printed programs/newsletters of past program events or projects

By signing this application, I hereby attest that the information contained within and attached to this application is a true and correct representation of the organization requesting community services grant funding from Otero County.

Authorized Representative Printed Name: Kim Underwood

Signature: 

Date: March 15, 2024

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 8/13/2024

Report Date: 08/02/2024

Report No: 7.

Submitted By: Josh Sides

Subject: Consider, and act upon, Resolution 2024-53, declaring 405 Delaware Ave. to be so ruined, damaged, and dilapidated that it is a menace to public comfort, health, peace, or safety. (*Josh Sides, Code Enforcement Manager*) **(Roll Call Vote Required)**

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation: Approve and order its abatement.

Background: 405 Delaware Ave. is so ruined and dilapidated that it is currently a risk to the public's health and safety.

405 Delaware Ave

Pictures





























Dilapidated Structure

405 Delaware Avenue



Timeline

405 Delaware Avenue

- On 11/07/2023, Code Enforcement Department was made aware of a potentially dilapidated structure and conducted an investigation.
- On 11/09/2023, 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 11/28/2023, the letter was returned to Code Enforcement undeliverable and subsequently posted on the property.

International Property Maintenance Code Violations

405 Delaware Avenue

- Total of 31 violations of the International Property Maintenance Code.

Condition of the Property at 405 Delaware Avenue



Condition of the Property at 405 Delaware Avenue



Condition of the Property at 405 Delaware Avenue



Condition of the Property at 405 Delaware Avenue



Questions

Josh Sides

Code Enforcement Manager



RESOLUTION NO. 2024-53

A RESOLUTION DECLARING THE BUILDING OR STRUCTURE, OR THE PREMISES LOCATED AT 405 DELAWARE 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 405 Delaware 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 1, 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 Mr. Gabriel Joe Telles, 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 _____ 2024.

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



Exhibit "2"

Case #: 202302224
Case Date: 11/07/23
Case Type:
Address Number: 405
Street Name: Delaware
Zoning Category: R-3
Commission District: 5
Description: Dilapidated Structure
Complainant Name: Sides
Complainant Phone: 5754394375
Complainant Address: 2010 Oregon Ave
Responsible Party:
Responsible Party Phone Number: 0
DOB:
ID #:
Property Owners : Gabriel J. Telles
Property Owner Phone Number: 0
Reinspection: 11/23/2023
Court case number:
Court Date:
Compliance Inspection :
Certified Mail #:
Citation Number:
Status: Draft IPMC Letter
Assigned To: JOSH SIDES

Property

Parcel #	Address	Legal Description	Owner Name	Owner Phone	Zoning
01N4055094142327	405 DELAWARE AVE	Subd: ALAMO BLOCKS Lot: 21, 22 Block: 20	TELLES, GABRIEL JOE		

Activities

Date	Activity Type	Description	Employee	Status
11/07/2023	Inspection	On 11/07/2023, I, Code Enforcement Manager Josh Sides, was contacted by Alamogordo Police Department Sergeant Ashe pertaining to a dilapidated structure located at 405 Delaware Ave.,	JOSH SIDES	Non-Compliance

Alamogordo, Otero County, New Mexico.

Upon arrival, I met with Sgt. Ashe who advised me Det. Edwards was on his way with a search warrant for the residence.

While I waited for Det. Edwards, I inspected the exterior of the residence from the public right of ways. It appeared to me the residence was dilapidated, but I would need to enter the residence to further inspect.

Det. Edwards arrived a short time later and began execution of his search warrant. I waited while Det. Edwards concluded his search. Once Det. Edwards finished, he accompanied me into the residence to allow me to inspect.

I observed numerous violations of the International Property Maintenance Code that reaffirmed my earlier observation the residence was in fact dilapidated.

I will draft a Notice of Violation letter to the property owner.

11/09/2023	Supplement	On 11/09/2024, I, Code Enforcement Manger Josh Sides, drafted a Notice of Violation letter and mailed it certified to the property owner.	JOSH SIDES	Closed
11/28/2023	Supplement	On 11/28/2023, I, Code Enforcement Manager Josh Sides, received the Notice of Violation letter back from USPS undeliverable. I subsequently posted the letter on the property.	JOSH SIDES	Closed
08/01/2024	Supplement	On 08/01/2024, I, Code Enforcement Manager Josh Sides, observed there had been no work done on the residence to correct the violations.	JOSH SIDES	Closed
		I will draft a resolution to present to the City of Alamogordo Commission for consideration of condemnation.		

Violations

Date	Violation	Description	Notes	Status
11/09/2023	IPMC 102.2 Maintenance.	Equipment, systems, devices and safeguards required by this code or a previous regulation or code under which the structure or premises was constructed, altered or repaired shall be maintained in good working order. An owner, owner's authorized agent, operator or occupant shall not cause any service, facility, equipment or utility that is required under this section to be removed from, shut off from or discontinued for any occupied dwelling, except for such temporary interruption as necessary while repairs or alterations are in progress. The requirements of this code are not intended to provide the basis for removal or abrogation of fire protection and safety systems and devices in existing structures. Except as otherwise specified herein, the owner or the owner's authorized agent shall be responsible for the maintenance of buildings, structures and premises.	Water system, electrical system, and gas systems are all disconnected.	*Open
11/09/2023	IPMC 111.1.2 Unsafe equipment.	Unsafe equipment includes any boiler, heating equipment, elevator, moving stairway, electrical wiring or device, flammable liquid containers or other equipment on the premises or within the structure that is in such disrepair or condition that such equipment is a hazard to life, health, property or safety of the public or occupants of the premises or structure.	Residence is a hazard to health, property, and safety of the occupants and public.	*Open
11/09/2023	IPMC 111.1.5 Dangerous structure or premises.	For the purpose of this code, any structure or premises that has any or all of the conditions or defects described as follows shall be considered to be dangerous: 1. Any door, aisle, passageway, stairway, exit or other means of	Passageways are blocked by junk that must be stepped over	*Open

egress that does not conform to the approved building or fire code of the jurisdiction as related to the requirements for existing buildings. to egress from within the residence.

2. The walking surface of any aisle, passageway, stairway, exit or other means of egress is so warped, worn loose, torn or otherwise unsafe as to not provide safe and adequate means of egress.
3. Any portion of a building, structure or appurtenance that has been damaged by fire, earthquake, wind, flood, deterioration, neglect, abandonment, vandalism or by any other cause to such an extent that it is likely to partially or completely collapse, or to become detached or dislodged.
4. Any portion of a building, or any member, appurtenance or ornamentation on the exterior thereof that is not of sufficient strength or stability, or is not so anchored, attached or fastened in place so as to be capable of resisting natural or artificial loads of one and one-half the original designed value.
5. The building or structure, or part of the building or structure, because of dilapidation, deterioration, decay, faulty construction, the removal or movement of some portion of the ground necessary for the support, or for any other reason, is likely to partially or completely collapse, or some portion of the foundation or underpinning of the building or structure is likely to fail or give way.
6. The building or structure, or any portion thereof, is clearly unsafe for its use and occupancy.
7. The building or structure is neglected, damaged, dilapidated, unsecured or abandoned so as to become an attractive nuisance to children who might play in the building or structure to their danger, becomes a harbor for vagrants, criminals or immoral persons, or enables persons to resort to the building or structure for committing a nuisance or an unlawful act.
8. Any building or structure has been constructed, exists or is maintained in violation of any specific requirement or prohibition applicable to such building or structure provided by the approved building or fire code of the jurisdiction, or of any law or ordinance to such an extent as to present either a substantial risk of fire, building collapse or any other threat to life and safety.
9. A building or structure, used or intended to be used for dwelling purposes, because of inadequate maintenance, dilapidation, decay, damage, faulty construction or arrangement, inadequate light, ventilation, mechanical or plumbing system, or otherwise, is determined by the code official to be unsanitary, unfit for human habitation or in such a condition that is likely to cause sickness or disease.
10. Any building or structure, because of a lack of sufficient or proper fire-resistance-rated construction, fire protection systems, electrical system, fuel connections, mechanical system, plumbing system or other cause, is determined by the code official to be a threat to life or health.
11. Any portion of a building remains on a site after the demolition or destruction of the building or structure or whenever any building or structure is abandoned so as to constitute such building or portion thereof as an attractive nuisance or hazard to the public.

11/09/2023 IPMC 301.2 Responsibility.

The owner of the premises shall maintain the structures and exterior property in compliance with these requirements, except as otherwise provided for in this code. A person shall not occupy as owner-occupant or permit another person to occupy premises that are not in a sanitary and safe condition and that do not comply with the requirements of this chapter. Occupants of a dwelling unit, rooming unit or housekeeping unit are responsible for keeping in a clean, sanitary and safe condition that part of the dwelling unit, rooming unit, housekeeping unit or premises they occupy and control.

Exterior of the premises does not comply with provisions of IPMC and is not sanitary or in a safe condition.

*Open

11/09/2023	IPMC 302.1. - Sanitation	Exterior property and premises shall be maintained in a clean, safe and sanitary condition. The occupant shall keep that part of the exterior property that such occupant occupies or controls in a clean and sanitary condition.	The exterior of the property is not in a clean, safe, or sanitary condition.	*Open
11/09/2023	IPMC 302.3. - Sidewalks and Driveways	Sidewalks, walkways, stairs, driveways, parking spaces and similar areas shall be kept in a proper state of repair, and maintained free from hazardous conditions.	Sidewalks are not in a proper state of repair or maintained free from hazardous conditions.	*Open
11/09/2023	IPMC 302.4. - Weeds	Premises and exterior property shall be maintained free from weeds or plant growth in excess of six inches. Noxious weeds shall be prohibited. Weeds shall be defined as all grasses, annual plants and vegetation, other than trees or shrubs provided; however, this term shall not include cultivated flowers and gardens. Upon failure of the owner or agent having charge of a property to cut and destroy weeds after service of a notice of violation, they shall be subject to prosecution in accordance with Section 108.3 and as prescribed by the authority having jurisdiction. Upon failure to comply with the notice of violation, any duly authorized employee of the jurisdiction or contractor hired by the jurisdiction shall be authorized to enter upon the property in violation and cut and destroy the weeds growing thereon, and the costs of such removal shall be paid by the owner or agent responsible for the property.	Noxious weeds on property in excess of 6 inches.	*Open
11/09/2023	IPMC 302.7 - Accessory Structures	Accessory structures, including detached garages, fences and walls, shall be maintained structurally sound and in good repair.	Fencing has been torn down as well as a shed in the back yard is dilapidated.	*Open
11/09/2023	IPMC 302.8. - Motor Vehicles	Except as provided for in other regulations, inoperative or unlicensed motor vehicles shall not be parked, kept or stored on any premises, and vehicles shall not at any time be in a state of major disassembly, disrepair, or in the process of being stripped or dismantled. Painting of vehicles is prohibited unless conducted inside an approved spray booth. Exception: A vehicle of any type is permitted to undergo major overhaul, including body work, provided that such work is performed inside a structure or similarly enclosed area designed and approved for such purposes.	multiple motor vehicles in the back yard are inoperable.	*Open
11/09/2023	IPMC 304.1.1 Unsafe Conditions	The following conditions shall be determined as unsafe and shall be repaired or replaced to comply with the International Building Code or the International Existing Building Code as required for existing buildings: 1. The nominal strength of any structural member is exceeded by nominal loads, the load effects or the required strength. 2. The anchorage of the floor or roof to walls or columns, and of walls and columns to foundations is not capable of resisting all nominal loads or load effects. 3. Structures or components thereof that have reached their limit state. 4. Siding and masonry joints including joints between the building envelope and the perimeter of windows, doors and skylights are not maintained, weather resistant or water tight. 5. Structural members that have evidence of deterioration or that are not capable of safely supporting all nominal loads and load effects. 6. Foundation systems that are not firmly supported by footings, are not plumb and free from open	Overhand extension was not properly anchored or capable of supporting nominal loads. Exterior stairs are not structurally sound. Chimney has signs of dilapidation with cracks. Interior walls have cracks.	*Open

cracks and breaks, are not properly anchored or are not capable of supporting all nominal loads and resisting all load effects.

7. Exterior walls that are not anchored to supporting and supported elements or are not plumb and free of holes, cracks or breaks and loose or rotting materials, are not properly anchored or are not capable of supporting all nominal loads and resisting all load effects.

8. Roofing or roofing components that have defects that admit rain, roof surfaces with inadequate drainage, or any portion of the roof framing that is not in good repair with signs of deterioration, fatigue or without proper anchorage and incapable of supporting all nominal loads and resisting all load effects.

9. Flooring and flooring components with defects that affect serviceability or flooring components that show signs of deterioration or fatigue, are not properly anchored or are incapable of supporting all nominal loads and resisting all load effects.

10. Veneer, cornices, belt courses, corbels, trim, wall facings and similar decorative features not properly anchored or that are anchored with connections not capable of supporting all nominal loads and resisting all load effects.

11. Overhang extensions or projections including, but not limited to, trash chutes, canopies, marquees, signs, awnings, fire escapes, standpipes and exhaust ducts not properly anchored or that are anchored with connections not capable of supporting all nominal loads and resisting all load effects.

12. Exterior stairs, decks, porches, balconies and all similar appurtenances attached thereto, including guards and handrails, are not structurally sound, not properly anchored or that are anchored with connections not capable of supporting all nominal loads and resisting all load effects.

13. Chimneys, cooling towers, smokestacks and similar appurtenances not structurally sound or not properly anchored, or that are anchored with connections not capable of supporting all nominal loads and resisting all load effects.

Exceptions:

1. Where substantiated otherwise by an approved method.

2. Demolition of unsafe conditions shall be permitted where approved by the code official.

11/09/2023	IPMC 304.11. - Chimneys and Towers	Chimneys, cooling towers, smoke stacks, and similar appurtenances shall be maintained structurally safe and sound, and in good repair. Exposed surfaces of metal or wood shall be protected from the elements and against decay or rust by periodic application of weather- coating materials, such as paint or similar surface treatment.	Chimney is not in good repair.	*Open
11/09/2023	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 not in good repair and weather tight.	*Open
11/09/2023	IPMC 304.13.1 Glazing	Glazing materials shall be maintained free from cracks and holes.	Glazing materials have cracks and holes.	*Open
11/09/2023	IPMC 304.15. - Doors	Exterior doors, door assemblies, operator systems if provided, and hardware shall be maintained in good condition. Locks at all entrances to dwelling units and sleeping units shall tightly secure	Exterior doors are not maintained in good condition.	*Open

		the door. Locks on means of egress doors shall be in accordance with Section 702.3.		
11/09/2023	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.	Lack of paint or sealant has lead to decay.	*Open
11/09/2023	IPMC 304.4 - Structural Members	All structural members shall be maintained free from deterioration and shall be capable of safely supporting the imposed dead and live loads.	Structural members are not maintained free from deterioration.	*Open
11/09/2023	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.	Exterior walls have breaks and not maintained weatherproof.	*Open
11/09/2023	IPMC 305.1 - General	The interior of a structure and equipment therein shall be maintained in good repair, structurally sound and in a sanitary condition. Occupants shall keep that part of the structure which they occupy or control in a clean and sanitary condition. Every owner of a structure containing a rooming house, housekeeping units, a hotel, a dormitory, two or more dwelling units or two or more nonresidential occupancies, shall maintain, in a clean and sanitary condition, the shared or public areas of the structure and exterior property.	Interior of the residence not in good repair or sanitary.	*Open
11/09/2023	IPMC 305.3 - Interior Surfaces	All interior surfaces, including windows and doors, shall be maintained in good, clean and sanitary condition. Peeling, chipping, flaking or abraded paint shall be repaired, removed or covered. Cracked or loose plaster, decayed wood and other defective surface conditions shall be corrected.	Interior surfaces are not in good, clean, and sanitary condition.	*Open
11/09/2023	IPMC 306.1. - General	The components of a structure and equipment therein shall be maintained in good repair, structurally sound and in a sanitary condition.	Components are not in good repair or sanitary.	*Open
11/09/2023	IPMC 306.1.1. - Unsafe Conditions	Where any of the following conditions cause the component or system to be beyond its limit state, the component or system shall be determined as unsafe and shall be repaired or replaced to comply with the International Building Code or the International Existing Building Code as required for existing buildings: 1. Soils that have been subjected to any of the following conditions: 1.1. Collapse of footing or foundation system. 1.2. Damage to footing, foundation, concrete or other structural element due to soil expansion. 1.3. Adverse effects to the design strength of footing, foundation, concrete or other structural element due to a chemical reaction from the soil. 1.4. Inadequate soil as determined by a geotechnical investigation. 1.5. Where the allowable bearing capacity of the soil is in doubt. 1.6. Adverse effects to the footing, foundation, concrete or other structural element due to the ground water table.	Settling of the residence has lead to cracks in the structural members.	*Open

2. Concrete that has been subjected to any of the following conditions:
 - 2.1. Deterioration.
 - 2.2. Ultimate deformation.
 - 2.3. Fractures.
 - 2.4. Fissures.
 - 2.5. Spalling.
 - 2.6. Exposed reinforcement.
 - 2.7. Detached, dislodged or failing connections.
 3. Aluminum that has been subjected to any of the following conditions:
 - 3.1. Deterioration.
 - 3.2. Corrosion.
 - 3.3. Elastic deformation.
 - 3.4. Ultimate deformation.
 - 3.5. Stress or strain cracks.
 - 3.6. Joint fatigue.
 - 3.7. Detached, dislodged or failing connections.
 4. Masonry that has been subjected to any of the following conditions:
 - 4.1. Deterioration.
 - 4.2. Ultimate deformation.
 - 4.3. Fractures in masonry or mortar joints.
 - 4.4. Fissures in masonry or mortar joints.
 - 4.5. Spalling.
 - 4.6. Exposed reinforcement.
 - 4.7. Detached, dislodged or failing connections.
 5. Steel that has been subjected to any of the following conditions:
 - 5.1. Deterioration.
 - 5.2. Elastic deformation.
 - 5.3. Ultimate deformation.
 - 5.4. Metal fatigue.
 - 5.5. Detached, dislodged or failing connections.
 6. Wood that has been subjected to any of the following conditions:
 - 6.1. Ultimate deformation.
 - 6.2. Deterioration.
 - 6.3. Damage from insects, rodents and other vermin.
 - 6.4. Fire damage beyond charring.
 - 6.5. Significant splits and checks.
 - 6.6. Horizontal shear cracks.
 - 6.7. Vertical shear cracks.
 - 6.8. Inadequate support.
 - 6.9. Detached, dislodged or failing connections.
 - 6.10. Excessive cutting and notching.
- Exceptions:
1. Where substantiated otherwise by an approved method.
 2. Demolition of unsafe conditions shall be permitted where approved by the code official.

11/09/2023	IPMC 308.1 - Accumulation of Rubbish or Garbage	Exterior property and premises, and the interior of every structure, shall be free from any accumulation of rubbish or garbage.	Exterior and interior has accumulated rubbish and garbage.	*Open
11/09/2023	IPMC 308.2.2. - Refrigerators	Refrigerators and similar equipment not in operation shall not be discarded, abandoned or stored on premises without first removing the doors.	Refrigerator on front porch still has the door intact.	*Open
11/09/2023	IPMC 309.1 Infestation	Structures shall be kept free from insect and rodent infestation. Structures in which insects or rodents are found shall be promptly exterminated by approved processes that will not be injurious to human health. After pest elimination, proper precautions shall be taken to prevent reinfestation.	Due to the rubbish and garbage there is an ant infestation.	*Open

11/09/2023	IPMC 505.3. - Supply	The water supply system shall be installed and maintained to provide a supply of water to plumbing fixtures, devices and appurtenances in sufficient volume and at pressures adequate to enable the fixtures to function properly, safely, and free from defects and leaks.	Water system is not maintained to provide a supply of water.	*Open
11/09/2023	IPMC 505.4 Water Heating Facilities	Water heating facilities shall be properly installed, maintained and capable of providing an adequate amount of water to be drawn at every required sink, lavatory, bathtub, shower and laundry facility at a temperature not less than 110°F (43°C). A gas-burning water heater shall not be located in any bathroom, toilet room, bedroom or other occupied room normally kept closed, unless adequate combustion air is provided. An approved combination temperature and pressure-relief valve and relief valve discharge pipe shall be properly installed and maintained on water heaters.	Water heating facilities not maintained.	*Open
11/09/2023	IPMC 506.1 General.	Plumbing fixtures shall be properly connected to either a public sewer system or to an approved private sewage disposal system.	Plumbing fixtures are not connected to public sewer system.	*Open
11/09/2023	IPMC 602.3 Heat Supply	Every owner and operator of any building who rents, leases or lets one or more dwelling units or sleeping units on terms, either expressed or implied, to furnish heat to the occupants thereof shall supply heat during the period from October to April to maintain a minimum temperature of 68°F (20°C) in all habitable rooms, bathrooms and toilet rooms. Exceptions: 1. When the outdoor temperature is below the winter outdoor design temperature for the locality, maintenance of the minimum room temperature shall not be required provided that the heating system is operating at its full design capacity. The winter outdoor design temperature for the locality shall be as indicated in Appendix D of the International Plumbing Code. 2. In areas where the average monthly temperature is above 30°F (-1°C), a minimum temperature of 65°F (18°C) shall be maintained. Exceptions: 1. When the outdoor temperature is below the winter outdoor design temperature for the locality, maintenance of the minimum room temperature shall not be required provided that the heating system is operating at its full design capacity. The winter outdoor design temperature for the locality shall be as indicated in Appendix D of the International Plumbing Code. 2. In areas where the average monthly temperature is above 30°F (-1°C), a minimum temperature of 65°F (18°C) shall be maintained.	No heat within the residence.	*Open
11/09/2023	IPMC 604.1 Facilities required.	. Every occupied building shall be provided with an electrical system in compliance with the requirements of this section and Section 605.	No electrical to the residence.	*Open
11/09/2023	IPMC 604.3- Electrical System Hazards	Where it is found that the electrical system in a structure constitutes a hazard to the occupants or the structure by reason of inadequate service, improper fusing, insufficient receptacle and lighting outlets, improper wiring or installation, deterioration or damage, or for similar reasons, the code official shall require the defects to be corrected to eliminate the hazard.	Electrical systems have inadequate service.	*Open
11/09/2023	IPMC24 109.1 Unsafe conditions.	When a structure or equipment is found by the code official to be unsafe, or when a structure is found unfit for human occupancy, or is found unlawful, such structure shall be condemned pursuant to the provisions of this code.	Residence lacks sanitation and essential equipment, and contains filth.	*Open

Attached Letters

Date	Letter	Description
11/09/2023	IPMC Letter	

Uploaded Files

Date	File Name
11/22/2023	17575845-Signed Letter Receipt- 405 Delaware.pdf
11/20/2023	17557300-Returned Mail- 405 Delaware.pdf
11/08/2023	17432804-JoshSides-11-07-2023-20-29-30-UTC-405_Delaware.jpg
11/08/2023	17432805-JoshSides-11-07-2023-20-29-34-UTC-405_Delaware.jpg
11/08/2023	17432806-JoshSides-11-07-2023-20-29-36-UTC-405_Delaware.jpg
11/08/2023	17432807-JoshSides-11-07-2023-20-29-42-UTC-405_Delaware.jpg
11/08/2023	17432799-JoshSides-11-07-2023-20-29-07-UTC-405_Delaware.jpg
11/08/2023	17432800-JoshSides-11-07-2023-20-29-11-UTC-405_Delaware.jpg
11/08/2023	17432801-JoshSides-11-07-2023-20-29-18-UTC-405_Delaware.jpg
11/08/2023	17432802-JoshSides-11-07-2023-20-29-25-UTC-405_Delaware.jpg
11/08/2023	17432803-JoshSides-11-07-2023-20-29-27-UTC-405_Delaware.jpg
11/08/2023	17432793-JoshSides-11-07-2023-20-26-40-UTC-405_Delaware.jpg
11/08/2023	17432794-JoshSides-11-07-2023-20-26-51-UTC-405_Delaware.jpg
11/08/2023	17432795-JoshSides-11-07-2023-20-27-03-UTC-405_Delaware.jpg
11/08/2023	17432796-JoshSides-11-07-2023-20-27-45-UTC-405_Delaware.jpg
11/08/2023	17432797-JoshSides-11-07-2023-20-28-56-UTC-405_Delaware.jpg
11/08/2023	17432798-JoshSides-11-07-2023-20-29-01-UTC-405_Delaware.jpg
11/08/2023	17432789-JoshSides-11-07-2023-20-25-33-UTC-405_Delaware.jpg
11/08/2023	17432790-JoshSides-11-07-2023-20-25-43-UTC-405_Delaware.jpg
11/08/2023	17432791-JoshSides-11-07-2023-20-25-51-UTC-405_Delaware.jpg
11/08/2023	17432792-JoshSides-11-07-2023-20-25-59-UTC-405_Delaware.jpg
11/08/2023	17432784-JoshSides-11-07-2023-20-20-35-UTC-405_Delaware.jpg
11/08/2023	17432785-JoshSides-11-07-2023-20-20-54-UTC-405_Delaware.jpg
11/08/2023	17432786-JoshSides-11-07-2023-20-20-59-UTC-405_Delaware.jpg
11/08/2023	17432787-JoshSides-11-07-2023-20-21-19-UTC-405_Delaware.jpg
11/08/2023	17432788-JoshSides-11-07-2023-20-25-18-UTC-405_Delaware.jpg
11/08/2023	17432779-JoshSides-11-07-2023-20-20-07-UTC-405_Delaware.jpg
11/08/2023	17432780-JoshSides-11-07-2023-20-20-11-UTC-405_Delaware.jpg
11/08/2023	17432781-JoshSides-11-07-2023-20-20-20-UTC-405_Delaware.jpg
11/08/2023	17432782-JoshSides-11-07-2023-20-20-26-UTC-405_Delaware.jpg
11/08/2023	17432783-JoshSides-11-07-2023-20-20-31-UTC-405_Delaware.jpg
11/08/2023	17432773-JoshSides-11-07-2023-20-18-34-UTC-405_Delaware.jpg
11/08/2023	17432774-JoshSides-11-07-2023-20-18-47-UTC-405_Delaware.jpg
11/08/2023	17432775-JoshSides-11-07-2023-20-18-58-UTC-405_Delaware.jpg
11/08/2023	17432776-JoshSides-11-07-2023-20-19-17-UTC-405_Delaware.jpg
11/08/2023	17432777-JoshSides-11-07-2023-20-19-24-UTC-405_Delaware.jpg
11/08/2023	17432778-JoshSides-11-07-2023-20-19-28-UTC-405_Delaware.jpg
11/08/2023	17432768-JoshSides-11-07-2023-20-17-27-UTC-405_Delaware.jpg

11/08/2023	<u>17432769-JoshSides-11-07-2023-20-17-42-UTC-405_Delaware.jpg</u>
11/08/2023	<u>17432770-JoshSides-11-07-2023-20-18-09-UTC-405_Delaware.jpg</u>
11/08/2023	<u>17432771-JoshSides-11-07-2023-20-18-18-UTC-405_Delaware.jpg</u>
11/08/2023	<u>17432772-JoshSides-11-07-2023-20-18-31-UTC-405_Delaware.jpg</u>
11/08/2023	<u>17432763-JoshSides-11-07-2023-21-03-21-UTC-405_Delaware.jpg</u>
11/08/2023	<u>17432764-JoshSides-11-07-2023-21-03-36-UTC-405_Delaware.jpg</u>
11/08/2023	<u>17432765-JoshSides-11-07-2023-21-04-02-UTC-405_Delaware.jpg</u>
11/08/2023	<u>17432766-JoshSides-11-07-2023-21-54-37-UTC-405_Delaware.jpg</u>
11/08/2023	<u>17432767-JoshSides-11-07-2023-20-17-12-UTC-405_Delaware.jpg</u>
11/08/2023	<u>17432757-JoshSides-11-07-2023-20-30-29-UTC-405_Delaware.jpg</u>
11/08/2023	<u>17432758-JoshSides-11-07-2023-20-30-34-UTC-405_Delaware.jpg</u>
11/08/2023	<u>17432760-JoshSides-11-07-2023-20-31-04-UTC-405_Delaware.jpg</u>
11/08/2023	<u>17432761-JoshSides-11-07-2023-20-31-30-UTC-405_Delaware.jpg</u>
11/08/2023	<u>17432762-JoshSides-11-07-2023-20-32-15-UTC-405_Delaware.jpg</u>
11/08/2023	<u>17432754-JoshSides-11-07-2023-20-30-01-UTC-405_Delaware.jpg</u>
11/08/2023	<u>17432755-JoshSides-11-07-2023-20-30-07-UTC-405_Delaware.jpg</u>
11/08/2023	<u>17432756-JoshSides-11-07-2023-20-30-10-UTC-405_Delaware.jpg</u>

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 8/13/2024

Report Date: 08/02/2024

Report No: 8.

Submitted By: Josh Sides

Subject: Consider, and act upon, Resolution 2024-54, declaring 502 S. Canyon Rd. to be so ruined, damaged, and dilapidated that it is a menace to public comfort, health, peace, or safety. *(Josh Sides, Code Enforcement Manager)* **(Roll Call Vote Required)**

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation: Approve and order its abatement.

Background: 502 S. Canyon is so ruined and dilapidated that it is currently a risk to the public's health and safety.

502 S. Canyon

Pictures























Dilapidated Structure

502 S. Canyon Rd.



Timeline

502 S. Canyon Rd.

- On 02/15/2024, Code Enforcement Department was made aware of a potentially dilapidated structure and conducted an investigation.
- On 03/18/2024, an Administrative Search Warrant was applied for and granted by 12th Judicial District Court Judge Bryant.
- On 03/20/2024, the Administrative Search Warrant was executed on the property.
- On 03/27/2024, 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.

International Property Maintenance Code Violations 502 S. Canyon Rd.

- Total of 38 violations of the International Property Maintenance Code.

Condition of the Property at 502 S. Canyon Rd.



Condition of the Property at 502 S. Canyon Rd.



Condition of the Property at 502 S. Canyon Rd.



Condition of the Property at 502 S. Canyon Rd.



Questions

Josh Sides

Code Enforcement Manager



RESOLUTION NO. 2024-54

A RESOLUTION DECLARING THE BUILDING OR STRUCTURE, OR THE PREMISES LOCATED AT 502 SOUTH CANYON ROAD 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 502 South Canyon Road, 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 Mr. Arnulfo Alvarez, 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 _____ 2024.

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

- [Account Search](#)
- [My Reports](#)
- [Help](#)
- [Logout Public](#)



Account: R010008

Location	Owner Information	Assessment History															
<i>Account Number R010008</i>	Owner Name ALVAREZ, ARNULFO	Actual (2024 - Residential Cap applied) \$86,734															
Situs Address 502 S CANYON RD	Owner Address 502 S CANYON RD	Primary Taxable \$28,912															
Previous Parcel ID 01-00011	ALAMOGORDO, NM 88310	Tax Area: 01_R Mill Levy: 25.844000															
Parcel Sequence		<table><tr><th>Type</th><th>Actual</th><th>Assessed</th><th>Acres</th><th>SQFT</th></tr><tr><td>Residential Land</td><td>\$7,415</td><td>\$2,472</td><td>0.198</td><td></td></tr><tr><td>Residential Improvement</td><td>\$79,319</td><td>\$26,440</td><td></td><td>1036.000</td></tr></table>	Type	Actual	Assessed	Acres	SQFT	Residential Land	\$7,415	\$2,472	0.198		Residential Improvement	\$79,319	\$26,440		1036.000
Type	Actual	Assessed	Acres	SQFT													
Residential Land	\$7,415	\$2,472	0.198														
Residential Improvement	\$79,319	\$26,440		1036.000													
Neighborhood A23 - Canyon Rd																	
Tax Area 01_R																	
Parcel Number 01N4056095379146																	
Legal Summary Subd: GRADY REPLAT A																	
Lot: 2A																	
Appraiser Sheldon Compton																	

Transfers

Sale Date	Sale Price	Doc Description
		Deed
		Deed
		Deed
		Deed
		Deed
		Deed
		Deed
		Deed
		Deed
		Deed
		Deed
		Deed
02/03/2014		Special Masters Deed
04/08/2014		Warranty Deed
		Separate Property Agreement

Tax History (<i>Estimated Taxes NOT TO BE USED TO MAKE PAYMENT</i>)	Images
Tax Year	Taxes
*2024	\$747.20
2023	\$725.44
* Estimated	Map Photo Sketch GIS



Exhibit "2"

Case #: 202400327
Case Date: 02/15/24
Case Type:
Address Number: 502
Street Name: Canyon
Zoning Category: R-1
Commission District: 6
Description: Dialpidated Structure
Complainant Name:
Complainant Phone:
Complainant Address:
Responsible Party:
Responsible Party Phone Number: 0
DOB:
ID #:
Property Owners :
Property Owner Phone Number: 0
Reinspection: 03/02/2024
Court case number:
Court Date:
Compliance Inspection :
Certified Mail #:
Citation Number:
Status: Draft Resolution
Assigned To: JOSH SIDES

Property

Parcel #	Address	Legal Description	Owner Name	Owner Phone	Zoning
01N4056095379146	502 CANYON RD,ALAMOGORDO,88310	Subd: GRADY REPLAT A Lot: 2A	ALVAREZ, ARNULFO		

Activities

Date	Activity Type	Description	Employee	Status
02/15/2024	Inspection	On 02/15/2024, I, Code Enforcement Manager Josh Sides, was requested to meet Code Enforcement Officer Payan at 502 S. Canyon Rd., Alamogordo, Otero County, New Mexico, about a dilapidated	JOSH SIDES	Non-Compliance

structure.

Upon arrival, I observed signs of dilapidation and neglect, including cracks in exterior walls, the front overhang extension was at serious risk of falling, exterior paint was flaking or missing, and the roof components were missing.

Due to the risk of the overhang extension falling on someone attempting to knock on the front door of the dwelling, I, along with Facility Maintenance Foreman Cody Eaton, removed the overhang extension from the dwelling. The extension was only secured to the residence by a piece of plywood and shingles and was supported by the porch light.

Photographs of the property's conditions were taken, including before and after pictures of removing the overhang extension.

I drafted a letter to the property owner, identified as Mr. Arnulfo Alvarez by the Otero County Assessors Office, requesting consent to inspect the property further. The letter was mailed on 02/15/2024.

03/18/2024	Supplement	On March 18, 2024, I, Code Enforcement Manager Josh Sides, applied for and was granted an Administrative Search Warrant for 502 S. Canyon Rd., Alamogordo, Otero County, New Mexico, by 12th Judicial District Court Judge Bryant.	JOSH SIDES	Closed
03/20/2024	Inspection	On 03/20/2024, I, Code Enforcement Manager Josh Sides, along with Code Enforcement Officer Payan and Alamogordo Police Department Sergeant Scharmack, executed the search warrant on 502 S. Canyon Rd., Alamogordo, Otero County, New Mexico. We entered the residence through the back door that had been pulled off the hinges. Sgt. Scharmack made sure no one was inside the residence that would cause Officer Payan or myself any harm. The property inspection found several violations of the International Property Maintenance Code. Officer Payan photographed the property's conditions and violations. A Notice of Violation letter was mailed certified to the property owner listing the violations, how to correct them, a timeline to correct the violations or contact me, and my contact information. Photographs of the property were taken and uploaded to the case file.	JOSH SIDES	Non-Compliance

Violations

Date	Violation	Description	Notes	Status
03/27/2024	IPMC24 109.1 Unsafe conditions.	When a structure or equipment is found by the code official to be unsafe, or when a structure is found unfit for human occupancy, or is found unlawful, such structure shall be condemned pursuant to the provisions of this code.		*Open
03/27/2024	IPMC24 109.1.1 Unsafe structures.	An unsafe structure is one that is found to be hazardous to the life, health, property or safety of the public or the occupants of the structure by not providing minimum safeguards to protect or warn occupants in the event of fire, or because such structure contains unsafe equipment or is dangerous.		*Open
03/27/2024	IPMC24 109.1.3 Structure unfit for human occupancy.	A structure is unfit for human occupancy whenever the code official finds that such structure is unsafe, unlawful or, because of the degree to which the structure is in disrepair or lacks maintenance, is insanitary, vermin or rat infested, contains filth and contamination, or lacks ventilation, illumination, sanitary or heating facilities or other essential equipment required by this		*Open

code, or because the location of the structure constitutes a hazard to the occupants of the structure or to the public.

For the purpose of this code, any structure or premises that has any or all of the conditions or defects described as follows shall be considered to be hazardous:

1. Any door, aisle, passageway, stairway, exit or other means of egress that does not conform to the approved building or fire code of the jurisdiction as related to the requirements for existing buildings.
2. The walking surface of any aisle, passageway, stairway, exit or other means of egress is so warped, worn loose, torn or otherwise unsafe as to not provide safe and adequate means of egress.
3. Any building, structure or portion thereof that is dangerous.
4. The building or structure, or any portion thereof, is clearly unsafe for its use and occupancy.
5. The building or structure is neglected, damaged, dilapidated, unsecured or abandoned so as to become an attractive nuisance to children who might play in the building or structure to their danger, becomes a harbor for vagrants, criminals or immoral persons, or enables persons to resort to the building or structure for committing a nuisance or an unlawful act.
6. Any building or structure has been constructed, exists or is maintained in violation of any specific requirement or prohibition applicable to such building or structure provided by the approved building or fire code of the jurisdiction, or of any law or ordinance to such an extent as to present either a substantial risk of fire, building collapse or any other threat to life and safety.
7. A building or structure, used or intended to be used for dwelling purposes, because of inadequate maintenance, dilapidation, decay, damage, faulty construction or arrangement, inadequate light, ventilation, mechanical or plumbing system, or otherwise, is determined by the code official to be unsanitary, unfit for human habitation or in such a condition that is likely to cause sickness or disease.
8. Any building or structure, because of a lack of sufficient or proper fire-resistance-rated construction, fire protection systems, electrical system, fuel connections, mechanical system, plumbing system or other cause, is determined by the code official to be a threat to life or health.
9. Any portion of a building remains on a site after the demolition or destruction of the building or structure or whenever any building or structure is abandoned so as to constitute such building or portion thereof as an attractive nuisance or hazard to the public.

03/27/2024

IPMC24 109.1.5 Hazardous structure or premises.

*Open

The owner of the premises shall maintain the structures and exterior property in compliance with these requirements and the code under which the building was constructed, except as otherwise provided for in this code. The owner or owner's agent shall be responsible to ensure that any repairs, additions or alterations to the building or portion thereof are performed or constructed in accordance with the International Building Code, International Residential Code or International Existing Building Code. A person shall not occupy as owner-occupant or permit another person to occupy premises that are not in a sanitary and safe condition and that do not comply with the requirements of this chapter. Occupants of a dwelling unit, rooming unit or housekeeping unit are responsible for keeping in a clean, sanitary and safe condition that part of the dwelling unit, rooming unit, housekeeping unit or premises they occupy and control.

03/27/2024

IPMC24 301.2 Responsibility.

*Open

Vacant structures and premises thereof or vacant land shall be maintained in a clean, safe, secure and sanitary condition as provided herein so as not to cause a blighting problem or adversely affect the public health or safety.

03/27/2024

IPMC24 301.3 Vacant structures and land.

*Open

03/27/2024	IPMC24 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.	*Open
03/27/2024	IPMC24 304.1.1 Potentially unsafe conditions.	The following conditions shall be considered to be potentially unsafe, shall be assessed and shall be addressed in compliance with the International Existing Building Code, the International Residential Code or the International Building Code: 1. Structural members have deterioration or distress that appears to reduce their load-carrying capacity. 2. The anchorage of the floor or roof to walls or columns, and of walls and columns to foundations has deterioration or distress that appears to reduce its load-carrying capacity. 3. Structures or components thereof have deterioration or distress that appears to reduce their load-carrying capacity. 4. Siding and masonry joints including joints between the building envelope and the perimeter of windows, doors and skylights are not maintained, weather resistant or watertight. 5. Foundation systems that are not firmly supported by footings, are not plumb and free from open cracks and breaks, are not properly anchored or are not capable of supporting all nominal loads and resisting all load effects. 6. Exterior walls that are not anchored to supporting and supported elements or are not plumb and free of holes, cracks or breaks and loose or rotting materials, are not properly anchored or are not capable of supporting all nominal loads and resisting all load effects. 7. Roofing or roofing components that have defects that admit rain, roof surfaces with inadequate drainage, or any portion of the roof framing that is not in good repair with signs of deterioration, fatigue or without proper anchorage and incapable of supporting all nominal loads and resisting all load effects. 8. Flooring and flooring components with defects that affect serviceability or flooring components that show signs of deterioration or fatigue, are not properly anchored or are incapable of supporting all nominal loads and resisting all load effects. 9. Veneer, cornices, belt courses, corbels, trim, wall facings and similar decorative features not properly anchored or that are anchored with connections not capable of supporting all nominal loads and resisting all load effects. 10. Overhang extensions or projections including, but not limited to, trash chutes, canopies, marquees, signs, awnings, fire escapes, standpipes and exhaust ducts not properly anchored or that are anchored with connections not capable of supporting all nominal loads and resisting all load effects. 11. Exterior stairs, decks, porches, balconies and all similar appurtenances attached thereto, including guards and handrails, are not structurally sound, not properly anchored or that are anchored with connections not capable of supporting all nominal loads and resisting all load effects. 12. Chimneys, cooling towers, smokestacks and similar appurtenances not structurally sound or not properly anchored, or that are anchored with connections not capable of supporting all nominal loads and resisting all load effects. Exceptions: 1. Where substantiated otherwise by an approved method. 2. Demolition of unsafe conditions shall be permitted where approved by the code official.	*Open
03/27/2024	IPMC24 304.10 Stairways, decks, porches and balconies.	Every exterior stairway, deck, porch and balcony, and all appurtenances attached thereto, shall be maintained structurally sound, in good repair, with proper anchorage and capable of supporting the imposed loads.	*Open

03/27/2024	IPMC24 304.12 Handrails and guards.	Every handrail and guard shall be firmly fastened and capable of supporting normally imposed loads and shall be maintained in good condition.	*Open
03/27/2024	IPMC24 304.13 Window, skylight and door frames.	Every window, skylight, door and frame shall be kept in sound condition, good repair and weathertight.	*Open
03/27/2024	IPMC24 304.13.1 Glazing.	Glazing materials shall be maintained free from cracks and holes.	*Open
03/27/2024	IPMC24 304.15 Doors.	Exterior doors, door assemblies, operator systems if provided, and hardware shall be maintained in good condition. Locks at all entrances to dwelling units and sleeping units shall tightly secure the door. Locks on means of egress doors shall be in accordance with Section 702.3.	*Open
03/27/2024	IPMC24 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.	*Open
03/27/2024	IPMC24 304.3 Premises identification.	Buildings shall have approved address numbers placed in a position to be plainly legible and visible from the street or road fronting the property. These numbers shall contrast with their background. Address numbers shall be Arabic numerals or alphabet letters. Numbers shall be not less than 4 inches (102 mm) in height with a minimum stroke width of 0.5 inch (12.7 mm).	*Open
03/27/2024	IPMC24 304.4 Structural members.	Structural members shall be maintained free from deterioration, and shall be capable of safely supporting the imposed dead and live loads.	*Open
03/27/2024	IPMC24 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.	*Open
03/27/2024	IPMC24 305.1 General.	The interior of a structure and equipment therein shall be maintained in good repair, structurally sound and in a sanitary condition. Occupants shall keep that part of the structure that they occupy or control in a clean and sanitary condition. Every owner of a structure containing a rooming house, housekeeping units, a hotel, a dormitory, two or more dwelling units or two or more nonresidential occupancies, shall maintain, in a clean and sanitary condition, the shared or public areas of the structure and exterior property.	*Open
03/27/2024	IPMC24 305.1.1 Potentially unsafe conditions.	The following conditions shall be considered to be potentially unsafe, shall be assessed and shall be addressed in compliance with the International Existing Building Code, the International Residential Code or the International Building Code: 1. Structural members have deterioration or distress that appears to reduce their load-carrying capacity. 2. The anchorage of the floor or roof to walls or columns, and of walls and columns to foundations has deterioration or distress that appears to reduce its load-carrying capacity. 3. Structures or components thereof have deterioration or distress	*Open

that appears to reduce their load-carrying capacity.

4. Stairs, landings, balconies and all similar walking surfaces, including guards and handrails, are not structurally sound, not properly anchored or are anchored with connections not capable of supporting all nominal loads and resisting all load effects.

5. Foundation systems that are not firmly supported by footings are not plumb and free from open cracks and breaks, are not properly anchored or are not capable of supporting all nominal loads and resisting all load effects.

Exceptions:

1. Where substantiated otherwise by an approved method.

2. Demolition of unsafe conditions shall be permitted where approved by the code official.

03/27/2024	IPMC24 305.2 Structural members.	Structural members shall be maintained structurally sound, and be capable of supporting the imposed loads.	*Open
03/27/2024	IPMC24 305.3 Interior surfaces.	Interior surfaces, including windows and doors, shall be maintained in good, clean and sanitary condition. Peeling, chipping, flaking or abraded paint shall be repaired, removed or covered. Cracked or loose plaster, decayed wood and other defective surface conditions shall be corrected.	*Open
03/27/2024	IPMC24 305.4 Stairs and walking surfaces.	Every stair, ramp, landing, balcony, porch, deck or other walking surface shall be maintained in sound condition and good repair.	*Open
03/27/2024	IPMC24 305.6 Interior doors.	Every interior door shall fit reasonably well within its frame and shall be capable of being opened and closed by being properly and securely attached to jambs, headers or tracks as intended by the manufacturer of the attachment hardware.	*Open
03/27/2024	IPMC24 306.1 General.	The components of a structure and equipment therein shall be maintained in good repair, structurally sound and in a sanitary condition.	*Open
03/27/2024	IPMC24 306.1.1 Potentially unsafe conditions.	Where any of the following conditions cause the component or system to be beyond its limit state, the component or system shall be considered to be unsafe and shall be addressed in compliance with the International Existing Building Code, the International Residential Code or the International Building Code: 1. Soils that have been subjected to any of the following conditions: 1.1. Collapse of footing or foundation system. 1.2. Damage to footing, foundation, concrete or other structural element due to soil expansion. 1.3. Adverse effects to the design strength of footing, foundation, concrete or other structural element due to a chemical reaction from the soil. 1.4. Inadequate soil as determined by a geotechnical investigation. 1.5. Where the allowable bearing capacity of the soil is in doubt. 1.6. Adverse effects to the footing, foundation, concrete or other structural element due to the ground water table. 2. Concrete that has been subjected to any of the following conditions: 2.1. Deterioration. 2.2. Ultimate deformation. 2.3. Fractures. 2.4. Fissures. 2.5. Spalling. 2.6. Exposed reinforcement. 2.7. Detached, dislodged or failing connections. 3. Aluminum that has been subjected to any of the following conditions: 3.1. Deterioration. 3.2. Corrosion. 3.3. Elastic deformation. 3.4. Ultimate deformation.	*Open

3.5. Stress or strain cracks.

3.6. Joint fatigue.

3.7. Detached, dislodged or failing connections.

4. Masonry that has been subjected to any of the following conditions:

4.1. Deterioration.

4.2. Ultimate deformation.

4.3. Fractures in masonry or mortar joints.

4.4. Fissures in masonry or mortar joints.

4.5. Spalling.

4.6. Exposed reinforcement.

4.7. Detached, dislodged or failing connections.

5. Steel that has been subjected to any of the following conditions:

5.1. Deterioration.

5.2. Elastic deformation.

5.3. Ultimate deformation.

5.4. Metal fatigue.

5.5. Detached, dislodged or failing connections.

6. Wood that has been subjected to any of the following conditions:

6.1. Ultimate deformation.

6.2. Deterioration.

6.3. Damage from insects, rodents and other vermin.

6.4. Fire damage beyond charring.

6.5. Significant splits and checks.

6.6. Horizontal shear cracks.

6.7. Vertical shear cracks.

6.8. Inadequate support.

6.9. Detached, dislodged or failing connections.

6.10. Excessive cutting and notching.

Exceptions:

1. Where substantiated otherwise by an approved method.

2. Demolition of unsafe conditions shall be permitted where approved by the code official.

03/27/2024	IPMC24 503.4 Floor surface.	In other than dwelling units, every toilet room floor shall be maintained to be a smooth, hard, nonabsorbent surface to permit such floor to be easily kept in a clean and sanitary condition.	*Open
03/27/2024	IPMC24 605.2 Receptacles.	Every habitable space in a dwelling shall contain not less than two separate and remote receptacle outlets. Every laundry area shall contain not less than one grounding-type receptacle or a receptacle with a ground fault circuit interrupter. Every bathroom shall contain not less than one receptacle. Any new bathroom receptacle outlet shall have ground fault circuit interrupter protection. All receptacle outlets shall have the appropriate faceplate cover for the location.	*Open
03/27/2024	IPMC24 704.1.1 Fire protection and life safety systems.	Fire protection and life safety systems shall be installed, repaired, operated and maintained in accordance with this code the International Fire Code and the International Building Code.	*Open
03/27/2024	IPMC24 704.6 Single- and multiple-station smoke alarms.	Single- and multiple-station smoke alarms shall be installed in existing Group I-1 and R occupancies in accordance with Sections 704.6.1 through 704.6.3.	*Open
03/27/2024	IPMC24 704.6.1 Where required.	Existing Group I-1 and R occupancies shall be provided with single-station smoke alarms in accordance with Sections 704.6.1.1 through 704.6.1.4. Interconnection and power sources shall be in accordance with Sections 704.6.2 and 704.6.3. Exceptions: 1. Where the code that was in effect at the time of construction required smoke alarms and smoke alarms complying with those requirements are already provided. 2. Where smoke alarms have been installed in occupancies and dwellings that were not required to have them at the time of construction, additional smoke alarms shall not be required	*Open

		provided that the existing smoke alarms comply with requirements that were in effect at the time of installation. 3. Where smoke detectors connected to a fire alarm system have been installed as a substitute for smoke alarms.	
03/27/2024	IPMC24 704.6.1.2 Groups R-2, R-3, R-4 and I-1.	Single or multiple-station smoke alarms shall be installed and maintained in Groups R-2, R-3, R-4 and I-1 regardless of occupant load at all of the following locations: 1. On the ceiling or wall outside of each separate sleeping area in the immediate vicinity of bedrooms. 2. In each room used for sleeping purposes. 3. In each story within a dwelling unit, including basements but not including crawl spaces and uninhabitable attics. In dwellings or dwelling units with split levels and without an intervening door between the adjacent levels, a smoke alarm installed on the upper level shall suffice for the adjacent lower level provided that the lower level is less than one full story below the upper level.	*Open
03/27/2024	IPMC24 704.6.1.3 Installation near cooking appliances.	Smoke alarms shall be installed a minimum of 10 feet (3.0 m) horizontally from a permanently installed cooking appliance. Exception: Smoke alarms shall be permitted to be installed a minimum of 6 feet (1.8 m) horizontally from a permanently installed cooking appliance where necessary to comply with Section 704.6.1.1 or 704.6.1.2.	*Open
03/27/2024	IPMC24 704.6.1.4 Installation near bathrooms.	Smoke alarms shall be installed not less than 3 feet (914 mm) horizontally from the door or opening of a bathroom that contains a bathtub or shower unless this would prevent placement of a smoke alarm required by Section 704.6.1.1 or 704.6.1.2.	*Open
03/27/2024	IPMC24 704.6.2 Interconnection.	Where more than one smoke alarm is required to be installed within an individual dwelling or sleeping unit, the smoke alarms shall be interconnected in such a manner that the activation of one alarm will activate all of the alarms in the individual unit. Physical interconnection of smoke alarms shall not be required where listed wireless alarms are installed and all alarms sound upon activation of one alarm. The alarm shall be clearly audible in all bedrooms over background noise levels with all intervening doors closed. Exceptions: 1. Interconnection is not required in buildings that are not undergoing alterations, repairs or construction of any kind. 2. Smoke alarms in existing areas are not required to be interconnected where alterations or repairs do not result in the removal of interior wall or ceiling finishes exposing the structure, unless there is an attic, crawl space or basement available that could provide access for interconnection without the removal of interior finishes.	*Open
03/27/2024	IPMC24 704.6.3 Power source.	Single-station smoke alarms shall receive their primary power from the building wiring provided that such wiring is served from a commercial source and shall be equipped with a battery backup. Smoke alarms with integral strobes that are not equipped with battery backup shall be connected to an emergency electrical system. Smoke alarms shall emit a signal when the batteries are low. Wiring shall be permanent and without a disconnecting switch other than as required for overcurrent protection. Exceptions: 1. Smoke alarms are permitted to be solely battery operated in existing buildings where construction is not taking place. 2. Smoke alarms are permitted to be solely battery operated in buildings that are not served from a commercial power source. 3. Smoke alarms are permitted to be solely battery operated in existing areas of buildings undergoing alterations or repairs that do not result in the removal of interior walls or ceiling finishes exposing the structure, unless there is an attic, crawl space or	*Open

		basement available that could provide access for building wiring without the removal of interior finishes.	
03/27/2024	IPMC24 704.7.1 Replacement.	Smoke alarms shall be replaced where any of the following apply: 1. The smoke alarm fails to respond to operability tests. 2. Where the smoke alarm exceeds 10 years from the date of manufacture marked on the unit, unless an earlier replacement is specified in the manufacturer's instructions. 3. The smoke alarm end-of-life signal is sounded. 4. The smoke alarm date of manufacturer cannot be determined.	*Open
03/27/2024	IPMC24 705.1 General.	Carbon monoxide alarms shall be installed in dwellings in accordance with Section 1103.9 of the International Fire Code, except that alarms in dwellings covered by the International Residential Code shall be installed in accordance with Section R315 of that code.	*Open
03/27/2024	IPMC24 705.2 Carbon monoxide alarms and detectors.	Carbon monoxide alarms and carbon monoxide detection systems shall be maintained in accordance with NFPA 72. Carbon monoxide alarms and carbon monoxide detectors that become inoperable or begin producing end-of-life signals shall be replaced.	*Open

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 8/13/2024

Report Date: 08/05/2024

Report No: 9.

Submitted By: Justen Boyle

Subject: Consider, and act upon, the award of Public Works Bid No. 2024-003, New York SMP-8th to 10th Project No. EN2305, to General Hydronics Utilities LLC, related to the Alamogordo New York SMP-8th to 10th project for an amount not to exceed \$1,823,734.45, including NMGRT. (*Justen Boyle, Project Manager*)

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation: Approve the Award

Background:

The Work designated as New York SMP—8th to 10th consists of installing a new 6-inch water line, valves, water connections, new water services and fire hydrants, pipe bursting a new sewer line and service connections, removing and replacing concrete, asphalt paving patchwork, traffic control, and appurtenances in accordance with the drawings, specifications, and other Contract Documents. The project was advertised on May 19 and 26, 2024. Bids were opened on June 19, 2024. The bid tabulation is attached.

June 19, 2024

Justen Boyle, Project Manager
City of Alamogordo
1376 E. Ninth Street
Alamogordo, New Mexico 88310
(j Boyle@ci.alamogordo.nm.us)

Re: **Public Works Bid No. 2024-003 | EN2305**
New York SMP – 8th to 10th
SEC# 823102-06

Dear Mr. Boyle:

Bids were opened for the above referenced project on Wednesday, June 19, 2024, at 2:00 PM mountain standard time. A single bid was submitted and received by General Hydronics Utilities, LLC. The bid amount is summarized on the attached bid tabulation sheet. The lowest, responsive bid was submitted by General Hydronics Utilities, LLC of Alamogordo, New Mexico in the amount of \$1,685,716.42 plus gross receipts tax.

General Hydronics Utilities, LLC is a registered Contractor in the State of New Mexico with active classifications MM98, GF09, GA02, GA03, GF04 and operating under License Number 388888. The bid submitted by General Hydronics Utilities, LLC listed the subcontractors that will work on the project. Each is licensed in the State of New Mexico with the appropriate classification to perform their nature of work. The Surety for the five percent (5%) Bid Bond included in the bid submitted by General Hydronics Utilities, LLC is The Gray Casualty & Surety Company.

The basis of award for this project is the lowest, complete, and responsive bid submitted by a qualified licensed Contractor in the State of New Mexico. Therefore, after reviewing the submitted bids, Smith Engineering Company recommends the contract be awarded to General Hydronics Utilities, LLC of Alamogordo, New Mexico in the amount of \$1,685,716.42 plus gross receipts tax. Award of this Contract is contingent upon approval of this recommendation by the City of Alamogordo Commission and the availability of construction funding.

Please feel free to contact us with any questions or comments. I can be reached at 575-523-2395 or via email: rustyp@smithengineering.pro.

Mr. Justen Boyle, PM

Page 2 of 2

June 19, 2024

Sincerely,
Smith Engineering Company

A handwritten signature in black ink that reads "Rusty Payne". The signature is stylized with a cursive-like font.

Rusty Payne, PE
Project Engineer

cc: Dan Wininger, Alamogordo Engineering Manager (dwininger@ci.alamogordo.nm.us)

Attach: Bid Tabulation

BID TABULATION
NEW YORK SMP - 8TH TO 10TH
PUBLIC WORKS BID NO. 2024-003 | EN2305
JUNE 19, 2024 at 2:00 PM MST

ITEM NO.	UNIT	ESTIMATED QUANTITY	ITEM DESCRIPTION	ENGINEER'S OPINION OF PROBABLE CONSTRUCTION COSTS (EOPC)		GENERAL HYDRONICS UTILITIES, LLC	
						LICENSE NO. 388888	
				UNIT COST	ITEM COST	UNIT COST	ITEM COST
1	LS	1	MOBILIZATION; CIP	\$94,000.00	\$94,000.00	\$160,160.75	\$160,160.75
2	LS	1	FURNISH, PROVIDE, & MAINTAIN MUTCD PLAN; CIP	\$32,000.00	\$32,000.00	\$52,900.00	\$52,900.00
3	LS	1	SWPPP PLAN PREPARATION & MAINTENANCE; CIP	\$5,000.00	\$5,000.00	\$11,520.00	\$11,520.00
4	LS	1	CONSTRUCTION STAKING & SURVEYING BY THE CONTRACTOR (incl. POST CONSTRUCTION SURVEY); CIP	\$21,000.00	\$21,000.00	\$13,225.00	\$13,225.00
5	LS	1	VIBRATION MONITORING; CIP	\$15,000.00	\$15,000.00	\$13,225.00	\$13,225.00
6	LS	1	REMOVAL OF STRUCTURES & OBSTRUCTIONS; CIP	\$30,000.00	\$30,000.00	\$17,204.44	\$17,204.44
7	LF	1,570	8" PVC C-900 WATERLINE; CIP	\$80.00	\$125,600.00	\$124.89	\$196,077.30
8	EA	9	8" GATE VALVE w/ VALVE BOX; CIP	\$3,000.00	\$27,000.00	\$3,286.11	\$29,574.99
9	LF	80	6" PVC C-900 (DR-18) WATERLINE; CIP	\$100.00	\$8,000.00	\$97.74	\$7,819.20
10	EA	3	6" GATE VALVE w/ VALVE BOX; CIP	\$2,500.00	\$7,500.00	\$2,934.46	\$8,803.38
11	EA	3	FIRE HYDRANT ASSEMBLY; CIP	\$5,500.00	\$16,500.00	\$8,021.37	\$24,064.11
12	EA	36	3/4" WATER SERVICE LINE; CIP	\$4,000.00	\$144,000.00	\$3,251.51	\$117,054.36
13	EA	6	ABANDON EXISTING WATER VALVE; CIP	\$250.00	\$1,500.00	\$2,054.49	\$12,326.94
14	EA	6	CONNECT TO EXISTING WATERLINE; CIP	\$3,000.00	\$18,000.00	\$3,509.24	\$21,055.44
15	EA	3	ABANDON EXISTING FIRE HYDRANT; CIP	\$2,000.00	\$6,000.00	\$2,234.23	\$6,702.69
16	EA	36	ABANDON EXISTING WATER SERVICE; CIP	\$250.00	\$9,000.00	\$1,497.85	\$53,922.60
17	EA	6	REHABILITATE MANHOLE; CIP	\$14,000.00	\$84,000.00	\$38,446.22	\$230,677.32
18	EA	2	CONNECT TO EXISTING SANITARY SEWER LINE; CIP	\$1,000.00	\$2,000.00	\$3,080.52	\$6,161.04
19	LF	1,370	PIPE CLEANING & DEBRIS DISPOSAL; CIP	\$5.00	\$6,850.00	\$9.68	\$13,261.60
20	LF	1,370	PRE-REHABILITATION CCTV INSPECTION; CIP	\$4.00	\$5,480.00	\$7.26	\$9,946.20
21	LF	1,370	SEWER LINE PIPE BURSTING REHABILITATION; CIP	\$90.00	\$123,300.00	\$100.86	\$138,178.20
22	EA	54	SEWER LINE SERVICE REINSTATEMENT; CIP	\$2,000.00	\$108,000.00	\$5,915.29	\$319,425.66
23	LF	1,370	POST-REHABILITATION CCTV INSPECTION; CIP	\$4.00	\$5,480.00	\$12.86	\$17,618.20
24	CY	10	FLOWABLE FILL; CIP	\$500.00	\$5,000.00	\$430.52	\$4,305.20
25	SY	2,060	SUBGRADE PREPARATION; CIP	\$5.00	\$10,300.00	\$14.76	\$30,405.60
26	SY	2,020	8" BASE COURSE; CIP	\$20.00	\$40,400.00	\$17.34	\$35,026.80
27	SY	40	12" BASE COURSE; CIP	\$50.00	\$2,000.00	\$59.97	\$2,398.80
28	SY	2,020	PRIME COAT MATERIAL; CIP	\$2.00	\$4,040.00	\$2.36	\$4,767.20
29	SY	2,020	3" HMA SP-IV; CIP	\$25.00	\$50,500.00	\$45.91	\$92,738.20
30	LF	70	24" CURB & GUTTER (ALL TYPES); CIP	\$50.00	\$3,500.00	\$90.98	\$6,368.60
31	SY	150	4" THICK CONCRETE PAVEMENT; CIP	\$100.00	\$15,000.00	\$122.36	\$18,354.00
32	SY	40	9" THICK CONCRETE PAVEMENT; CIP	\$400.00	\$16,000.00	\$261.19	\$10,447.60
BID SUBTOTAL:				\$1,041,950.00		\$1,685,716.42	
NMGRT (8.1875%):				\$85,309.66		\$138,018.03	
BID TOTAL:				\$1,127,259.66		\$1,823,734.45	

Bid discrepancy corrected in Bid Tabulation.

FOR BID EVALUATION PURPOSES ONLY: LOCAL, RESIDENT [NATIVE AMERICAN RESIDENT] , & RESIDENT VETERAN'S [NATIVE AMERICAN RESIDENT VETERAN'S] PREFERENCE EVALUATION	
THE COMBINATION OF PREFERENCES IS LIMITED TO 10%	
LOCAL BUSINESS PREFERENCE SUBMITTED (10% PREFERENCE FOR EVALUATION ONLY):	Yes
NEW MEXICO RESIDENT BUSINESS OR NATIVE AMERICAN RESIDENT BUSINESS CERTIFICATE SUBMITTED (8% PREFERENCE FOR EVALUATION ONLY):	Yes
NEW MEXICO RESIDENT VETERAN'S OR NATIVE AMERICAN RESIDENT VETERAN'S CERTIFICATE SUBMITTED (10% PREFERENCE FOR EVALUATION ONLY):	No
PREFERENCE AMOUNT (EVALUATION ONLY):	\$168,571.64
BID EVALUATION TOTAL (EXCLUDING NMGRT):	\$1,517,144.78
GENERAL HYDRONICS UTILITIES, LLC	
LICENSE NO. 388888	

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 8/13/2024

Report Date: 08/05/2024

Report No: 10.

Submitted By: Barbara Pyeatt

Subject: Consider, an act upon, the award of PW Bid 2024-004 Rehabilitate Taxiway A to Mesa Verde Enterprises, Inc. in the amount of \$1,285,875.00, excluding NMGRT. (*Troy Orr, Airport Manager*)

Fiscal Impact: \$1,285,875 less NMGRT

Amount Budgeted: \$1,498,675

Fund: 091.300.2400.0000.54520.

Additional Fiscal Impact:

Recommendation: Approve the Award

Background: This project is a pavement maintenance project that consists of longitudinal crack repair on the partial parallel Taxiway A, the seal coat application on Taxiway A, the connector Taxiway A4, and the connector Taxiway A at the Runway 22 end, and the marking removal and replacement of markings on areas to be seal coated. Following the FAA's AIP Handbook, the project was competitively bid. The project was advertised on May 12th and 19th, 2024, in both the Alamogordo Daily News and the Albuquerque Journal. The City received one (1) sealed bid proposal for all labor, materials, and equipment for the performance of work for the Rehabilitate Taxiway A project for the Alamogordo-White Sands Airport (ALM) on June 6, 2024.

BID TABULATIONS**Rehabilitate Taxiway A**

Alamogordo White Sands Regional Airport
Alamogordo, NM

AIP Project No. 3-35-0001-034-2023 (Design)
AIG Project No. 3-35-0001-035-2024 (Construction)
AIP Project No. 3-35-0001-036-2024 (Construction)
Public Works Bid No. 2024-004
Delta Project No. 22045

Bid Opening Date: June 6, 2024

					Engineer's Estimate		Mesa Verde Almogordo, NM	
Item No.	Spec. No.	Description	Unit	Bid Quantity	Unit Price	Estimate Amount	Unit Price	Bid Amount
1	C-105	MOBILIZATION	LS	1	\$72,000.00	\$72,000.00	\$112,170.00	\$112,170.00
2	P-101	JOINT AND CRACK REPAIR (TYPE C)	LF	18,000	\$25.00	\$450,000.00	\$30.00	\$540,000.00
3	P-619	PAINT REMOVAL (85-90%)	SF	17,000	\$2.00	\$34,000.00	\$5.00	\$85,000.00
4	P-619	PAINT REMOVAL (95-100%)	SF	3,200	\$2.00	\$6,400.00	\$11.50	\$36,800.00
5	P-620	MARKING (INITIAL YELLOW)	SF	7,000	\$2.00	\$14,000.00	\$3.00	\$21,000.00
6	P-620	MARKING (PERMANENT YELLOW)	SF	7,000	\$2.00	\$14,000.00	\$3.60	\$25,200.00
7	P-620	MARKING (PERMANENT BLACK)	SF	12,000	\$2.00	\$24,000.00	\$1.80	\$21,600.00
8	P-620	REFLECTIVE MEDIA	LS	1	\$20,000.00	\$20,000.00	\$10,580.00	\$10,580.00
9	P-608	EMULSIFIED ASPHALT SEAL COAT	SY	65,000	\$2.00	\$130,000.00	\$5.50	\$357,500.00
10	M-103	LIGHTED PORTABLE CLOSED RUNWAY MARKER	EA	2	\$3,000.00	\$6,000.00	\$14,900.00	\$29,800.00
11	M-103	CLOSED TAXIWAY MARKER	EA	2	\$2,500.00	\$5,000.00	\$3,500.00	\$7,000.00
12	M-107	AVIATION BARRICADES	LF	750	\$20.00	\$15,000.00	\$52.30	\$39,225.00
Total:						\$790,400.00		\$1,285,875.00 *
DBE Participation:						5.30%		0.0%

A-1330
Updated:07/2023
Aviation

NEW MEXICO DEPARTMENT OF TRANSPORTATION
Aviation Grant Agreement Form



Date Jul 15, 2024

Project Location ALM - ALAMOGORDO MUNICIPAL AIRPORT

Sponsor ALAMOGORDO, CITY OF
Address 1376 EAST 9TH ST
City ALAMOGORDO NM Zip Code 88310

Participation FAA

Funding Breakdown FAA/STAT

Contract No. AVA1615

Project No. ALM-25-01

Vendor No. 0000054303-5

Expiration Date 7/23/2026

Purchase Order No: 0000403315

AVIATION GRANT AGREEMENT

This Agreement is between the New Mexico Department of Transportation, acting through its Aviation Division (Department), and the Sponsor. This Agreement is effective pursuant to Section 7, below.

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

1. Purpose.

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

a. Project Description:

REHABILITATE TAXIWAY A (CONSTRUCTION)

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

State		Sponsor		Other		Total	
\$	453,120	\$	50,347	\$	995,208	\$	1,498,675

2. The Sponsor Shall:

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

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

3. The Department Shall:

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

4. Both Parties Agree:

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

5. Method of Payment - Reimbursement.

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

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

6. Accountability of Receipts and Disbursements.

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

The Agreement becomes effective upon signatures of all parties. The Agreement's effective date is the date opposite of the NMDOT Cabinet Secretary or Designee's signature on the signature page. This agreement shall expire two (2) years from the effective date, unless terminated pursuant to Sections 8 and 17, below.

8. Termination for Cause.

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

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

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

9. Disposition of Property.

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

10. Representations and Certification.

The Sponsor, by signing this Agreement, represents and certifies the following:

- a. Legal Authority - The Sponsor has the legal power and authority to: (1) do all things necessary in order to undertake and carry out the Project in conformity with the provisions stated in the New Mexico Aviation Act and Rules and Regulations pursuant thereto; (2) accept, receive and disburse grant funds from the State of New Mexico in aid of the Project; and (3) carry out all provisions stated in this Aviation Grant Agreement.
- b. Defaults - The Sponsor is not in default on any obligation to the State of New Mexico relative to the development, operation or maintenance of any airport or aviation project.
- c. Possible Disabilities - The Sponsor states, by execution of this Agreement, there are no facts or circumstance (including the existence of effective or proposed leases, use agreements, or other legal instruments affecting use of the airport or the existence of pending litigation or other legal proceedings) which in reasonable probability might make it impossible for the Sponsor to carry out and complete the Project.
- d. Land - The Sponsor holds the property interest in the areas of land which are to be developed or used as part of or in connection with the Project and is identified in a current Airport Property Map. The Sponsor further certifies that the aforementioned is based on a title examination by a qualified attorney or title company who has determined that the Sponsor holds the stated property interests.

11. Assurances.

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

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

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

12. Third Party Beneficiaries.

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

13. New Mexico Tort Claims Act.

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

14. Scope of Agreement.

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

15. Terms of this Agreement.

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

16. Equal Opportunity Compliance.

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

17. Appropriations and Authorizations of State and Federal Funds.

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

18. Severability.

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

19. Applicable Law.

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

20. Principal Contacts and Notices.

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

Address: New Mexico Department of Transportation - Aviation Division
3501 Access Rd C.
Albuquerque, NM 87106
General Office: (505) 795-1401
Fax: (505) 244-1790
E-mail: Aviation.Division@dot.nm.gov

Name	VERONICA ORTEGA		
Title	COMMUNITY SERVICES DIRECTOR		
Sponsor	ALAMOGORDO, CITY OF		
Address	1376 EAST 9TH ST		
City	ALAMOGORDO	NM	Zip Code 88310
Office Phone	+1 (575) 439-4353	Fax	
E-Mail	vortega@ci.alamorgordo.nm.us		

21. Amendment.

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

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

NEW MEXICO DEPARTMENT OF TRANSPORTATION

DocuSigned by:
Ricky Serna
5910E8A6255842F...
By: _____ Date: 07/23/24
Cabinet Secretary or Designee

Recommended by:

DocuSigned by:
Pedro Raul
C6675C3211D34C0...
By: _____ Date: 07/22/24
Aviation Division Director
or Designee

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

DocuSigned by:
John Newell
John Newell
Assistant General Counsel
C750CEC1625D488...
By: _____ Date: 07/16/24
Assistant General Counsel

SPONSOR

Print Name: Rick Holden

DocuSigned by:
Rick Holden
04F44842E5494A5...
By: _____ Date: 07/16/24

Title: City Manager

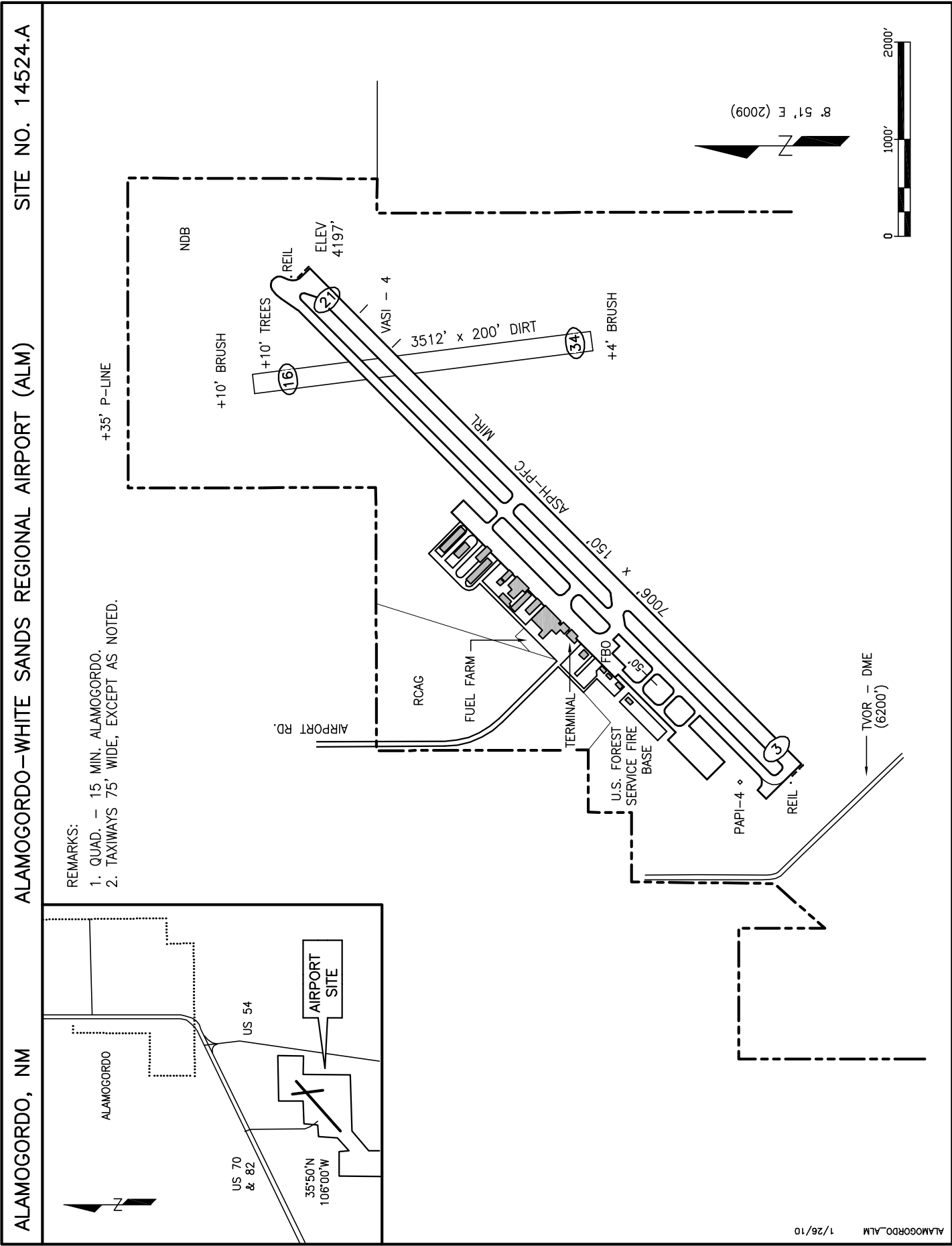


EXHIBIT B

LOCATION:
ALAMOGORDO WHITE SANDS REGIONAL AIRPORT

PROJECT:
REHABILITATE TAXIWAY A (CONSTRUCTION)

LAND ACQUISITION	
CONSTRUCTION	\$1,391,175
ENGINEERING	
ADMINISTRATIVE (DBE)	
INSPECTION	\$107,500
TESTING	
EQUIPMENT (SPECIFY)	
OTHER (PLANNING)	
TOTAL	\$1,498,675

REMARKS:
Total includes all NMGR T’s

PROJECT COSTS: \$1,498,675

FAA Share (66.41%): \$995,208

STATE Share (30.23%): \$453,120

SPONSOR Share (3.36%): \$50,347

From: [Sanchez, Vanessa, DOT](#)
To: [Lucero, Jane, DOT](#)
Cc: [Lucero, Christina, DOT](#)
Subject: RE: [EXTERNAL] Completed: Complete with Docusign: ALM-25-01 REHABILITATE TAXIWAY A (CONSTRUCTION).pdf
Date: Tuesday, July 23, 2024 3:31:55 PM
Attachments: [image001.png](#)

Hi Jane,

In the future will show the actual percentage on the Exhibits because the rounded percentage calculates differently.

We will keep this email for backup documentation for this contract.

Thank you,

Vanessa Sanchez

505-795-0877



From: Lucero, Jane, DOT <jane.lucero@dot.nm.gov>
Sent: Tuesday, July 23, 2024 3:03 PM
To: Sanchez, Vanessa, DOT <Vanessa.Sanchez@dot.nm.gov>
Cc: Lucero, Christina, DOT <Christina.Lucero3@dot.nm.gov>
Subject: Re: [EXTERNAL] Completed: Complete with Docusign: ALM-25-01 REHABILITATE TAXIWAY A (CONSTRUCTION).pdf

Hi Vanessa-

Those percentages are rounded. The actual percentage is 30.2347073%.

If you take 30.2347073% of 1,498,675 you get 453,120.

Do I need to show the 30.2347073% and not 30.23%?

Let me know.

Thanks.

Jane

Sent from my iPhone

On Jul 23, 2024, at 2:39 PM, Sanchez, Vanessa, DOT <Vanessa.Sanchez@dot.nm.gov> wrote:

Per Exhibit B the STATE percentage share is 30.23% from \$1,498,675 which comes out to \$453,049.45 and not \$453,120 it could become a potential audit finding.

Vanessa Sanchez

505-795-0877

On Jul 23, 2024, at 11:24 AM, Sanchez, Vanessa, DOT <Vanessa.Sanchez@dot.nm.gov> wrote:

Jane,

The percentage breakdowns don't match the contract splits. Being the amendment has been executed you will need to obtain concurrence to correct the document from the signing parties.

Let me know if further is needed.

Vanessa Sanchez

505-795-0877
<image002.png>

From: Lucero, Christina, DOT <Christina.Lucero3@dot.nm.gov>
Sent: Tuesday, July 23, 2024 11:11 AM
To: Sanchez, Vanessa, DOT <Vanessa.Sanchez@dot.nm.gov>
Subject: FW: [EXTERNAL] Completed: Complete with Docusign: ALM-25-01 REHABILITATE TAXIWAY A (CONSTRUCTION).pdf

Vanessa,

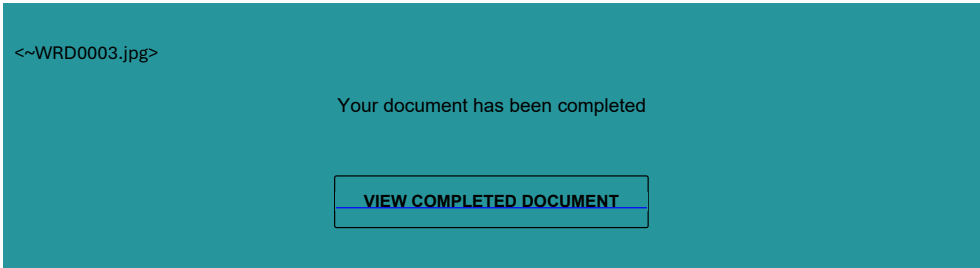
Do these percentages matter? If they are not equaling the percentages shown?

<image001.png>

From: DocuSign NA3 System <dse_NA3@docusign.net>
Sent: Tuesday, July 23, 2024 9:40 AM
To: Lucero, Christina, DOT <Christina.Lucero3@dot.nm.gov>
Subject: [EXTERNAL] Completed: Complete with Docusign: ALM-25-01 REHABILITATE TAXIWAY A (CONSTRUCTION).pdf

CAUTION: This email originated outside of our organization. Exercise caution prior to clicking on links or opening attachments.

<~WRD0003.jpg>



Jane Lucero
jane.lucero@dot.nm.gov

All parties have completed Complete with Docusign: ALM-25-01 REHABILITATE TAXIWAY A (CONSTRUCTION).pdf.

Powered by <~WRD0003.jpg>

Do Not Share This Email

This email contains a secure link to Docusign. Please do not share this email, link, or access code with others.

Alternate Signing Method

Visit [Docusign.com](https://docusign.com), click 'Access Documents', and enter the security code:
69CACD9DA14948D98497CAD6AF8E9F7A3

About Docusign

Sign documents electronically in just minutes. It's safe, secure, and legally binding. Whether you're in an office, at home, on-the-go -- or even across the globe -- Docusign provides a professional trusted solution for Digital Transaction Management™.

Questions about the Document?

If you need to modify the document or have questions about the details in the document, please reach out to the sender by emailing them directly.

Stop receiving this email

[Report this email](#) or read more about [Declining to sign](#) and [Managing notifications](#).

If you have trouble signing, visit "[How to Sign a Document](#)" on our [DocuSign Support Center](#), or browse our [DocuSign Community](#) for more information.

[<~WRD0003.jpg>](#)

[Download the DocuSign App](#)

This message was sent to you by Jane Lucero who is using the DocuSign Electronic Signature Service. If you would rather not receive email from this sender you may contact the sender with your request.

<ALM-25-01 REHABILITATE TAXIWAY A (CONSTRUCTION).pdf>

<Summary.pdf>

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 8/13/2024

Report Date: 08/05/2024

Report No: 11.

Submitted By: Britney Ybarra

Subject: Consider, and act upon, an amendment to the funding from the New Mexico Economic Development District, Non-Metro Area Agency on Aging for the Nutrition Services Incentive Program (NSIP). The amendment revises the original FY23-24 contract amount from \$61,016.00 to \$60,644.67, thereby decreasing the total dollar amount by \$371.33 (*Magdalena Morales, ASC Manager and Veronica Ortega, Community Services Director*).

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Amount budgeted: \$60,644.67

Project String: SCCM24.SUPP.FOOD.NSIP / 52%

Project String: SCCM24.SUPP.FOOD.NSIP / 48%

Recommendation: Approve the amendment to Contract No. 2023-2024-64012-N.

Background: The amendment is for the purpose of reverting \$371.33, as these funds were not requested for reimbursement in FY 23-24.

**North Central New Mexico Economic Development District
Non-Metro Area Agency on Aging**

**NUTRITION SERVICE INCENTIVE PROGRAM (NSIP)
SUBRECIPIENT CONTRACTOR SUB AWARD
AMENDMENT No. 1**

This Amendment is made and entered into this 30th day of June 2024, by and between the North Central New Mexico Economic Development District (NCNMEDD), Non-Metro Area Agency on Aging (Non-Metro AAA), hereinafter referred to as the "Agency" and **City of Alamogordo**, hereinafter referred to as the "Subrecipient Contractor".

1. Purpose of Amendment. The purpose of the Amendment is to revise the original contract amount from **\$61,016.00** to **\$60,644.67** thereby *decreasing* the total dollar amount by **\$371.33**.
2. Changes to Contract. The following changes are amendments to the contract:

Compensation is amended to read: The total amount payable under this Agreement shall not exceed **\$60,644.67** for the purchase of foods produced in the United States, for use in senior nutrition programs.
3. All other clauses in the original Agreement will remain unchanged and together with this Agreement constitute the entire Agreement between the Host Agency and NCNMEDD, Non-Metro AAA.
4. For the faithful performance of the terms of this agreement, the parties affix their signatures and bind themselves effective June 30, 2024.

City of Alamogordo
Legal Name of Vendor/Contractor

Signature

Printed/Typed Name of Signatory

Date

NCNMEDD Non-Metro Area Agency on Aging
Name of Area Agency on Aging

Monica Abeita
Signature

Monica Abeita, Executive Director
Printed/Typed Name of Signatory

June 30, 2024
Date

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 8/13/2024

Report Date: 08/06/2024

Report No: 12.

Submitted By: Deborah Osborne

Subject: Consider, and act upon, acceptance of FAA grant award number 3-35-0001-036-2024, to Alamogordo-White Sands Regional Airport, in the amount of \$547,208, to Reseal Taxiway A Pavement. *(Troy Orr, Airport Manager)*

Fiscal Impact: \$50,347

Amount Budgeted: \$50,347

Fund: 091

Additional Fiscal Impact: City match of \$50,347.

Recommendation: Accept grant number 3-35-0001-036-2024 from the FAA to Alamogordo-White Sands Regional Airport.

Background: Delta Airport Consultants submitted an application to the FAA on behalf of Alamogordo-White Sands Regional Airport to request grant funding to reseal Taxiway A pavement. Subsequently, they were awarded grant number 03-35-0001-036-2024 for the amount of \$547,208.00. This project will consist of a longitudinal crack repair on partial parallel Taxiway A, seal coat application on Taxiway A, Taxiway A4, and the connector to Taxiway A at the end of Runway 22. One bid in the amount of \$1,498,675 was received for this project. A state grant will fund \$453,120, there is a \$50,347 match from the City, and a second FAA grant in the amount of \$448,000 was received.



U.S. Department
of Transportation
Federal Aviation
Administration

Airports Division
Southwest Region
New Mexico

Louisiana/New Mexico Airports
District Office
10101 Hillwood Pkwy
Fort Worth, TX 76177-1524

August 2, 2024

Mr. Rick Holden
City of Alamogordo
1376 E. Ninth Street
Alamogordo, NM 88310

Dear Rick Holden:

The Grant Offer for Airport Improvement Program (AIP) Project No. **3-35-0001-036-2024** at Alamogordo-White Sands Regional Airport is attached for execution. This letter outlines the steps you must take to properly enter into this agreement and provides other useful information. Please read the conditions, special conditions, and assurances that comprise the grant offer carefully.

You may not make any modification to the text, terms or conditions of the grant offer.

Steps You Must Take to Enter Into Agreement.

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

1. The governing body must give authority to execute the grant to the individual(s) signing the grant, i.e., the person signing the document must be the sponsor's authorized representative(s) (hereinafter "authorized representative").
2. The authorized representative must execute the grant by adding their electronic signature to the appropriate certificate at the end of the agreement.
3. Once the authorized representative has electronically signed the grant, the sponsor's attorney(s) will automatically receive an email notification.
4. On the **same day or after** the authorized representative has signed the grant, the sponsor's attorney(s) will add their electronic signature to the appropriate certificate at the end of the agreement.
5. If there are co-sponsors, the authorized representative(s) and sponsor's attorney(s) must follow the above procedures to fully execute the grant and finalize the process. Signatures must be obtained and finalized no later than **September 06, 2024**.
6. The fully executed grant will then be automatically sent to all parties as an email attachment.

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

Project Timing. The terms and conditions of this agreement require you to complete the project without undue delay and no later than the Period of Performance end date (1,460 days from the grant execution date). We will be monitoring your progress to ensure proper stewardship of these Federal funds. We expect you to submit payment requests for reimbursement of allowable incurred project expenses consistent with project progress. Your grant may be placed in "inactive" status if you do not make draws

on a regular basis, which will affect your ability to receive future grant offers. Costs incurred after the Period of Performance ends are generally not allowable and will be rejected unless authorized by the FAA in advance.

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

- For all grants, you must submit by December 31st of each year this grant is open:
 1. A signed/dated SF-270 (Request for Advance or Reimbursement for non-construction projects) or SF-271 or equivalent (Outlay Report and Request for Reimbursement for Construction Programs), and
 2. An SF-425 (Federal Financial Report).
- For non-construction projects, you must submit [FAA Form 5100-140, Performance Report](#) within 30 days of the end of the Federal fiscal year.
- For construction projects, you must submit [FAA Form 5370-1, Construction Progress and Inspection Report](#), within 30 days of the end of each Federal fiscal quarter.

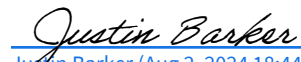
Audit Requirements. As a condition of receiving Federal assistance under this award, you must comply with audit requirements as established under 2 CFR Part 200. Subpart F requires non-Federal entities that expend \$750,000 or more in Federal awards to conduct a single or program specific audit for that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

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

FAA Contact Information. Sarah Young, (817) 222-5643, sarah.j.young@faa.gov is the assigned program manager for this grant and is readily available to assist you and your designated representative with the requirements stated herein.

We sincerely value your cooperation in these efforts and look forward to working with you to complete this important project.

Sincerely,


Justin Barker (Aug 2, 2024 18:44 CDT)

Justin Barker
Manager



U.S. Department
of Transportation
Federal Aviation
Administration

FEDERAL AVIATION ADMINISTRATION AIRPORT IMPROVEMENT PROGRAM (AIP)

FY 2024 AIP

GRANT AGREEMENT

Part I - Offer

Federal Award Offer Date August 2, 2024

Airport/Planning Area **Alamogordo-White Sands Regional Airport**

Airport Infrastructure Grant
Number **3-35-0001-036-2024**

Unique Entity Identifier **GK8LNMMJ3XN1**

TO: **City of Alamogordo**

(herein called the "Sponsor") (For Co-Sponsors, list all Co-Sponsor names. The word "Sponsor" in this Grant Agreement also applies to a Co-Sponsor.)

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

WHEREAS, the Sponsor has submitted to the FAA a Project Application dated June 17, 2024, for a grant of Federal funds for a project at or associated with the Alamogordo-White Sands Regional Airport, which is included as part of this Grant Agreement; and

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

Reseal Taxiway A Pavement

which is more fully described in the Project Application.

NOW THEREFORE, Pursuant to and for the purpose of carrying out the Title 49, United States Code (U.S.C.), Chapters 471 and 475; 49 U.S.C. §§ 40101 et seq., and 48103; FAA Reauthorization Act of 2018

(Public Law Number (P.L.) 115-254); the Department of Transportation Appropriations Act, 2021 (P.L. 116-260, Division L); the Consolidated Appropriations Act, 2022 (P.L. 117-103); Consolidated Appropriations Act, 2023 (P.L. 117-328); Consolidated Appropriations Act, 2024 (P.L. 118-42); FAA Reauthorization Act of 2024 (P.L. 118-63); and the representations contained in the Project Application; and in consideration of: (a) the Sponsor's adoption and ratification of the Grant Assurances dated May 2022, interpreted and applied consistent with the FAA Reauthorization Act of 2024 per Reauthorization Grant Condition 30 below; (b) the Sponsor's acceptance of this Offer; and (c) the benefits to accrue to the United States and the public from the accomplishment of the Project and compliance with the Grant Assurance and conditions as herein provided;

THE FEDERAL AVIATION ADMINISTRATION, FOR AND ON BEHALF OF THE UNITED STATES, HEREBY OFFERS AND AGREES to pay (90) % of the allowable costs incurred accomplishing the Project as the United States share of the Project.

Assistance Listings Number (Formerly CFDA Number): 20.106

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

CONDITIONS

1. **Maximum Obligation.** The maximum obligation of the United States payable under this Offer is **\$547,208.**

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

\$547,208 for airport development or noise program implementation;

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

- a. Period of Performance:

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

- b. Budget Period:

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

- c. Close Out and Termination

1. Unless the FAA authorizes a written extension, the Sponsor must submit all Grant closeout documentation and liquidate (pay-off) all obligations incurred under this award no later than 120 calendar days after the end date of the Period of Performance. If the Sponsor does not submit all required closeout documentation within this time period, the FAA will proceed to close out the grant within one year of the Period of Performance end date with the information available at the end of 120 days (2 CFR § 200.344).
2. The FAA may terminate this Grant, in whole or in part, in accordance with the conditions set forth in 2 CFR § 200.340, or other Federal regulatory or statutory authorities as applicable.
3. **Ineligible or Unallowable Costs.** The Sponsor must not include any costs in the project that the FAA has determined to be ineligible or unallowable.
4. **Indirect Costs - Sponsor.** The Sponsor may charge indirect costs under this award by applying the indirect cost rate identified in the project application as accepted by the FAA, to allowable costs for Sponsor direct salaries and wages.
5. **Determining the Final Federal Share of Costs.** The United States' share of allowable project costs will be made in accordance with 49 U.S.C. § 47109, the regulations, policies, and procedures of the Secretary of Transportation ("Secretary"), and any superseding legislation. Final determination of the United States' share will be based upon the final audit of the total amount of allowable project costs and settlement will be made for any upward or downward adjustments to the Federal share of costs.
6. **Completing the Project Without Delay and in Conformance with Requirements.** The Sponsor must carry out and complete the project without undue delays and in accordance with this Agreement, 49 U.S.C. Chapters 471 and 475, the regulations, policies, and procedures of the Secretary. Per 2 CFR § 200.308, the Sponsor agrees to report and request prior FAA approval for any disengagement from performing the project that exceeds three months or a 25 percent reduction in time devoted to the project. The report must include a reason for the project stoppage. The Sponsor also agrees to comply with the grant assurances, which are part of this Agreement.
7. **Amendments or Withdrawals before Grant Acceptance.** The FAA reserves the right to amend or withdraw this offer at any time prior to its acceptance by the Sponsor.
8. **Offer Expiration Date.** This offer will expire and the United States will not be obligated to pay any part of the costs of the project unless this offer has been accepted by the Sponsor on or before **September 06, 2024**, or such subsequent date as may be prescribed in writing by the FAA.
9. **Improper Use of Federal Funds.** The Sponsor must take all steps, including litigation if necessary, to recover Federal funds spent fraudulently, wastefully, or in violation of Federal antitrust statutes, or misused in any other manner for any project upon which Federal funds have been expended. For the purposes of this Grant Agreement, the term "Federal funds" means funds however used or dispersed by the Sponsor, that were originally paid pursuant to this or any other Federal grant agreement. The Sponsor must obtain the approval of the Secretary as to any determination of the amount of the Federal share of such funds. The Sponsor must return the recovered Federal share, including funds recovered by settlement, order, or judgment, to the Secretary. The Sponsor must furnish to the Secretary, upon request, all documents and records pertaining to the determination of the amount of the Federal share or to any settlement, litigation, negotiation, or other efforts taken to recover such funds. All settlements or other final positions of the Sponsor, in court or otherwise, involving the recovery of such Federal share require advance approval by the Secretary.

10. **United States Not Liable for Damage or Injury.** The United States is not responsible or liable for damage to property or injury to persons which may arise from, or be incident to, compliance with this Grant Agreement.
11. **System for Award Management (SAM) Registration and Unique Entity Identifier (UEI).**
 - a. Requirement for System for Award Management (SAM): Unless the Sponsor is exempted from this requirement under 2 CFR § 25.110, the Sponsor must maintain the currency of its information in the SAM until the Sponsor submits the final financial report required under this Grant, or receives the final payment, whichever is later. This requires that the Sponsor review and update the information at least annually after the initial registration and more frequently if required by changes in information or another award term. Additional information about registration procedures may be found at the SAM website (currently at <http://www.sam.gov>).
 - b. Unique entity identifier (UEI) means a 12-character alpha-numeric value used to identify a specific commercial, nonprofit or governmental entity. A UEI may be obtained from SAM.gov at <https://sam.gov/content/entity-registration>.
12. **Electronic Grant Payment(s).** Unless otherwise directed by the FAA, the Sponsor must make each payment request under this Agreement electronically via the Delphi Invoicing System for Department of Transportation (DOT) Financial Assistance Awardees.
13. **Informal Letter Amendment of AIP Projects.** If, during the life of the project, the FAA determines that the maximum grant obligation of the United States exceeds the expected needs of the Sponsor by \$25,000 or five percent (5%), whichever is greater, the FAA can issue a letter amendment to the Sponsor unilaterally reducing the maximum obligation.

The FAA can also issue a letter to the Sponsor increasing the maximum obligation if there is an overrun in the total actual eligible and allowable project costs to cover the amount of the overrun provided it will not exceed the statutory limitations for grant amendments. The FAA's authority to increase the maximum obligation does not apply to the "planning" component of Condition No. 1, Maximum Obligation.

The FAA can also issue an informal letter amendment that modifies the grant description to correct administrative errors or to delete work items if the FAA finds it advantageous and in the best interests of the United States.

An informal letter amendment has the same force and effect as a formal grant amendment.
14. **Environmental Standards.** The Sponsor is required to comply with all applicable environmental standards, as further defined in the Grant Assurances, for all projects in this grant. If the Sponsor fails to comply with this requirement, the FAA may suspend, cancel, or terminate this Grant Agreement.
15. **Financial Reporting and Payment Requirements.** The Sponsor will comply with all Federal financial reporting requirements and payment requirements, including submittal of timely and accurate reports.
16. **Buy American.** Unless otherwise approved in advance by the FAA, in accordance with 49 U.S.C. § 50101, the Sponsor will not acquire or permit any contractor or subcontractor to acquire any steel or manufactured goods produced outside the United States to be used for any project for which funds are provided under this Grant. The Sponsor will include a provision implementing Buy American in every contract and subcontract awarded under this Grant.

17. **Build America, Buy America.** The Sponsor must comply with the requirements under the Build America, Buy America Act (P.L. 117-58).
18. **Maximum Obligation Increase.** In accordance with 49 U.S.C. § 47108(b)(3), as amended, the maximum obligation of the United States, as stated in Condition No. 1, Maximum Obligation, of this Grant:
 - a. May not be increased for a planning project;
 - b. May be increased by not more than 15 percent for development projects, if funds are available;
 - c. May be increased by not more than the greater of the following for a land project, if funds are available:
 1. 15 percent; or
 2. 25 percent of the total increase in allowable project costs attributable to acquiring an interest in the land.

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

19. **Audits for Sponsors.**

PUBLIC SPONSORS. The Sponsor must provide for a Single Audit or program-specific audit in accordance with 2 CFR Part 200. The Sponsor must submit the audit reporting package to the Federal Audit Clearinghouse on the Federal Audit Clearinghouse's Internet Data Entry System at <http://harvester.census.gov/facweb/>. Upon request of the FAA, the Sponsor shall provide one copy of the completed audit to the FAA. Sponsors that expend less than \$750,000 in Federal awards and are exempt from Federal audit requirements must make records available for review or audit by the appropriate Federal agency officials, State, and Government Accountability Office. The FAA and other appropriate Federal agencies may request additional information to meet all Federal audit requirements.

20. **Suspension or Debarment.** When entering into a "covered transaction" as defined by 2 CFR § 180.200, the Sponsor must:
 - a. Verify the non-Federal entity is eligible to participate in this Federal program by:
 1. Checking the System for Award Management Exclusions in the System for Award Management (SAM) to determine if the non-Federal entity is excluded or disqualified; or
 2. Collecting a certification statement from the non-Federal entity attesting they are not excluded or disqualified from participating; or
 3. Adding a clause or condition to covered transactions attesting the individual or firm are not excluded or disqualified from participating.
 - b. Require prime contractors to comply with 2 CFR § 180.330 when entering into lower-tier transactions with their contractors and sub-contractors.

- c. Immediately disclose in writing to the FAA whenever (1) the Sponsor learns they have entered into a covered transaction with an ineligible entity or (2) the Public Sponsor suspends or debars a contractor, person, or entity.

21. Ban on Texting While Driving.

- a. In accordance with Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving, October 1, 2009, and DOT Order 3902.10, Text Messaging While Driving, December 30, 2009, the Sponsor is encouraged to:
 - 1. Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving when performing any work for, or on behalf of, the Federal government, including work relating to a grant or subgrant.
 - 2. Conduct workplace safety initiatives in a manner commensurate with the size of the business, such as:
 - i. Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and
 - ii. Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.
- b. The Sponsor must insert the substance of this clause on banning texting while driving in all subgrants, contracts, and subcontracts funded with this Grant.

22. Trafficking in Persons.

- a. *Posting of contact information.*
 - 1. The Sponsor must post the contact information of the national human trafficking hotline (including options to reach out to the hotline such as through phone, text, or TTY) in all public airport restrooms.
- b. *Provisions applicable to a recipient that is a private entity.*
 - 1. You as the recipient, your employees, subrecipients under this Grant, and subrecipients' employees may not:
 - i. Engage in severe forms of trafficking in persons during the period of time that the Grant and applicable conditions are in effect;
 - ii. Procure a commercial sex act during the period of time that the Grant and applicable conditions are in effect; or
 - iii. Use forced labor in the performance of the Grant or any subgrants under this Grant.
 - 2. We as the Federal awarding agency, may unilaterally terminate this Grant, without penalty, if you or a subrecipient that is a private entity –
 - i. Is determined to have violated a prohibition in paragraph (b) of this Grant Condition; or
 - ii. Has an employee who is determined by the agency official authorized to terminate the Grant to have violated a prohibition in paragraph (b) of this Grant Condition through conduct that is either –
 - a) Associated with performance under this Grant; or

- b) Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR Part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by our agency at 2 CFR Part 1200.
- c. *Provision applicable to a recipient other than a private entity.* We as the Federal awarding agency may unilaterally terminate this Grant, without penalty, if a subrecipient that is a private entity –
 - 1. Is determined to have violated an applicable prohibition in paragraph (b) of this Grant Condition; or
 - 2. Has an employee who is determined by the agency official authorized to terminate the Grant to have violated an applicable prohibition in paragraph (b) of this Grant Condition through conduct that is either –
 - i. Associated with performance under this Grant; or
 - ii. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR Part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by our agency at 2 CFR Part 1200.
- d. *Provisions applicable to any recipient.*
 - 1. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph (b) of this Grant Condition.
 - 2. Our right to terminate unilaterally that is described in paragraph (b) or (c) of this Grant Condition:
 - i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended [22 U.S.C. § 7104(g)], and
 - ii. Is in addition to all other remedies for noncompliance that are available to us under this Grant.
 - 3. You must include the requirements of paragraph (b) of this Grant Condition in any subgrant you make to a private entity.
- e. *Definitions.* For purposes of this Grant Condition:
 - 1. “Employee” means either:
 - i. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this Grant; or
 - ii. Another person engaged in the performance of the project or program under this Grant and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.
 - 2. “Forced labor” means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
 - 3. “Private entity”:

- i. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR § 175.25.
 - ii. Includes:
 - a) A nonprofit organization, including any nonprofit institute of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR § 175.25(b).
 - b) A for-profit organization.
- 4. “Severe forms of trafficking in persons,” “commercial sex act,” and “coercion” have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. § 7102).
- 23. **AIP Funded Work Included in a PFC Application.** Within 120 days of acceptance of this Grant Agreement, the Sponsor must submit to the FAA an amendment to any approved Passenger Facility Charge (PFC) application that contains an approved PFC project also covered under this Grant Agreement as described in the project application. The airport sponsor may not make any expenditure under this Grant Agreement until project work addressed under this Grant Agreement is removed from an approved PFC application by amendment.
- 24. **Exhibit “A” Property Map.** The Exhibit “A” Property Map dated March 27, 2024, is incorporated herein by reference or is submitted with the project application and made part of this Grant Agreement.
- 25. **Employee Protection from Reprisal.**
 - a. Prohibition of Reprisals.
 - 1. In accordance with 41 U.S.C. § 4712, an employee of a Sponsor, grantee, subgrantee, contractor, or subcontractor may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body described in sub-paragraph (a)(2) below, information that the employee reasonably believes is evidence of:
 - i. Gross mismanagement of a Federal grant;
 - ii. Gross waste of Federal funds;
 - iii. An abuse of authority relating to implementation or use of Federal funds;
 - iv. A substantial and specific danger to public health or safety; or
 - v. A violation of law, rule, or regulation related to a Federal grant.
 - 2. Persons and bodies covered. The persons and bodies to which a disclosure by an employee is covered are as follows:
 - i. A member of Congress or a representative of a committee of Congress;
 - ii. An Inspector General;
 - iii. The Government Accountability Office;
 - iv. A Federal employee responsible for contract or grant oversight or management at the relevant agency;
 - v. A court or grand jury;

- vi. A management official or other employee of the Sponsor, contractor, or subcontractor who has the responsibility to investigate, discover, or address misconduct; or
 - vii. An authorized official of the Department of Justice or other law enforcement agency.
- b. Investigation of Complaints.
- 1. Submission of Complaint. A person who believes that they have been subjected to a reprisal prohibited by paragraph (a) of this Condition may submit a complaint regarding the reprisal to the Office of Inspector General (OIG) for the U.S. Department of Transportation.
 - 2. Time Limitation for Submittal of a Complaint. A complaint may not be brought under this subsection more than three years after the date on which the alleged reprisal took place.
 - 3. Required Actions of the Inspector General. Actions, limitations, and exceptions of the Inspector General's office are established under 41 U.S.C. § 4712(b).
- c. Remedy and Enforcement Authority.
- 1. Assumption of Rights to Civil Remedy. Upon receipt of an explanation of a decision not to conduct or continue an investigation by the OIG, the person submitting a complaint assumes the right to a civil remedy under 41 U.S.C. § 4712(c)(2).
26. **Prohibited Telecommunications and Video Surveillance Services and Equipment.** The Sponsor agrees to comply with mandatory standards and policies relating to use and procurement of certain telecommunications and video surveillance services or equipment in compliance with the National Defense Authorization Act [P.L. 115-232 § 889(f)(1)] and 2 CFR § 200.216.
27. **Critical Infrastructure Security and Resilience.** The Sponsor acknowledges that it has considered and addressed physical and cybersecurity and resilience in their project planning, design, and oversight, as determined by the DOT and the Department of Homeland Security (DHS). For airports that do not have specific DOT or DHS cybersecurity requirements, the FAA encourages the voluntary adoption of the cybersecurity requirements from the Transportation Security Administration and Federal Security Director identified for security risk Category X airports.
28. **Title VI of the Civil Rights Act.** As a condition of a grant award, the Sponsor shall demonstrate that it complies with the provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq) and implementing regulations (49 CFR part 21), the Airport and Airway Improvement Act of 1982 (49 U.S.C. § 47123), the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 et seq.), the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101, et seq.), U.S. Department of Transportation and Federal Aviation Administration (FAA) Assurances, and other relevant civil rights statutes, regulations, or authorities. This may include, as applicable, providing a current Title VI Program Plan and a Community Participation Plan (alternatively may be called a Public Participation Plan) to the FAA for approval, in the format and according to the timeline required by the FAA, and other information about the communities that will be benefited and impacted by the project. A completed FAA Title VI Pre-Grant Award Checklist is also required for every grant application, unless excused by the FAA. The Sponsor shall affirmatively ensure that when carrying out any project supported by this grant that it complies with all federal nondiscrimination and civil rights laws based on race, color, national origin (including limited English proficiency), sex (including sexual orientation and gender identity), creed, age, disability, genetic information, or environmental justice in consideration for federal financial assistance. The Sponsor, who has not sufficiently demonstrated the conditions of compliance with civil rights requirements will be required to do so before receiving funds. The Department's and FAA's Office of Civil Rights

may provide resources and technical assistance to recipients to ensure full and sustainable compliance with Federal civil rights requirements. Failure to comply with civil rights requirements will be considered a violation of the agreement or contract and be subject to any enforcement action as authorized by law.

29. **FAA Reauthorization Act of 2024.** This grant agreement is subject to the terms and conditions contained herein including the terms known as the Grant Assurances as they were published in the Federal Register on May 2022. On May 16, 2024, the FAA Reauthorization Act of 2024 made certain amendments to 49 U.S.C. chapter 471. The Reauthorization Act will require FAA to make certain amendments to the assurances in order to best achieve consistency with the statute. Federal law requires that FAA publish any amendments to the assurances in the Federal Register along with an opportunity to comment. In order not to delay the offer of this grant, the existing assurances are attached herein; however, FAA shall interpret and apply these assurances consistent with the Reauthorization Act. To the extent there is a conflict between the assurances and Federal statutes, the statutes shall apply. The full text of the FAA Reauthorization Act of 2024 is at <https://www.congress.gov/bill/118th-congress/house-bill/3935/text>.

SPECIAL CONDITIONS

30. **Disadvantaged Business Enterprise (DBE)/Airport Concessions Disadvantaged Business Enterprise (ACDBE) Program.** The Sponsor understands and agrees that it will not submit payment reimbursement requests until the Sponsor has received from the FAA Office of Civil Rights approval of its DBE Program (reflecting compliance with 49 CFR Part 26), and if applicable, its ACDBE program (reflecting compliance with 49 CFR Part 23).
31. **Pavement Maintenance Management Program.** The Sponsor agrees that it will implement an effective airport pavement maintenance management program as required by Airport Sponsor Grant Assurance 11, Pavement Preventive Maintenance-Management, which is codified at 49 U.S.C. § 47105(e). The Sponsor agrees that it will use the program for the useful life of any pavement constructed, reconstructed, rehabilitated, or repaired with Federal financial assistance at the airport. The Sponsor further agrees that the program will:
- a. Follow the current version of FAA Advisory Circular 150/5380-6, "Guidelines and Procedures for Maintenance of Airport Pavements," for specific guidelines and procedures for maintaining airport pavements, establishing an effective maintenance program, specific types of distress and its probable cause, inspection guidelines, and recommended methods of repair;
 - b. Detail the procedures to be followed to assure that proper pavement maintenance, both preventive and repair, is performed;
 - c. Include a Pavement Inventory, Inspection Schedule, Record Keeping, Information Retrieval, and Reference, meeting the following requirements:
 1. Pavement Inventory. The following must be depicted in an appropriate form and level of detail:
 - i. Location of all runways, taxiways, and aprons;
 - ii. Dimensions;
 - iii. Type of pavement; and,

- iv. Year of construction or most recent major reconstruction, rehabilitation, or repair.
- 2. Inspection Schedule.
 - i. Detailed Inspection. A detailed inspection must be performed at least once a year. If a history of recorded pavement deterioration is available, i.e., Pavement Condition Index (PCI) survey as set forth in the current version of Advisory Circular 150/5380-6, the frequency of inspections may be extended to three years.
 - ii. Drive-By Inspection. A drive-by inspection must be performed a minimum of once per month to detect unexpected changes in the pavement condition. For drive-by inspections, the date of inspection and any maintenance performed must be recorded.
- 3. Record Keeping. Complete information on the findings of all detailed inspections and on the maintenance performed must be recorded and kept on file for a minimum of five years. The type of distress, location, and remedial action, scheduled or performed, must be documented. The minimum information is:
 - i. Inspection date;
 - ii. Location;
 - iii. Distress types; and
 - iv. Maintenance scheduled or performed.
- 4. Information Retrieval System. The Sponsor must be able to retrieve the information and records produced by the pavement survey to provide a report to the FAA as may be required.

32. Project Containing Paving Work in Excess of \$500,000. The Sponsor agrees to:

- a. Furnish a construction management program to the FAA prior to the start of construction which details the measures and procedures to be used to comply with the quality control provisions of the construction contract, including, but not limited to, all quality control provisions and tests required by the Federal specifications. The program must include as a minimum:
 - 1. The name of the person representing the Sponsor who has overall responsibility for contract administration for the project and the authority to take necessary actions to comply with the contract;
 - 2. Names of testing laboratories and consulting engineer firms with quality control responsibilities on the project, together with a description of the services to be provided;
 - 3. Procedures for determining that the testing laboratories meet the requirements of the ASTM International standards on laboratory evaluation referenced in the contract specifications (i.e., ASTM D 3666, ASTM C 1077);
 - 4. Qualifications of engineering supervision and construction inspection personnel;
 - 5. A listing of all tests required by the contract specifications, including the type and frequency of tests to be taken, the method of sampling, the applicable test standard, and the acceptance criteria or tolerances permitted for each type of test; and

6. Procedures for ensuring that the tests are taken in accordance with the program, that they are documented daily, and that the proper corrective actions, where necessary, are undertaken.
 - b. Submit at completion of the project, a final test and quality assurance report documenting the summary results of all tests performed and highlighting those tests that indicated failure or that did not meet the applicable test standard. The report must include the pay reductions applied and the reasons for accepting any out-of-tolerance material. Submit interim test and quality assurance reports when requested by the FAA.
 - c. Failure to provide a complete report as described above, or failure to perform such tests, will, absent any compelling justification, result in a reduction in Federal participation for costs incurred in connection with construction of the applicable pavement. Such reduction will be at the discretion of the FAA and will be based on the type or types of required tests not performed or not documented and will be commensurate with the proportion of applicable pavement with respect to the total pavement constructed under the Grant Agreement.
 - d. The FAA, at its discretion, reserves the right to conduct independent tests and to reduce grant payments accordingly if such independent tests determine that Sponsor test results are inaccurate.
33. **Maintenance Project Life.** The Sponsor agrees that pavement maintenance is limited to those aircraft pavements that are in sound condition that they do not warrant extensive work, such as reconstruction or overlays in the immediate or near future. The Sponsor further agrees that AIP, Airport Infrastructure Grant (AIG), or supplemental appropriation funding for the pavements maintained under this project will not be requested for more substantial type rehabilitation (more substantial than periodic maintenance) for a 5-year period following the completion of this project unless the FAA determines that the rehabilitation or reconstruction is required for safety reasons.
34. **Plans and Specifications Prior to Bidding.** The Sponsor agrees that it will submit plans and specifications for FAA review prior to advertising for bids.
35. **Plans and Specifications Approval Based Upon Certification.** The FAA and the Sponsor agree that the FAA's approval of the Sponsor's Plans and Specification is based primarily upon the Sponsor's certification to carry out the project in accordance with policies, standards, and specifications approved by the FAA. The Sponsor understands that:
- a. The Sponsor's certification does not relieve the Sponsor of the requirement to obtain prior FAA approval for modifications to published FAA airport development grant standards or to notify the FAA of any limitations to competition within the project;
 - b. The FAA's acceptance of a Sponsor's certification does not limit the FAA from reviewing appropriate project documentation for the purpose of validating the certification statements; and
 - c. If the FAA determines that the Sponsor has not complied with their certification statements, the FAA will review the associated project costs to determine whether such costs are allowable under this Grant and associated grants.
36. **Consultant Contract and Cost Analysis.** The Sponsor understands and agrees that no reimbursement will be made on the consultant contract portion of this Grant until the FAA has

received the consultant contract, the Sponsor's analysis of costs, and the independent fee estimate.

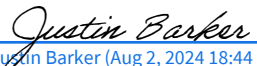
37. **Buy American Executive Orders.** The Sponsor agrees to abide by applicable Executive Orders in effect at the time this Grant Agreement is executed, including Executive Order 14005, Ensuring the Future Is Made in All of America by All of America's Workers.
38. **Usable Unit of Development.** The FAA and the Sponsor agree this Grant only funds a portion of the overall project. The FAA makes no commitment of funding beyond what is provided herein. In accepting this award, the Sponsor understands and agrees that the work described in this Grant Agreement must be incorporated into a safe, useful, and usable unit of development completed within a reasonable timeframe [49 USC § 47106(a)(4)]. This safe, useful, usable unit of development must be completed regardless of whether the Sponsor receives any additional federal funding.

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

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

I declare under penalty of perjury that the foregoing is true and correct.¹

**UNITED STATES OF AMERICA
FEDERAL AVIATION ADMINISTRATION**


Justin Barker (Aug 2, 2024 18:44 CDT)

(Signature)

Justin Barker

(Typed Name)

Manager, Louisiana/New Mexico ADC

(Title of FAA Official)

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

Part II - Acceptance

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

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

I declare under penalty of perjury that the foregoing is true and correct.²

Dated August 5, 2024

City of Alamogordo

(Name of Sponsor)

Rick Holden

Rick Holden (Aug 5, 2024 06:32 MDT)

(Signature of Sponsor's Authorized Official)

By: Rick Holden

(Typed Name of Sponsor's Authorized Official)

Title: City Manager

(Title of Sponsor's Authorized Official)

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

CERTIFICATE OF SPONSOR'S ATTORNEY

I, Ashley Smith, acting as Attorney for the Sponsor do hereby certify:

That in my opinion the Sponsor is empowered to enter into the foregoing Grant Agreement under the laws of the State of New Mexico. Further, I have examined the foregoing Grant Agreement and the actions taken by said Sponsor and Sponsor's official representative, who has been duly authorized to execute this Grant Agreement, which is in all respects due and proper and in accordance with the laws of the said State; and Title 49, United States Code (U.S.C.), Chapters 471 and 475; 49 U.S.C. §§ 40101 et seq., and 48103; FAA Reauthorization Act of 2018 (P.L. 115-254); the Department of Transportation Appropriations Act, 2021 (P.L. 116-260, Division L); the Consolidated Appropriations Act, 2022 (P.L. 117-103); Consolidated Appropriations Act, 2023 (P.L. 117-328); Consolidated Appropriations Act, 2024 (P.L. 118-42); FAA Reauthorization Act of 2024 (P.L. 118-63); and the representations contained in the Project Application. In addition, for grants involving projects to be carried out on property not owned by the Sponsor, there are no legal impediments that will prevent full performance by the Sponsor. Further, it is my opinion that the said Grant Agreement constitutes a legal and binding obligation of the Sponsor in accordance with the terms thereof.

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

I declare under penalty of perjury that the foregoing is true and correct.³

Dated at August 5, 2024

By: 
 Ashley Smith (Aug 5, 2024 08:19 MDT)
 (Signature of Sponsor's Attorney)

³ Knowingly and willfully providing false information to the Federal government is a violation of 18 U.S.C. § 1001 (False Statements) and could subject you to fines, imprisonment, or both.

ASSURANCES

AIRPORT SPONSORS

A. General.

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

B. Duration and Applicability.

1. **Airport development or Noise Compatibility Program Projects Undertaken by a Public Agency Sponsor.**

The terms, conditions and assurances of this Grant Agreement shall remain in full force and effect throughout the useful life of the facilities developed or equipment acquired for an airport development or noise compatibility program project, or throughout the useful life of the project items installed within a facility under a noise compatibility program project, but in any event not to exceed twenty (20) years from the date of acceptance of a grant offer of Federal funds for the project. However, there shall be no limit on the duration of the assurances regarding Exclusive Rights and Airport Revenue so long as the airport is used as an airport. There shall be no limit on the duration of the terms, conditions, and assurances with respect to real property acquired with federal funds. Furthermore, the duration of the Civil Rights assurance shall be specified in the assurances.

2. **Airport Development or Noise Compatibility Projects Undertaken by a Private Sponsor.**

The preceding paragraph (1) also applies to a private sponsor except that the useful life of project items installed within a facility or the useful life of the facilities developed or equipment acquired under an airport development or noise compatibility program project shall be no less than ten (10) years from the date of acceptance of Federal aid for the project.

3. **Airport Planning Undertaken by a Sponsor.**

Unless otherwise specified in this Grant Agreement, only Assurances 1, 2, 3, 5, 6, 13, 18, 23, 25, 30, 32, 33, 34, and 37 in Section C apply to planning projects. The terms, conditions, and assurances of this Grant Agreement shall remain in full force and effect during the life of the project; there shall be no limit on the duration of the assurances regarding Exclusive Rights and Airport Revenue so long as the airport is used as an airport.

C. Sponsor Certification.

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

1. General Federal Requirements

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

FEDERAL LEGISLATION

- a. 49 U.S.C. subtitle VII, as amended.
- b. Davis-Bacon Act, as amended — 40 U.S.C. §§ 3141-3144, 3146, and 3147, et seq.¹
- c. Federal Fair Labor Standards Act – 29 U.S.C. § 201, et seq.
- d. Hatch Act – 5 U.S.C. § 1501, et seq.²
- e. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. § 4601, et seq.^{1, 2}
- f. National Historic Preservation Act of 1966 – Section 106 – 54 U.S.C. § 306108.¹
- g. Archeological and Historic Preservation Act of 1974 – 54 U.S.C. § 312501, et seq.¹
- h. Native Americans Grave Repatriation Act – 25 U.S.C. § 3001, et seq.
- i. Clean Air Act, P.L. 90-148, as amended – 42 U.S.C. § 7401, et seq.
- j. Coastal Zone Management Act, P.L. 92-583, as amended – 16 U.S.C. § 1451, et seq.
- k. Flood Disaster Protection Act of 1973 – Section 102(a) - 42 U.S.C. § 4012a.¹
- l. 49 U.S.C. § 303, (formerly known as Section 4(f)).
- m. Rehabilitation Act of 1973 – 29 U.S.C. § 794.
- n. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin).
- o. Americans with Disabilities Act of 1990, as amended, (42 U.S.C. § 12101 et seq.) (prohibits discrimination on the basis of disability).
- p. Age Discrimination Act of 1975 – 42 U.S.C. § 6101, et seq.
- q. American Indian Religious Freedom Act, P.L. 95-341, as amended.
- r. Architectural Barriers Act of 1968, as amended – 42 U.S.C. § 4151, et seq.¹
- s. Powerplant and Industrial Fuel Use Act of 1978 – Section 403 – 42 U.S.C. § 8373.¹
- t. Contract Work Hours and Safety Standards Act – 40 U.S.C. § 3701, et seq.¹
- u. Copeland Anti-kickback Act – 18 U.S.C. § 874.¹
- v. National Environmental Policy Act of 1969 – 42 U.S.C. § 4321, et seq.¹
- w. Wild and Scenic Rivers Act, P.L. 90-542, as amended – 16 U.S.C. § 1271, et seq.
- x. Single Audit Act of 1984 – 31 U.S.C. § 7501, et seq.²

- y. Drug-Free Workplace Act of 1988 – 41 U.S.C. §§ 8101 through 8105.
- z. The Federal Funding Accountability and Transparency Act of 2006, as amended (P.L. 109-282, as amended by section 6202 of P.L. 110-252).
- aa. Civil Rights Restoration Act of 1987, P.L. 100-259.
- bb. Build America, Buy America Act, P.L. 117-58, Title IX.

EXECUTIVE ORDERS

- a. Executive Order 11246 – Equal Employment Opportunity¹
- b. Executive Order 11990 – Protection of Wetlands
- c. Executive Order 11998 – Flood Plain Management
- d. Executive Order 12372 – Intergovernmental Review of Federal Programs
- e. Executive Order 12699 – Seismic Safety of Federal and Federally Assisted New Building Construction¹
- f. Executive Order 12898 – Environmental Justice
- g. Executive Order 13166 – Improving Access to Services for Persons with Limited English Proficiency
- h. Executive Order 13985 – Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government
- i. Executive Order 13988 - Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation
- j. Executive Order 14005 – Ensuring the Future is Made in all of America by All of America’s Workers
- k. Executive Order 14008 – Tackling the Climate Crisis at Home and Abroad

FEDERAL REGULATIONS

- a. 2 CFR Part 180 – OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement).
- b. 2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. ^{4, 5}
- c. 2 CFR Part 1200 – Nonprocurement Suspension and Debarment.
- d. 14 CFR Part 13 – Investigative and Enforcement Procedures.
- e. 14 CFR Part 16 – Rules of Practice for Federally-Assisted Airport Enforcement Proceedings.
- f. 14 CFR Part 150 – Airport Noise Compatibility Planning.
- g. 28 CFR Part 35 – Nondiscrimination on the Basis of Disability in State and Local Government Services.
- h. 28 CFR § 50.3 – U.S. Department of Justice Guidelines for the Enforcement of Title VI of the Civil Rights Act of 1964.
- i. 29 CFR Part 1 – Procedures for Predetermination of Wage Rates.¹

- j. 29 CFR Part 3 – Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States.¹
- k. 29 CFR Part 5 – Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act).¹
- l. 41 CFR Part 60 – Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and Federally-assisted contracting requirements).¹
- m. 49 CFR Part 20 – New Restrictions on Lobbying.
- n. 49 CFR Part 21 – Nondiscrimination in Federally-Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964.
- o. 49 CFR Part 23 – Participation by Disadvantage Business Enterprise in Airport Concessions.
- p. 49 CFR Part 24 – Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs.^{1, 2}
- q. 49 CFR Part 26 – Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs.
- r. 49 CFR Part 27 – Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance.¹
- s. 49 CFR Part 28 – Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Transportation.
- t. 49 CFR Part 30 – Denial of Public Works Contracts to Suppliers of Goods and Services of Countries That Deny Procurement Market Access to U.S. Contractors.
- u. 49 CFR Part 32 – Governmentwide Requirements for Drug-Free Workplace (Financial Assistance).
- v. 49 CFR Part 37 – Transportation Services for Individuals with Disabilities (ADA).
- w. 49 CFR Part 38 – Americans with Disabilities Act (ADA) Accessibility Specifications for Transportation Vehicles.
- x. 49 CFR Part 41 – Seismic Safety.

FOOTNOTES TO ASSURANCE (C)(1)

¹ These laws do not apply to airport planning sponsors.

² These laws do not apply to private sponsors.

³ 2 CFR Part 200 contains requirements for State and Local Governments receiving Federal assistance. Any requirement levied upon State and Local Governments by this regulation shall apply where applicable to private sponsors receiving Federal assistance under Title 49, United States Code.

⁴ Cost principles established in 2 CFR part 200 subpart E must be used as guidelines for determining the eligibility of specific types of expenses.

⁵ Audit requirements established in 2 CFR part 200 subpart F are the guidelines for audits.

SPECIFIC ASSURANCES

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

2. Responsibility and Authority of the Sponsor.

a. Public Agency Sponsor:

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

b. Private Sponsor:

It has legal authority to apply for this Grant and to finance and carry out the proposed project and comply with all terms, conditions, and assurances of this Grant Agreement. It shall designate an official representative and shall in writing direct and authorize that person to file this application, including all understandings and assurances contained therein; to act in connection with this application; and to provide such additional information as may be required.

3. Sponsor Fund Availability.

It has sufficient funds available for that portion of the project costs which are not to be paid by the United States. It has sufficient funds available to assure operation and maintenance of items funded under this Grant Agreement which it will own or control.

4. Good Title.

- a. It, a public agency or the Federal government, holds good title, satisfactory to the Secretary, to the landing area of the airport or site thereof, or will give assurance satisfactory to the Secretary that good title will be acquired.
- b. For noise compatibility program projects to be carried out on the property of the sponsor, it holds good title satisfactory to the Secretary to that portion of the property upon which Federal funds will be expended or will give assurance to the Secretary that good title will be obtained.

5. Preserving Rights and Powers.

- a. It will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in this Grant Agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor. This shall be done in a manner acceptable to the Secretary.
- b. Subject to the FAA Act of 2018, Public Law 115-254, Section 163, it will not sell, lease, encumber, or otherwise transfer or dispose of any part of its title or other interests in the property shown on Exhibit A to this application or, for a noise compatibility program project, that portion of the property upon which Federal funds have been expended, for the duration of the terms, conditions, and assurances in this Grant Agreement without approval by the

Secretary. If the transferee is found by the Secretary to be eligible under Title 49, United States Code, to assume the obligations of this Grant Agreement and to have the power, authority, and financial resources to carry out all such obligations, the sponsor shall insert in the contract or document transferring or disposing of the sponsor's interest, and make binding upon the transferee all of the terms, conditions, and assurances contained in this Grant Agreement.

- c. For all noise compatibility program projects which are to be carried out by another unit of local government or are on property owned by a unit of local government other than the sponsor, it will enter into an agreement with that government. Except as otherwise specified by the Secretary, that agreement shall obligate that government to the same terms, conditions, and assurances that would be applicable to it if it applied directly to the FAA for a grant to undertake the noise compatibility program project. That agreement and changes thereto must be satisfactory to the Secretary. It will take steps to enforce this agreement against the local government if there is substantial non-compliance with the terms of the agreement.
- d. For noise compatibility program projects to be carried out on privately owned property, it will enter into an agreement with the owner of that property which includes provisions specified by the Secretary. It will take steps to enforce this agreement against the property owner whenever there is substantial non-compliance with the terms of the agreement.
- e. If the sponsor is a private sponsor, it will take steps satisfactory to the Secretary to ensure that the airport will continue to function as a public-use airport in accordance with these assurances for the duration of these assurances.
- f. If an arrangement is made for management and operation of the airport by any agency or person other than the sponsor or an employee of the sponsor, the sponsor will reserve sufficient rights and authority to ensure that the airport will be operated and maintained in accordance with Title 49, United States Code, the regulations and the terms, conditions and assurances in this Grant Agreement and shall ensure that such arrangement also requires compliance therewith.
- g. Sponsors of commercial service airports will not permit or enter into any arrangement that results in permission for the owner or tenant of a property used as a residence, or zoned for residential use, to taxi an aircraft between that property and any location on airport. Sponsors of general aviation airports entering into any arrangement that results in permission for the owner of residential real property adjacent to or near the airport must comply with the requirements of Sec. 136 of Public Law 112-95 and the sponsor assurances.

6. Consistency with Local Plans.

The project is reasonably consistent with plans (existing at the time of submission of this application) of public agencies that are authorized by the State in which the project is located to plan for the development of the area surrounding the airport.

7. Consideration of Local Interest.

It has given fair consideration to the interest of communities in or near where the project may be located.

8. Consultation with Users.

In making a decision to undertake any airport development project under Title 49, United States Code, it has undertaken reasonable consultations with affected parties using the airport at which project is proposed.

9. Public Hearings.

In projects involving the location of an airport, an airport runway, or a major runway extension, it has afforded the opportunity for public hearings for the purpose of considering the economic, social, and environmental effects of the airport or runway location and its consistency with goals and objectives of such planning as has been carried out by the community and it shall, when requested by the Secretary, submit a copy of the transcript of such hearings to the Secretary. Further, for such projects, it has on its management board either voting representation from the communities where the project is located or has advised the communities that they have the right to petition the Secretary concerning a proposed project.

10. Metropolitan Planning Organization.

In projects involving the location of an airport, an airport runway, or a major runway extension at a medium or large hub airport, the sponsor has made available to and has provided upon request to the metropolitan planning organization in the area in which the airport is located, if any, a copy of the proposed amendment to the airport layout plan to depict the project and a copy of any airport master plan in which the project is described or depicted.

11. Pavement Preventive Maintenance-Management.

With respect to a project approved after January 1, 1995, for the replacement or reconstruction of pavement at the airport, it assures or certifies that it has implemented an effective airport pavement maintenance-management program and it assures that it will use such program for the useful life of any pavement constructed, reconstructed or repaired with Federal financial assistance at the airport. It will provide such reports on pavement condition and pavement management programs as the Secretary determines may be useful.

12. Terminal Development Prerequisites.

For projects which include terminal development at a public use airport, as defined in Title 49, it has, on the date of submittal of the project grant application, all the safety equipment required for certification of such airport under 49 U.S.C. § 44706, and all the security equipment required by rule or regulation, and has provided for access to the passenger enplaning and deplaning area of such airport to passengers enplaning and deplaning from aircraft other than air carrier aircraft.

13. Accounting System, Audit, and Record Keeping Requirements.

- a. It shall keep all project accounts and records which fully disclose the amount and disposition by the recipient of the proceeds of this Grant, the total cost of the project in connection with which this Grant is given or used, and the amount or nature of that portion of the cost of the project supplied by other sources, and such other financial records pertinent to the project. The accounts and records shall be kept in accordance with an accounting system that will facilitate an effective audit in accordance with the Single Audit Act of 1984.
- b. It shall make available to the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, for the purpose of audit and examination, any books, documents, papers, and records of the recipient that are pertinent to this Grant. The Secretary may require that an appropriate audit be conducted by a recipient. In any case in which an independent audit is made of the accounts of a sponsor relating to the disposition of the proceeds of a grant or relating to the project in connection with which this Grant was given or used, it shall file a certified copy of such audit with the Comptroller General of the United

States not later than six (6) months following the close of the fiscal year for which the audit was made.

14. Minimum Wage Rates.

It shall include, in all contracts in excess of \$2,000 for work on any projects funded under this Grant Agreement which involve labor, provisions establishing minimum rates of wages, to be predetermined by the Secretary of Labor under 40 U.S.C. §§ 3141-3144, 3146, and 3147, Public Building, Property, and Works), which contractors shall pay to skilled and unskilled labor, and such minimum rates shall be stated in the invitation for bids and shall be included in proposals or bids for the work.

15. Veteran's Preference.

It shall include in all contracts for work on any project funded under this Grant Agreement which involve labor, such provisions as are necessary to insure that, in the employment of labor (except in executive, administrative, and supervisory positions), preference shall be given to Vietnam era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns owned and controlled by disabled veterans as defined in 49 U.S.C. § 47112. However, this preference shall apply only where the individuals are available and qualified to perform the work to which the employment relates.

16. Conformity to Plans and Specifications.

It will execute the project subject to plans, specifications, and schedules approved by the Secretary. Such plans, specifications, and schedules shall be submitted to the Secretary prior to commencement of site preparation, construction, or other performance under this Grant Agreement, and, upon approval of the Secretary, shall be incorporated into this Grant Agreement. Any modification to the approved plans, specifications, and schedules shall also be subject to approval of the Secretary, and incorporated into this Grant Agreement.

17. Construction Inspection and Approval.

It will provide and maintain competent technical supervision at the construction site throughout the project to assure that the work conforms to the plans, specifications, and schedules approved by the Secretary for the project. It shall subject the construction work on any project contained in an approved project application to inspection and approval by the Secretary and such work shall be in accordance with regulations and procedures prescribed by the Secretary. Such regulations and procedures shall require such cost and progress reporting by the sponsor or sponsors of such project as the Secretary shall deem necessary.

18. Planning Projects.

In carrying out planning projects:

- a. It will execute the project in accordance with the approved program narrative contained in the project application or with the modifications similarly approved.
- b. It will furnish the Secretary with such periodic reports as required pertaining to the planning project and planning work activities.
- c. It will include in all published material prepared in connection with the planning project a notice that the material was prepared under a grant provided by the United States.

- d. It will make such material available for examination by the public, and agrees that no material prepared with funds under this project shall be subject to copyright in the United States or any other country.
- e. It will give the Secretary unrestricted authority to publish, disclose, distribute, and otherwise use any of the material prepared in connection with this grant.
- f. It will grant the Secretary the right to disapprove the sponsor's employment of specific consultants and their subcontractors to do all or any part of this project as well as the right to disapprove the proposed scope and cost of professional services.
- g. It will grant the Secretary the right to disapprove the use of the sponsor's employees to do all or any part of the project.
- h. It understands and agrees that the Secretary's approval of this project grant or the Secretary's approval of any planning material developed as part of this grant does not constitute or imply any assurance or commitment on the part of the Secretary to approve any pending or future application for a Federal airport grant.

19. Operation and Maintenance.

- a. The airport and all facilities which are necessary to serve the aeronautical users of the airport, other than facilities owned or controlled by the United States, shall be operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable Federal, state, and local agencies for maintenance and operation. It will not cause or permit any activity or action thereon which would interfere with its use for airport purposes. It will suitably operate and maintain the airport and all facilities thereon or connected therewith, with due regard to climatic and flood conditions. Any proposal to temporarily close the airport for non-aeronautical purposes must first be approved by the Secretary. In furtherance of this assurance, the sponsor will have in effect arrangements for:
 - 1. Operating the airport's aeronautical facilities whenever required;
 - 2. Promptly marking and lighting hazards resulting from airport conditions, including temporary conditions; and
 - 3. Promptly notifying pilots of any condition affecting aeronautical use of the airport. Nothing contained herein shall be construed to require that the airport be operated for aeronautical use during temporary periods when snow, flood, or other climatic conditions interfere with such operation and maintenance. Further, nothing herein shall be construed as requiring the maintenance, repair, restoration, or replacement of any structure or facility which is substantially damaged or destroyed due to an act of God or other condition or circumstance beyond the control of the sponsor.
- b. It will suitably operate and maintain noise compatibility program items that it owns or controls upon which Federal funds have been expended.

20. Hazard Removal and Mitigation.

It will take appropriate action to assure that such terminal airspace as is required to protect instrument and visual operations to the airport (including established minimum flight altitudes) will be adequately cleared and protected by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.

21. Compatible Land Use.

It will take appropriate action, to the extent reasonable, including the adoption of zoning laws, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft. In addition, if the project is for noise compatibility program implementation, it will not cause or permit any change in land use, within its jurisdiction, that will reduce its compatibility, with respect to the airport, of the noise compatibility program measures upon which Federal funds have been expended.

22. Economic Nondiscrimination.

- a. It will make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.
- b. In any agreement, contract, lease, or other arrangement under which a right or privilege at the airport is granted to any person, firm, or corporation to conduct or to engage in any aeronautical activity for furnishing services to the public at the airport, the sponsor will insert and enforce provisions requiring the contractor to:
 1. Furnish said services on a reasonable, and not unjustly discriminatory, basis to all users thereof, and
 2. Charge reasonable, and not unjustly discriminatory, prices for each unit or service, provided that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.
- c. Each fixed-based operator at the airport shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other fixed-based operators making the same or similar uses of such airport and utilizing the same or similar facilities.
- d. Each air carrier using such airport shall have the right to service itself or to use any fixed-based operator that is authorized or permitted by the airport to serve any air carrier at such airport.
- e. Each air carrier using such airport (whether as a tenant, non-tenant, or subtenant of another air carrier tenant) shall be subject to such nondiscriminatory and substantially comparable rules, regulations, conditions, rates, fees, rentals, and other charges with respect to facilities directly and substantially related to providing air transportation as are applicable to all such air carriers which make similar use of such airport and utilize similar facilities, subject to reasonable classifications such as tenants or non-tenants and signatory carriers and non-signatory carriers. Classification or status as tenant or signatory shall not be unreasonably withheld by any airport provided an air carrier assumes obligations substantially similar to those already imposed on air carriers in such classification or status.
- f. It will not exercise or grant any right or privilege which operates to prevent any person, firm, or corporation operating aircraft on the airport from performing any services on its own aircraft with its own employees (including, but not limited to maintenance, repair, and fueling) that it may choose to perform.
- g. In the event the sponsor itself exercises any of the rights and privileges referred to in this assurance, the services involved will be provided on the same conditions as would apply to the furnishing of such services by commercial aeronautical service providers authorized by the sponsor under these provisions.

- h. The sponsor may establish such reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport.
- i. The sponsor may prohibit or limit any given type, kind or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public.

23. Exclusive Rights.

It will permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public. For purposes of this paragraph, the providing of the services at an airport by a single fixed-based operator shall not be construed as an exclusive right if both of the following apply:

- a. It would be unreasonably costly, burdensome, or impractical for more than one fixed-based operator to provide such services, and
- b. If allowing more than one fixed-based operator to provide such services would require the reduction of space leased pursuant to an existing agreement between such single fixed-based operator and such airport. It further agrees that it will not, either directly or indirectly, grant or permit any person, firm, or corporation, the exclusive right at the airport to conduct any aeronautical activities, including, but not limited to charter flights, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, air carrier operations, aircraft sales and services, sale of aviation petroleum products whether or not conducted in conjunction with other aeronautical activity, repair and maintenance of aircraft, sale of aircraft parts, and any other activities which because of their direct relationship to the operation of aircraft can be regarded as an aeronautical activity, and that it will terminate any exclusive right to conduct an aeronautical activity now existing at such an airport before the grant of any assistance under Title 49, United States Code.

24. Fee and Rental Structure.

It will maintain a fee and rental structure for the facilities and services at the airport which will make the airport as self-sustaining as possible under the circumstances existing at the particular airport, taking into account such factors as the volume of traffic and economy of collection. No part of the Federal share of an airport development, airport planning or noise compatibility project for which a Grant is made under Title 49, United States Code, the Airport and Airway Improvement Act of 1982, the Federal Airport Act or the Airport and Airway Development Act of 1970 shall be included in the rate basis in establishing fees, rates, and charges for users of that airport.

25. Airport Revenues.

- a. All revenues generated by the airport and any local taxes on aviation fuel established after December 30, 1987, will be expended by it for the capital or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the airport and which are directly and substantially related to the actual air transportation of passengers or property; or for noise mitigation purposes on or off the airport. The following exceptions apply to this paragraph:
 - 1. If covenants or assurances in debt obligations issued before September 3, 1982, by the owner or operator of the airport, or provisions enacted before September 3, 1982, in governing statutes controlling the owner or operator's financing, provide for the use of the

revenues from any of the airport owner or operator's facilities, including the airport, to support not only the airport but also the airport owner or operator's general debt obligations or other facilities, then this limitation on the use of all revenues generated by the airport (and, in the case of a public airport, local taxes on aviation fuel) shall not apply.

2. If the Secretary approves the sale of a privately owned airport to a public sponsor and provides funding for any portion of the public sponsor's acquisition of land, this limitation on the use of all revenues generated by the sale shall not apply to certain proceeds from the sale. This is conditioned on repayment to the Secretary by the private owner of an amount equal to the remaining unamortized portion (amortized over a 20-year period) of any airport improvement grant made to the private owner for any purpose other than land acquisition on or after October 1, 1996, plus an amount equal to the federal share of the current fair market value of any land acquired with an airport improvement grant made to that airport on or after October 1, 1996.
3. Certain revenue derived from or generated by mineral extraction, production, lease, or other means at a general aviation airport (as defined at 49 U.S.C. § 47102), if the FAA determines the airport sponsor meets the requirements set forth in Section 813 of Public Law 112-95.
- b. As part of the annual audit required under the Single Audit Act of 1984, the sponsor will direct that the audit will review, and the resulting audit report will provide an opinion concerning, the use of airport revenue and taxes in paragraph (a), and indicating whether funds paid or transferred to the owner or operator are paid or transferred in a manner consistent with Title 49, United States Code and any other applicable provision of law, including any regulation promulgated by the Secretary or Administrator.
- c. Any civil penalties or other sanctions will be imposed for violation of this assurance in accordance with the provisions of 49 U.S.C. § 47107.

26. Reports and Inspections.

It will:

- a. submit to the Secretary such annual or special financial and operations reports as the Secretary may reasonably request and make such reports available to the public; make available to the public at reasonable times and places a report of the airport budget in a format prescribed by the Secretary;
- b. for airport development projects, make the airport and all airport records and documents affecting the airport, including deeds, leases, operation and use agreements, regulations and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request;
- c. for noise compatibility program projects, make records and documents relating to the project and continued compliance with the terms, conditions, and assurances of this Grant Agreement including deeds, leases, agreements, regulations, and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request; and
- d. in a format and time prescribed by the Secretary, provide to the Secretary and make available to the public following each of its fiscal years, an annual report listing in detail:
 1. all amounts paid by the airport to any other unit of government and the purposes for which each such payment was made; and

2. all services and property provided by the airport to other units of government and the amount of compensation received for provision of each such service and property.

27. Use by Government Aircraft.

It will make available all of the facilities of the airport developed with Federal financial assistance and all those usable for landing and takeoff of aircraft to the United States for use by Government aircraft in common with other aircraft at all times without charge, except, if the use by Government aircraft is substantial, charge may be made for a reasonable share, proportional to such use, for the cost of operating and maintaining the facilities used. Unless otherwise determined by the Secretary, or otherwise agreed to by the sponsor and the using agency, substantial use of an airport by Government aircraft will be considered to exist when operations of such aircraft are in excess of those which, in the opinion of the Secretary, would unduly interfere with use of the landing areas by other authorized aircraft, or during any calendar month that:

- a. Five (5) or more Government aircraft are regularly based at the airport or on land adjacent thereto; or
- b. The total number of movements (counting each landing as a movement) of Government aircraft is 300 or more, or the gross accumulative weight of Government aircraft using the airport (the total movement of Government aircraft multiplied by gross weights of such aircraft) is in excess of five million pounds.

28. Land for Federal Facilities.

It will furnish without cost to the Federal Government for use in connection with any air traffic control or air navigation activities, or weather-reporting and communication activities related to air traffic control, any areas of land or water, or estate therein as the Secretary considers necessary or desirable for construction, operation, and maintenance at Federal expense of space or facilities for such purposes. Such areas or any portion thereof will be made available as provided herein within four months after receipt of a written request from the Secretary.

29. Airport Layout Plan.

- a. Subject to the FAA Reauthorization Act of 2018, Public Law 115-254, Section 163, it will keep up to date at all times an airport layout plan of the airport showing:
 1. boundaries of the airport and all proposed additions thereto, together with the boundaries of all offsite areas owned or controlled by the sponsor for airport purposes and proposed additions thereto;
 2. the location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars and roads), including all proposed extensions and reductions of existing airport facilities;
 3. the location of all existing and proposed non-aviation areas and of all existing improvements thereon; and
 4. all proposed and existing access points used to taxi aircraft across the airport's property boundary.

Such airport layout plans and each amendment, revision, or modification thereof, shall be subject to the approval of the Secretary which approval shall be evidenced by the signature of a duly authorized representative of the Secretary on the face of the airport layout plan. The sponsor will not make or permit any changes or alterations in the airport or any of its facilities

which are not in conformity with the airport layout plan as approved by the Secretary and which might, in the opinion of the Secretary, adversely affect the safety, utility or efficiency of the airport.

- b. Subject to the FAA Reauthorization Act of 2018, Public Law 115-254, Section 163, if a change or alteration in the airport or the facilities is made which the Secretary determines adversely affects the safety, utility, or efficiency of any federally owned, leased, or funded property on or off the airport and which is not in conformity with the airport layout plan as approved by the Secretary, the owner or operator will, if requested, by the Secretary:
 1. eliminate such adverse effect in a manner approved by the Secretary; or
 2. bear all costs of relocating such property (or replacement thereof) to a site acceptable to the Secretary and all costs of restoring such property (or replacement thereof) to the level of safety, utility, efficiency, and cost of operation existing before the unapproved change in the airport or its facilities except in the case of a relocation or replacement of an existing airport facility due to a change in the Secretary's design standards beyond the control of the airport sponsor.

30. Civil Rights.

It will promptly take any measures necessary to ensure that no person in the United States shall, on the grounds of race, color, and national origin (including limited English proficiency) in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4); creed and sex (including sexual orientation and gender identity) per 49 U.S.C. § 47123 and related requirements; age per the Age Discrimination Act of 1975 and related requirements; or disability per the Americans with Disabilities Act of 1990 and related requirements, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in any program and activity conducted with, or benefiting from, funds received from this Grant.

- a. Using the definitions of activity, facility, and program as found and defined in 49 CFR §§ 21.23(b) and 21.23(e), the sponsor will facilitate all programs, operate all facilities, or conduct all programs in compliance with all non-discrimination requirements imposed by or pursuant to these assurances.
- b. Applicability
 1. Programs and Activities. If the sponsor has received a grant (or other federal assistance) for any of the sponsor's program or activities, these requirements extend to all of the sponsor's programs and activities.
 2. Facilities. Where it receives a grant or other federal financial assistance to construct, expand, renovate, remodel, alter, or acquire a facility, or part of a facility, the assurance extends to the entire facility and facilities operated in connection therewith.
 3. Real Property. Where the sponsor receives a grant or other Federal financial assistance in the form of, or for the acquisition of real property or an interest in real property, the assurance will extend to rights to space on, over, or under such property.
- c. Duration.

The sponsor agrees that it is obligated to this assurance for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or

structures or improvements thereon, in which case the assurance obligates the sponsor, or any transferee for the longer of the following periods:

1. So long as the airport is used as an airport, or for another purpose involving the provision of similar services or benefits; or
 2. So long as the sponsor retains ownership or possession of the property.
- d. Required Solicitation Language. It will include the following notification in all solicitations for bids, Requests For Proposals for work, or material under this Grant Agreement and in all proposals for agreements, including airport concessions, regardless of funding source:
- “The (City of Alamogordo), in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders or offerors that it will affirmatively ensure that for any contract entered into pursuant to this advertisement, [select businesses, or disadvantaged business enterprises or airport concession disadvantaged business enterprises] will be afforded full and fair opportunity to submit bids in response to this invitation and no businesses will be discriminated against on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in consideration for an award.”
- e. Required Contract Provisions.
1. It will insert the non-discrimination contract clauses requiring compliance with the acts and regulations relative to non-discrimination in Federally-assisted programs of the Department of Transportation (DOT), and incorporating the acts and regulations into the contracts by reference in every contract or agreement subject to the non-discrimination in Federally-assisted programs of the DOT acts and regulations.
 2. It will include a list of the pertinent non-discrimination authorities in every contract that is subject to the non-discrimination acts and regulations.
 3. It will insert non-discrimination contract clauses as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a sponsor.
 4. It will insert non-discrimination contract clauses prohibiting discrimination on the basis of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability as a covenant running with the land, in any future deeds, leases, license, permits, or similar instruments entered into by the sponsor with other parties:
 - a. For the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
 - b. For the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.
- f. It will provide for such methods of administration for the program as are found by the Secretary to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the acts, the regulations, and this assurance.

- g. It agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the acts, the regulations, and this assurance.

31. Disposal of Land.

- a. For land purchased under a grant for airport noise compatibility purposes, including land serving as a noise buffer, it will dispose of the land, when the land is no longer needed for such purposes, at fair market value, at the earliest practicable time. That portion of the proceeds of such disposition which is proportionate to the United States' share of acquisition of such land will be, at the discretion of the Secretary, (1) reinvested in another project at the airport, or (2) transferred to another eligible airport as prescribed by the Secretary. The Secretary shall give preference to the following, in descending order:

1. Reinvestment in an approved noise compatibility project;
2. Reinvestment in an approved project that is eligible for grant funding under 49 U.S.C. § 47117(e);
3. Reinvestment in an approved airport development project that is eligible for grant funding under 49 U.S.C. §§ 47114, 47115, or 47117;
4. Transfer to an eligible sponsor of another public airport to be reinvested in an approved noise compatibility project at that airport; or
5. Payment to the Secretary for deposit in the Airport and Airway Trust Fund.

If land acquired under a grant for noise compatibility purposes is leased at fair market value and consistent with noise buffering purposes, the lease will not be considered a disposal of the land. Revenues derived from such a lease may be used for an approved airport development project that would otherwise be eligible for grant funding or any permitted use of airport revenue.

- b. For land purchased under a grant for airport development purposes (other than noise compatibility), it will, when the land is no longer needed for airport purposes, dispose of such land at fair market value or make available to the Secretary an amount equal to the United States' proportionate share of the fair market value of the land. That portion of the proceeds of such disposition which is proportionate to the United States' share of the cost of acquisition of such land will, upon application to the Secretary, be reinvested or transferred to another eligible airport as prescribed by the Secretary. The Secretary shall give preference to the following, in descending order:

1. Reinvestment in an approved noise compatibility project;
2. Reinvestment in an approved project that is eligible for grant funding under 49 U.S.C. § 47117(e);
3. Reinvestment in an approved airport development project that is eligible for grant funding under 49 U.S.C. §§ 47114, 47115, or 47117;
4. Transfer to an eligible sponsor of another public airport to be reinvested in an approved noise compatibility project at that airport.

- c. Land shall be considered to be needed for airport purposes under this assurance if (1) it may be needed for aeronautical purposes (including runway protection zones) or serve as noise buffer land, and (2) the revenue from interim uses of such land contributes to the financial self-

sufficiency of the airport. Further, land purchased with a grant received by an airport operator or owner before December 31, 1987, will be considered to be needed for airport purposes if the Secretary or Federal agency making such grant before December 31, 1987, was notified by the operator or owner of the uses of such land, did not object to such use, and the land continues to be used for that purpose, such use having commenced no later than December 15, 1989.

- d. Disposition of such land under (a), (b), or (c) will be subject to the retention or reservation of any interest or right therein necessary to ensure that such land will only be used for purposes which are compatible with noise levels associated with operation of the airport.

32. Engineering and Design Services.

If any phase of such project has received Federal funds under Chapter 471 subchapter 1 of Title 49 U.S.C., it will award each contract, or sub-contract for program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design, engineering, surveying, mapping or related services in the same manner as a contract for architectural and engineering services is negotiated under Chapter 11 of Title 40 U.S.C., or an equivalent qualifications-based requirement prescribed for or by the sponsor of the airport.

33. Foreign Market Restrictions.

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

34. Policies, Standards, and Specifications.

It will carry out any project funded under an Airport Improvement Program Grant in accordance with policies, standards, and specifications approved by the Secretary including, but not limited to, current FAA Advisory Circulars (<https://www.faa.gov/airports/aip/media/aip-pfc-checklist.pdf>) for AIP projects as of June 17, 2024.

35. Relocation and Real Property Acquisition.

- a. It will be guided in acquiring real property, to the greatest extent practicable under State law, by the land acquisition policies in Subpart B of 49 CFR Part 24 and will pay or reimburse property owners for necessary expenses as specified in Subpart B.
- b. It will provide a relocation assistance program offering the services described in Subpart C of 49 CFR Part 24 and fair and reasonable relocation payments and assistance to displaced persons as required in Subpart D and E of 49 CFR Part 24.
- c. It will make available within a reasonable period of time prior to displacement, comparable replacement dwellings to displaced persons in accordance with Subpart E of 49 CFR Part 24.

36. Access By Intercity Buses.

The airport owner or operator will permit, to the maximum extent practicable, intercity buses or other modes of transportation to have access to the airport; however, it has no obligation to fund special facilities for intercity buses or for other modes of transportation.

37. Disadvantaged Business Enterprises.

The sponsor shall not discriminate on the basis of race, color, national origin, or sex, in the award and performance of any DOT-assisted contract covered by 49 CFR Part 26, or in the award and performance of any concession activity contract covered by 49 CFR Part 23. In addition, the sponsor shall not discriminate on the basis of race, color, national origin or sex in the administration of its Disadvantaged Business Enterprise (DBE) and Airport Concessions Disadvantaged Business Enterprise (ACDBE) programs or the requirements of 49 CFR Parts 23 and 26. The sponsor shall take all necessary and reasonable steps under 49 CFR Parts 23 and 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts, and/or concession contracts. The sponsor's DBE and ACDBE programs, as required by 49 CFR Parts 26 and 23, and as approved by DOT, are incorporated by reference in this agreement. Implementation of these programs is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the sponsor of its failure to carry out its approved program, the Department may impose sanctions as provided for under Parts 26 and 23 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. § 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. §§ 3801-3809, 3812).

38. Hangar Construction.

If the airport owner or operator and a person who owns an aircraft agree that a hangar is to be constructed at the airport for the aircraft at the aircraft owner's expense, the airport owner or operator will grant to the aircraft owner for the hangar a long term lease that is subject to such terms and conditions on the hangar as the airport owner or operator may impose.

39. Competitive Access.

- a. If the airport owner or operator of a medium or large hub airport (as defined in 49 U.S.C. § 47102) has been unable to accommodate one or more requests by an air carrier for access to gates or other facilities at that airport in order to allow the air carrier to provide service to the airport or to expand service at the airport, the airport owner or operator shall transmit a report to the Secretary that:
 1. Describes the requests;
 2. Provides an explanation as to why the requests could not be accommodated; and
 3. Provides a time frame within which, if any, the airport will be able to accommodate the requests.
- b. Such report shall be due on either February 1 or August 1 of each year if the airport has been unable to accommodate the request(s) in the six month period prior to the applicable due date.

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 8/13/2024

Report Date: 08/06/2024

Report No: 13.

Submitted By: Deborah Osborne

Subject: Consider, and act upon, acceptance of FAA grant award number 3-35-0001-035-2024, to Alamogordo-White Sands Regional Airport, in the amount of \$448,000 FAA, to Reseal Taxiway A Pavement. *(Troy Orr, Airport Manager)*

Fiscal Impact: \$50,347

Amount Budgeted: \$50,347

Fund: 091

Additional Fiscal Impact: City match of \$50,347 is required.

Recommendation: Accept grant number 3-35-0001-035-2024 from FAA to Alamogordo-White Sands Regional Airport.

Background: Delta Airport Consultants submitted an application to the FAA on behalf of Alamogordo-White Sands Regional Airport to request grant funding to reseal Taxiway A pavement. Subsequently, they were awarded grant number 03-35-0001-036-2024 for the amount of \$448,000. This project will consist of a longitudinal crack repair on partial parallel Taxiway A, seal coat application on Taxiway A, Taxiway A4, and the connector to Taxiway A at the end of Runway 22. One bid in the amount of \$1,498,675 was received for this project. A state grant will fund \$453,120, there is a \$50,347 match from the City, and a second FAA grant in the amount of \$547,208 was received.



U.S. Department
of Transportation
Federal Aviation
Administration

Airports Division
Southwest Region
New Mexico

Louisiana/New Mexico Airports
District Office
10101 Hillwood Pkwy
Fort Worth, TX 76177-1524

August 2, 2024

Mr. Rick Holden
City of Alamogordo
1376 E. Ninth Street
Alamogordo, NM 88310

Dear Rick Holden:

The Grant Offer for the Bipartisan Infrastructure Law (BIL) - Airport Infrastructure Grant (AIG) Project No. **3-35-0001-035-2024** at Alamogordo-White Sands Regional Airport is attached for execution. This letter outlines the steps you must take to properly enter into this agreement and provides other useful information. Please read the conditions, special conditions, and assurances that comprise the grant offer carefully.

You may not make any modification to the text, terms or conditions of the grant offer.

Steps You Must Take to Enter Into Agreement.

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

1. The governing body must give authority to execute the grant to the individual(s) signing the grant, i.e., the person signing the document must be the sponsor's authorized representative(s) (hereinafter "authorized representative").
2. The authorized representative must execute the grant by adding their electronic signature to the appropriate certificate at the end of the agreement.
3. Once the authorized representative has electronically signed the grant, the sponsor's attorney(s) will automatically receive an email notification.
4. On the **same day or after** the authorized representative has signed the grant, the sponsor's attorney(s) will add their electronic signature to the appropriate certificate at the end of the agreement.
5. If there are co-sponsors, the authorized representative(s) and sponsor's attorney(s) must follow the above procedures to fully execute the grant and finalize the process. Signatures must be obtained and finalized no later than **September 04, 2024**.
6. The fully executed grant will then be automatically sent to all parties as an email attachment.

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

Project Timing. The terms and conditions of this agreement require you to complete the project without undue delay and no later than the Period of Performance end date (1,460 days from the grant execution date). We will be monitoring your progress to ensure proper stewardship of these Federal funds. We expect you to submit payment requests for reimbursement of allowable incurred project expenses

consistent with project progress. Your grant may be placed in “inactive” status if you do not make draws on a regular basis, which will affect your ability to receive future grant offers. Costs incurred after the Period of Performance ends are generally not allowable and will be rejected unless authorized by the FAA in advance.

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

- For all grants, you must submit by December 31st of each year this grant is open:
 1. A signed/dated SF-270 (Request for Advance or Reimbursement for non-construction projects) or SF-271 or equivalent (Outlay Report and Request for Reimbursement for Construction Programs), and
 2. An SF-425 (Federal Financial Report).
- For non-construction projects, you must submit [FAA Form 5100-140, Performance Report](#) within 30 days of the end of the Federal fiscal year.
- For construction projects, you must submit [FAA Form 5370-1, Construction Progress and Inspection Report](#), within 30 days of the end of each Federal fiscal quarter.

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

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

FAA Contact Information. Sarah Young, (817) 222-5643, sarah.j.young@faa.gov is the assigned program manager for this grant and is readily available to assist you and your designated representative with the requirements stated herein.

We sincerely value your cooperation in these efforts and look forward to working with you to complete this important project.

Sincerely,

Justin Barker
Justin Barker (Aug 2, 2024 18:45 CDT)

Justin Barker
Manager



U.S. Department
of Transportation
Federal Aviation
Administration

**FY 2024 AIRPORT INFRASTRUCTURE GRANT
GRANT AGREEMENT
Part I - Offer**

Federal Award Offer Date	August 2, 2024
Airport/Planning Area	Alamogordo-White Sands Regional Airport
Airport Infrastructure Grant Number	3-35-0001-035-2024
Unique Entity Identifier	GK8LNMMJ3XN1
TO:	City of Alamogordo

(herein called the "Sponsor") (For Co-Sponsors, list all Co-Sponsor names. The word "Sponsor" in this Grant Agreement also applies to a Co-Sponsor.)

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

WHEREAS, the Sponsor has submitted to the FAA a Project Application dated June 17, 2024, for a grant of Federal funds for a project at or associated with the Alamogordo-White Sands Regional Airport, which is included as part of this Grant Agreement; and

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

Reseal Taxiway A Pavement

which is more fully described in the Project Application.

NOW THEREFORE, Pursuant to and for the purpose of carrying out the Infrastructure Investment and Jobs Act (Public Law 117-58) of 2021 referred to as the Bipartisan Infrastructure Law (BIL); and the representations contained in the Project Application; and in consideration of: (a) the Sponsor's adoption and ratification of the Grant Assurances attached hereto; (b) the Sponsor's acceptance of this Offer; and (c) the benefits to accrue to the United States and the public from the accomplishment of the Project and compliance with the Grant Assurance and conditions as herein provided;

THE FEDERAL AVIATION ADMINISTRATION, FOR AND ON BEHALF OF THE UNITED STATES, HEREBY OFFERS AND AGREES to pay (90) % of the allowable costs incurred accomplishing the Project as the United States share of the Project.

Assistance Listings Number (Formerly CFDA Number): 20.106

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

CONDITIONS

1. **Maximum Obligation.** The maximum obligation of the United States payable under this Offer is **\$448,000.**

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

\$448,000 for airport development or noise program implementation;

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

- a. Period of Performance:

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

- b. Budget Period:

1. For this Grant is 4 years (1,460 calendar days) and follows the same start and end date as the Period of Performance provided in paragraph 2(a)(1). Pursuant to 2 CFR § 200.403(h), the Sponsor may charge to the Grant only allowable costs incurred during the Budget Period. Eligible project-related costs incurred on or after November 15, 2021 that comply with all Federal funding procurement requirements and FAA standards are allowable costs.
2. Means the time interval from the start date of a funded portion of an award to the end date of that funded portion during which the Sponsor is authorized to expend the funds awarded, including any funds carried forward or other revisions pursuant to 2 CFR § 200.308.

- c. Close Out and Termination

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

2. The FAA may terminate this Grant, in whole or in part, in accordance with the conditions set forth in 2 CFR § 200.340, or other Federal regulatory or statutory authorities as applicable.
3. **Ineligible or Unallowable Costs.** The Sponsor must not include any costs in the project that the FAA has determined to be ineligible or unallowable.
4. **Indirect Costs - Sponsor.** The Sponsor may charge indirect costs under this award by applying the indirect cost rate identified in the project application as accepted by the FAA, to allowable costs for Sponsor direct salaries and wages.
5. **Determining the Final Federal Share of Costs.** The United States' share of allowable project costs will be made in accordance with 49 U.S.C. § 47109, the regulations, policies, and procedures of the Secretary of Transportation ("Secretary"), and any superseding legislation. Final determination of the United States' share will be based upon the final audit of the total amount of allowable project costs and settlement will be made for any upward or downward adjustments to the Federal share of costs.
6. **Completing the Project Without Delay and in Conformance with Requirements.** The Sponsor must carry out and complete the project without undue delays and in accordance with this Agreement, BIL (Public Law 117-58), the regulations, policies, and procedures of the Secretary. Per 2 CFR § 200.308, the Sponsor agrees to report and request prior FAA approval for any disengagement from performing the project that exceeds three months or a 25 percent reduction in time devoted to the project. The report must include a reason for the project stoppage. The Sponsor also agrees to comply with the grant assurances, which are part of this Agreement.
7. **Amendments or Withdrawals before Grant Acceptance.** The FAA reserves the right to amend or withdraw this offer at any time prior to its acceptance by the Sponsor.
8. **Offer Expiration Date.** This offer will expire and the United States will not be obligated to pay any part of the costs of the project unless this offer has been accepted by the Sponsor on or before **September 04, 2024**, or such subsequent date as may be prescribed in writing by the FAA.
9. **Improper Use of Federal Funds.** The Sponsor must take all steps, including litigation if necessary, to recover Federal funds spent fraudulently, wastefully, or in violation of Federal antitrust statutes, or misused in any other manner for any project upon which Federal funds have been expended. For the purposes of this Grant Agreement, the term "Federal funds" means funds however used or dispersed by the Sponsor, that were originally paid pursuant to this or any other Federal grant agreement. The Sponsor must obtain the approval of the Secretary as to any determination of the amount of the Federal share of such funds. The Sponsor must return the recovered Federal share, including funds recovered by settlement, order, or judgment, to the Secretary. The Sponsor must furnish to the Secretary, upon request, all documents and records pertaining to the determination of the amount of the Federal share or to any settlement, litigation, negotiation, or other efforts taken to recover such funds. All settlements or other final positions of the Sponsor, in court or otherwise, involving the recovery of such Federal share require advance approval by the Secretary.
10. **United States Not Liable for Damage or Injury.** The United States is not responsible or liable for damage to property or injury to persons which may arise from, or be incident to, compliance with this Grant Agreement.
11. **System for Award Management (SAM) Registration and Unique Entity Identifier (UEI).**
 - a. Requirement for System for Award Management (SAM): Unless the Sponsor is exempted from this requirement under 2 CFR § 25.110, the Sponsor must maintain the currency of its

information in the SAM until the Sponsor submits the final financial report required under this Grant, or receives the final payment, whichever is later. This requires that the Sponsor review and update the information at least annually after the initial registration and more frequently if required by changes in information or another award term. Additional information about registration procedures may be found at the SAM website (currently at <http://www.sam.gov>).

- b. Unique entity identifier (UEI) means a 12-character alpha-numeric value used to identify a specific commercial, nonprofit or governmental entity. A UEI may be obtained from SAM.gov at <https://sam.gov/content/entity-registration>.

12. **Electronic Grant Payment(s).** Unless otherwise directed by the FAA, the Sponsor must make each payment request under this Agreement electronically via the Delphi eInvoicing System for Department of Transportation (DOT) Financial Assistance Awardees.

13. **Informal Letter Amendment of BIL Projects.** If, during the life of the project, the FAA determines that the maximum grant obligation of the United States exceeds the expected needs of the Sponsor by \$25,000 or five percent (5%), whichever is greater, the FAA can issue a letter amendment to the Sponsor unilaterally reducing the maximum obligation.

The FAA can, subject to the availability of Federal funds, also issue a letter to the Sponsor increasing the maximum obligation if there is an overrun in the total actual eligible and allowable project costs to cover the amount of the overrun provided it will not exceed the statutory limitations for grant amendments. The FAA's authority to increase the maximum obligation does not apply to the "planning" component of Condition No. 1, Maximum Obligation.

The FAA can also issue an informal letter amendment that modifies the grant description to correct administrative errors or to delete work items if the FAA finds it advantageous and in the best interests of the United States.

An informal letter amendment has the same force and effect as a formal grant amendment.

14. **Environmental Standards.** The Sponsor is required to comply with all applicable environmental standards, as further defined in the Grant Assurances, for all projects in this grant. If the Sponsor fails to comply with this requirement, the FAA may suspend, cancel, or terminate this Grant Agreement.
15. **Financial Reporting and Payment Requirements.** The Sponsor will comply with all Federal financial reporting requirements and payment requirements, including submittal of timely and accurate reports.
16. **Buy American.** Unless otherwise approved in advance by the FAA, in accordance with 49 U.S.C. § 50101, the Sponsor will not acquire or permit any contractor or subcontractor to acquire any steel or manufactured goods produced outside the United States to be used for any project for which funds are provided under this Grant. The Sponsor will include a provision implementing Buy American in every contract and subcontract awarded under this Grant.
17. **Build America, Buy American.** The Sponsor must comply with the requirements under the Build America, Buy America Act (Public Law 117-58).
18. **Maximum Obligation Increase.** In accordance with 49 U.S.C. § 47108(b)(3), as amended, the maximum obligation of the United States, as stated in Condition No. 1, Maximum Obligation, of this Grant:
 - a. May not be increased for a planning project;

- b. May be increased by not more than 15 percent for development projects, if funds are available;
- c. May be increased by not more than the greater of the following for a land project, if funds are available:
 - 1. 15 percent; or
 - 2. 25 percent of the total increase in allowable project costs attributable to acquiring an interest in the land.

If the Sponsor requests an increase, any eligible increase in funding will be subject to the United States Government share as provided in BIL (Public Law 117-58), or other superseding legislation if applicable, for the fiscal year appropriation with which the increase is funded. The FAA is not responsible for the same Federal share provided herein for any amount increased over the initial grant amount. The FAA may adjust the Federal share as applicable through an informal letter of amendment.

19. Audits for Sponsors.

PUBLIC SPONSORS. The Sponsor must provide for a Single Audit or program-specific audit in accordance with 2 CFR Part 200. The Sponsor must submit the audit reporting package to the Federal Audit Clearinghouse on the Federal Audit Clearinghouse's Internet Data Entry System at <http://harvester.census.gov/facweb/>. Upon request of the FAA, the Sponsor shall provide one copy of the completed audit to the FAA. Sponsors that expend less than \$750,000 in Federal awards and are exempt from Federal audit requirements must make records available for review or audit by the appropriate Federal agency officials, State, and Government Accountability Office. The FAA and other appropriate Federal agencies may request additional information to meet all Federal audit requirements.

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

- a. Verify the non-Federal entity is eligible to participate in this Federal program by:
 - 1. Checking the Responsibility/Qualification records in the Federal Awardee Performance and Integrity Information System (FAPIIS) as maintained within the System for Award Management (SAM) to determine if the non-Federal entity is excluded or disqualified; or
 - 2. Collecting a certification statement from the non-Federal entity attesting they are not excluded or disqualified from participating; or
 - 3. Adding a clause or condition to covered transactions attesting the individual or firm are not excluded or disqualified from participating.
- b. Require prime contractors to comply with 2 CFR § 180.330 when entering into lower-tier transactions with their contractors and sub-contractors.
- c. Immediately disclose in writing to the FAA whenever (1) the Sponsor learns they have entered into a covered transaction with an ineligible entity or (2) the Public Sponsor suspends or debars a contractor, person, or entity.

21. Ban on Texting While Driving.

- a. In accordance with Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving, October 1, 2009, and DOT Order 3902.10, Text Messaging While Driving, December 30, 2009, the Sponsor is encouraged to:

1. Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving when performing any work for, or on behalf of, the Federal government, including work relating to a grant or subgrant.
2. Conduct workplace safety initiatives in a manner commensurate with the size of the business, such as:
 - i. Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and
 - ii. Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.
- b. The Sponsor must insert the substance of this clause on banning texting while driving in all subgrants, contracts, and subcontracts funded with this Grant.

22. Trafficking in Persons.

- a. *Posting of contact information.*
 1. The Sponsor must post the contact information of the national human trafficking hotline (including options to reach out to the hotline such as through phone, text, or TTY) in all public airport restrooms.
- b. *Provisions applicable to a recipient that is a private entity.*
 1. You as the recipient, your employees, subrecipients under this Grant, and subrecipients' employees may not:
 - i. Engage in severe forms of trafficking in persons during the period of time that the Grant and applicable conditions are in effect;
 - ii. Procure a commercial sex act during the period of time that the Grant and applicable conditions are in effect; or
 - iii. Use forced labor in the performance of the Grant or any subgrants under this Grant.
 2. We as the Federal awarding agency, may unilaterally terminate this Grant, without penalty, if you or a subrecipient that is a private entity –
 - i. Is determined to have violated a prohibition in paragraph (b) of this Grant Condition; or
 - ii. Has an employee who is determined by the agency official authorized to terminate the Grant to have violated a prohibition in paragraph (b) of this Grant Condition through conduct that is either –
 - a) Associated with performance under this Grant; or
 - b) Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR Part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 2 CFR Part 1200.
- c. *Provision applicable to a recipient other than a private entity.* We as the Federal awarding agency may unilaterally terminate this Grant, without penalty, if a subrecipient that is a private entity –

1. Is determined to have violated an applicable prohibition in paragraph (a) of this Grant Condition; or
 2. Has an employee who is determined by the agency official authorized to terminate the Grant to have violated an applicable prohibition in paragraph (a) of this Grant Condition through conduct that is either –
 - i. Associated with performance under this Grant; or
 - ii. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR Part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by our agency at 2 CFR Part 1200.
- d. *Provisions applicable to any recipient.*
1. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph (a) of this Grant Condition.
 2. Our right to terminate unilaterally that is described in paragraph (a) or (b) of this Grant Condition:
 - i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended [22 U.S.C. § 7104(g)], and
 - ii. Is in addition to all other remedies for noncompliance that are available to us under this Grant.
 3. You must include the requirements of paragraph (a) of this Grant Condition in any subgrant you make to a private entity.
- e. *Definitions.* For purposes of this Grant Condition:
1. “Employee” means either:
 - i. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this Grant; or
 - ii. Another person engaged in the performance of the project or program under this Grant and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.
 2. “Forced labor” means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
 3. “Private entity”:
 - i. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR § 175.25.
 - ii. Includes:
 - a) A nonprofit organization, including any nonprofit institute of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR § 175.25(b).

b) A for-profit organization.

4. "Severe forms of trafficking in persons," "commercial sex act," and "coercion" have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. § 7102).

23. **BIL Funded Work Included in a PFC Application.** Within 120 days of acceptance of this Grant Agreement, the Sponsor must submit to the FAA an amendment to any approved Passenger Facility Charge (PFC) application that contains an approved PFC project also covered under this Grant Agreement as described in the project application. The airport sponsor may not make any expenditure under this Grant Agreement until project work addressed under this Grant Agreement is removed from an approved PFC application by amendment.

24. **Exhibit "A" Property Map.** The Exhibit "A" Property Map dated March 27, 2023, is incorporated herein by reference or is submitted with the project application and made part of this Grant Agreement.

25. **Employee Protection from Reprisal.**

a. Prohibition of Reprisals.

1. In accordance with 41 U.S.C. § 4712, an employee of a Sponsor, grantee, subgrantee, contractor, or subcontractor may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body described in sub-paragraph (a)(2) below, information that the employee reasonably believes is evidence of:

- i. Gross mismanagement of a Federal grant;
- ii. Gross waste of Federal funds;
- iii. An abuse of authority relating to implementation or use of Federal funds;
- iv. A substantial and specific danger to public health or safety; or
- v. A violation of law, rule, or regulation related to a Federal grant.

2. Persons and bodies covered. The persons and bodies to which a disclosure by an employee is covered are as follows:

- i. A member of Congress or a representative of a committee of Congress;
- ii. An Inspector General;
- iii. The Government Accountability Office;
- iv. A Federal employee responsible for contract or grant oversight or management at the relevant agency;
- v. A court or grand jury;
- vi. A management official or other employee of the Sponsor, contractor, or subcontractor who has the responsibility to investigate, discover, or address misconduct; or
- vii. An authorized official of the Department of Justice or other law enforcement agency.

b. Investigation of Complaints.

1. Submission of Complaint. A person who believes that they have been subjected to a reprisal prohibited by paragraph (a) of this Condition may submit a complaint regarding the reprisal to the Office of Inspector General (OIG) for the U.S. Department of Transportation.

2. Time Limitation for Submittal of a Complaint. A complaint may not be brought under this subsection more than three years after the date on which the alleged reprisal took place.
 3. Required Actions of the Inspector General. Actions, limitations, and exceptions of the OIG's office are established under 41 U.S.C. § 4712(b).
- c. Remedy and Enforcement Authority.
1. Assumption of Rights to Civil Remedy. Upon receipt of an explanation of a decision not to conduct or continue an investigation by the OIG, the person submitting a complaint assumes the right to a civil remedy under 41 U.S.C. § 4712(c)(2).
26. **Prohibited Telecommunications and Video Surveillance Services and Equipment.** The Sponsor agrees to comply with mandatory standards and policies relating to use and procurement of certain telecommunications and video surveillance services or equipment in compliance with the National Defense Authorization Act [Public Law 115-232 § 889(f)(1)] and 2 CFR § 200.216.
27. **Title VI of the Civil Rights Act.** As a condition of a grant award, the Sponsor shall demonstrate that it complies with the provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq) and implementing regulations (49 CFR part 21), the Airport and Airway Improvement Act of 1982 (49 U.S.C. § 47123), the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 et seq.), the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101, et seq.), U.S. Department of Transportation and Federal Aviation Administration (FAA) Assurances, and other relevant civil rights statutes, regulations, or authorities. This may include, as applicable, providing a current Title VI Program Plan and a Community Participation Plan (alternatively may be called a Public Participation Plan) to the FAA for approval, in the format and according to the timeline required by the FAA, and other information about the communities that will be benefited and impacted by the project. A completed FAA Title VI Pre-Grant Award Checklist is also required for every grant application, unless excused by the FAA. The Sponsor shall affirmatively ensure that when carrying out any project supported by this grant that it complies with all federal nondiscrimination and civil rights laws based on race, color, national origin (including limited English proficiency), sex (including sexual orientation and gender identity), creed, age, disability, genetic information, or environmental justice in consideration for federal financial assistance. The Sponsor, who have not sufficiently demonstrated the conditions of compliance with civil rights requirements will be required to do so before receiving funds. The Department's and FAA's Office of Civil Rights may provide resources and technical assistance to recipients to ensure full and sustainable compliance with Federal civil rights requirements. Failure to comply with civil rights requirements will be considered a violation of the agreement or contract and be subject to any enforcement action as authorized by law.

SPECIAL CONDITIONS

28. **Disadvantaged Business Enterprise (DBE)/Airport Concessions Disadvantaged Business Enterprise (ACDBE) Program.** The Sponsor understands and agrees that the FAA will not make nor be obligated to make any payments on this Grant until the Sponsor has received from the FAA Office of Civil Rights approval of its DBE Program (reflecting compliance with 49 CFR Part 26), and, if applicable, its ACDBE program (reflecting compliance with 49 CFR Part 23).
29. **Pavement Maintenance Management Program.** The Sponsor agrees that it will implement an effective airport pavement maintenance management program as required by Airport Sponsor Grant Assurance 11, Pavement Preventive Maintenance-Management, which is codified at 49 U.S.C. § 47105(e). The Sponsor agrees that it will use the program for the useful life of any pavement constructed, reconstructed, rehabilitated, or repaired with Federal financial assistance at the airport. The Sponsor further agrees that the program will:
- a. Follow the current version of FAA Advisory Circular 150/5380-6, "Guidelines and Procedures for Maintenance of Airport Pavements," for specific guidelines and procedures for maintaining airport pavements, establishing an effective maintenance program, specific types of distress and its probable cause, inspection guidelines, and recommended methods of repair;
 - b. Detail the procedures to be followed to assure that proper pavement maintenance, both preventive and repair, is performed;
 - c. Include a Pavement Inventory, Inspection Schedule, Record Keeping, Information Retrieval, and Reference, meeting the following requirements:
 1. Pavement Inventory. The following must be depicted in an appropriate form and level of detail:
 - i. Location of all runways, taxiways, and aprons;
 - ii. Dimensions;
 - iii. Type of pavement; and,
 - iv. Year of construction or most recent major reconstruction, rehabilitation, or repair.
 2. Inspection Schedule.
 - i. Detailed Inspection. A detailed inspection must be performed at least once a year. If a history of recorded pavement deterioration is available, i.e., Pavement Condition Index (PCI) survey as set forth in the current version of Advisory Circular 150/5380-6, the frequency of inspections may be extended to three years.
 - ii. Drive-By Inspection. A drive-by inspection must be performed a minimum of once per month to detect unexpected changes in the pavement condition. For drive-by inspections, the date of inspection and any maintenance performed must be recorded.
 3. Record Keeping. Complete information on the findings of all detailed inspections and on the maintenance performed must be recorded and kept on file for a minimum of five years. The type of distress, location, and remedial action, scheduled or performed, must be documented. The minimum information is:
 - i. Inspection date;
 - ii. Location;

- iii. Distress types; and
 - iv. Maintenance scheduled or performed.
4. Information Retrieval System. The Sponsor must be able to retrieve the information and records produced by the pavement survey to provide a report to the FAA as may be required.

30. **Project Containing Paving Work in Excess of \$500,000.** The Sponsor agrees to:

- a. Furnish a construction management program to the FAA prior to the start of construction which details the measures and procedures to be used to comply with the quality control provisions of the construction contract, including, but not limited to, all quality control provisions and tests required by the Federal specifications. The program must include as a minimum:
 - 1. The name of the person representing the Sponsor who has overall responsibility for contract administration for the project and the authority to take necessary actions to comply with the contract;
 - 2. Names of testing laboratories and consulting engineer firms with quality control responsibilities on the project, together with a description of the services to be provided;
 - 3. Procedures for determining that the testing laboratories meet the requirements of the ASTM International standards on laboratory evaluation referenced in the contract specifications (i.e., ASTM D 3666, ASTM C 1077);
 - 4. Qualifications of engineering supervision and construction inspection personnel;
 - 5. A listing of all tests required by the contract specifications, including the type and frequency of tests to be taken, the method of sampling, the applicable test standard, and the acceptance criteria or tolerances permitted for each type of test; and
 - 6. Procedures for ensuring that the tests are taken in accordance with the program, that they are documented daily, and that the proper corrective actions, where necessary, are undertaken.
- b. Submit at completion of the project, a final test and quality assurance report documenting the summary results of all tests performed and highlighting those tests that indicated failure or that did not meet the applicable test standard. The report must include the pay reductions applied and the reasons for accepting any out-of-tolerance material. Submit interim test and quality assurance reports when requested by the FAA.
- c. Failure to provide a complete report as described above, or failure to perform such tests, will, absent any compelling justification, result in a reduction in Federal participation for costs incurred in connection with construction of the applicable pavement. Such reduction will be at the discretion of the FAA and will be based on the type or types of required tests not performed or not documented and will be commensurate with the proportion of applicable pavement with respect to the total pavement constructed under the Grant Agreement.
- d. The FAA, at its discretion, reserves the right to conduct independent tests and to reduce grant payments accordingly if such independent tests determine that Sponsor test results are inaccurate.

31. **Maintenance Project Life.** The Sponsor agrees that pavement maintenance is limited to those aircraft pavements that are in sufficiently sound condition that they do not warrant more extensive work, such as reconstruction or overlays in the immediate or near future. The Sponsor further agrees that Airport Improvement Program (AIP), Airport Infrastructure Grant (AIG), or supplemental appropriation funding for the pavements maintained under this project will not be requested for more substantial type rehabilitation (more substantial than periodic maintenance) for a 5-year period following the completion of this project unless the FAA determines that the rehabilitation or reconstruction is required for safety reasons.
32. **Plans and Specifications Prior to Bidding.** The Sponsor agrees that it will submit plans and specifications for FAA review prior to advertising for bids.
33. **Plans and Specifications Approval Based Upon Certification.** The FAA and the Sponsor agree that the FAA's approval of the Sponsor's Plans and Specification is based primarily upon the Sponsor's certification to carry out the project in accordance with policies, standards, and specifications approved by the FAA. The Sponsor understands that:
 - a. The Sponsor's certification does not relieve the Sponsor of the requirement to obtain prior FAA approval for modifications to published FAA airport development grant standards or to notify the FAA of any limitations to competition within the project;
 - b. The FAA's acceptance of a Sponsor's certification does not limit the FAA from reviewing appropriate project documentation for the purpose of validating the certification statements; and
 - c. If the FAA determines that the Sponsor has not complied with their certification statements, the FAA will review the associated project costs to determine whether such costs are allowable under this Grant and associated grants.
34. **Consultant Contract and Cost Analysis.** The Sponsor understands and agrees that no reimbursement will be made on the consultant contract portion of this Grant until the FAA has received the consultant contract, the Sponsor's analysis of costs, and the independent fee estimate.
35. **Buy American Executive Orders.** The Sponsor agrees to abide by applicable Executive Orders in effect at the time this Grant Agreement is executed, including Executive Order 14005, Ensuring the Future Is Made in All of America by All of America's Workers.
36. **Usable Unit of Development.** The FAA and the Sponsor agree this Grant only funds a portion of the overall project. The FAA makes no commitment of funding beyond what is provided herein. In accepting this award, the airport Sponsor understands and agrees that the work described in this Grant Agreement must be incorporated into a safe, useful, and usable unit of development completed within a reasonable timeframe [49 USC § 47106(a)(4)]. This safe, useful, usable unit of development must be completed regardless of whether the Sponsor receives any additional federal funding.

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

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

I declare under penalty of perjury that the foregoing is true and correct.¹

**UNITED STATES OF AMERICA
FEDERAL AVIATION ADMINISTRATION**

Justin Barker

Justin Barker (Aug 2, 2024 18:45 CDT)

(Signature)

Justin Barker

(Typed Name)

Manager, Louisiana/New Mexico ADO

(Title of FAA Official)

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

Part II - Acceptance

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

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

I declare under penalty of perjury that the foregoing is true and correct.²

Dated August 5, 2024

City of Alamogordo

(Name of Sponsor)

Rick Holden

Rick Holden (Aug 5, 2024 06:31 MDT)

(Signature of Sponsor's Authorized Official)

By: Rick Holden

(Typed Name of Sponsor's Authorized Official)

Title: City Manager

(Title of Sponsor's Authorized Official)

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

CERTIFICATE OF SPONSOR'S ATTORNEY

I, Ashley Smith, acting as Attorney for the Sponsor do hereby certify:

That in my opinion the Sponsor is empowered to enter into the foregoing Grant Agreement under the laws of the State of New Mexico. Further, I have examined the foregoing Grant Agreement and the actions taken by said Sponsor and Sponsor's official representative, who has been duly authorized to execute this Grant Agreement, which is in all respects due and proper and in accordance with the laws of the said State; the Infrastructure Investment and Jobs Act (Public Law 117-58) of 2021 referred to as the Bipartisan Infrastructure Law (BIL), Division J, Title VIII; and the representations contained in the Project Application. In addition, for grants involving projects to be carried out on property not owned by the Sponsor, there are no legal impediments that will prevent full performance by the Sponsor. Further, it is my opinion that the said Grant Agreement constitutes a legal and binding obligation of the Sponsor in accordance with the terms thereof.

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

I declare under penalty of perjury that the foregoing is true and correct.³

Dated at August 5, 2024

%}

By: 
 Ashley Smith (Aug 5, 2024 08:19 MDT)
 (Signature of Sponsor's Attorney)

³ Knowingly and willfully providing false information to the Federal government is a violation of 18 U.S.C. § 1001 (False Statements) and could subject you to fines, imprisonment, or both.

ASSURANCES

AIRPORT SPONSORS

A. General.

1. These assurances shall be complied with in the performance of grant agreements for airport development, airport planning, and noise compatibility program grants for airport sponsors.
2. These assurances are required to be submitted as part of the project application by sponsors requesting funds under the provisions of Public Law 117-58, Division J, Title VIII, as amended. As used herein, the term "public agency sponsor" means a public agency with control of a public-use airport; the term "private sponsor" means a private owner of a public-use airport; and the term "sponsor" includes both public agency sponsors and private sponsors.
3. Upon acceptance of this grant offer by the sponsor, these assurances are incorporated in and become part of this Grant Agreement.

B. Duration and Applicability.

1. **Airport development or Noise Compatibility Program Projects Undertaken by a Public Agency Sponsor.**

The terms, conditions and assurances of this Grant Agreement shall remain in full force and effect throughout the useful life of the facilities developed or equipment acquired for an airport development or noise compatibility program project, or throughout the useful life of the project items installed within a facility under a noise compatibility program project, but in any event not to exceed twenty (20) years from the date of acceptance of a grant offer of Federal funds for the project. However, there shall be no limit on the duration of the assurances regarding Exclusive Rights and Airport Revenue so long as the airport is used as an airport. There shall be no limit on the duration of the terms, conditions, and assurances with respect to real property acquired with federal funds. Furthermore, the duration of the Civil Rights assurance shall be specified in the assurances.

2. **Airport Development or Noise Compatibility Projects Undertaken by a Private Sponsor.**

The preceding paragraph (1) also applies to a private sponsor except that the useful life of project items installed within a facility or the useful life of the facilities developed or equipment acquired under an airport development or noise compatibility program project shall be no less than ten (10) years from the date of acceptance of Federal aid for the project.

3. **Airport Planning Undertaken by a Sponsor.**

Unless otherwise specified in this Grant Agreement, only Assurances 1, 2, 3, 5, 6, 13, 18, 23, 25, 30, 32, 33, 34, and 37 in Section C apply to planning projects. The terms, conditions, and assurances of this Grant Agreement shall remain in full force and effect during the life of the project; there shall be no limit on the duration of the assurances regarding Exclusive Rights and Airport Revenue so long as the airport is used as an airport.

C. Sponsor Certification.

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

1. General Federal Requirements

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

FEDERAL LEGISLATION

- a. 49 U.S.C. subtitle VII, as amended.
- b. Davis-Bacon Act, as amended — 40 U.S.C. §§ 3141-3144, 3146, and 3147, et seq.¹
- c. Federal Fair Labor Standards Act – 29 U.S.C. § 201, et seq.
- d. Hatch Act – 5 U.S.C. § 1501, et seq.²
- e. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. § 4601, et seq.^{1, 2}
- f. National Historic Preservation Act of 1966 – Section 106 – 54 U.S.C. § 306108.¹
- g. Archeological and Historic Preservation Act of 1974 – 54 U.S.C. § 312501, et seq.¹
- h. Native Americans Grave Repatriation Act – 25 U.S.C. § 3001, et seq.
- i. Clean Air Act, P.L. 90-148, as amended – 42 U.S.C. § 7401, et seq.
- j. Coastal Zone Management Act, P.L. 92-583, as amended – 16 U.S.C. § 1451, et seq.
- k. Flood Disaster Protection Act of 1973 – Section 102(a) - 42 U.S.C. § 4012a.¹
- l. 49 U.S.C. § 303, (formerly known as Section 4(f))
- m. Rehabilitation Act of 1973 – 29 U.S.C. § 794.
- n. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- o. Americans with Disabilities Act of 1990, as amended, (42 U.S.C. § 12101 et seq.) (prohibits discrimination on the basis of disability).
- p. Age Discrimination Act of 1975 – 42 U.S.C. § 6101, et seq.
- q. American Indian Religious Freedom Act, P.L. 95-341, as amended.
- r. Architectural Barriers Act of 1968, as amended – 42 U.S.C. § 4151, et seq.¹
- s. Powerplant and Industrial Fuel Use Act of 1978 – Section 403 – 42 U.S.C. § 8373.¹
- t. Contract Work Hours and Safety Standards Act – 40 U.S.C. § 3701, et seq.¹
- u. Copeland Anti-kickback Act – 18 U.S.C. § 874.¹
- v. National Environmental Policy Act of 1969 – 42 U.S.C. § 4321, et seq.¹
- w. Wild and Scenic Rivers Act, P.L. 90-542, as amended – 16 U.S.C. § 1271, et seq.
- x. Single Audit Act of 1984 – 31 U.S.C. § 7501, et seq.²

- y. Drug-Free Workplace Act of 1988 – 41 U.S.C. §§ 8101 through 8105.
- z. The Federal Funding Accountability and Transparency Act of 2006, as amended (Pub. L. 109-282, as amended by section 6202 of Pub. L. 110-252).
- aa. Civil Rights Restoration Act of 1987, P.L. 100-259.
- bb. Build America, Buy America Act, P.L. 117-58, Title IX.

EXECUTIVE ORDERS

- a. Executive Order 11246 – Equal Employment Opportunity¹
- b. Executive Order 11990 – Protection of Wetlands
- c. Executive Order 11998 – Flood Plain Management
- d. Executive Order 12372 – Intergovernmental Review of Federal Programs
- e. Executive Order 12699 – Seismic Safety of Federal and Federally Assisted New Building Construction¹
- f. Executive Order 12898 – Environmental Justice
- g. Executive Order 13166 – Improving Access to Services for Persons with Limited English Proficiency
- h. Executive Order 13985 – Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government
- i. Executive Order 13988 - Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation
- j. Executive Order 14005 – Ensuring the Future is Made in all of America by All of America’s Workers
- k. Executive Order 14008 – Tackling the Climate Crisis at Home and Abroad

FEDERAL REGULATIONS

- a. 2 CFR Part 180 – OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement).
- b. 2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. ^{4, 5}
- c. 2 CFR Part 1200 – Nonprocurement Suspension and Debarment.
- d. 14 CFR Part 13 – Investigative and Enforcement Procedures.
- e. 14 CFR Part 16 – Rules of Practice for Federally-Assisted Airport Enforcement Proceedings.
- f. 14 CFR Part 150 – Airport Noise Compatibility Planning.
- g. 28 CFR Part 35 – Nondiscrimination on the Basis of Disability in State and Local Government Services.
- h. 28 CFR § 50.3 – U.S. Department of Justice Guidelines for the Enforcement of Title VI of the Civil Rights Act of 1964.
- i. 29 CFR Part 1 – Procedures for Predetermination of Wage Rates.¹

- j. 29 CFR Part 3 – Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States.¹
- k. 29 CFR Part 5 – Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act).¹
- l. 41 CFR Part 60 – Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and Federally-assisted contracting requirements).¹
- m. 49 CFR Part 20 – New Restrictions on Lobbying.
- n. 49 CFR Part 21 – Nondiscrimination in Federally-Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964.
- o. 49 CFR Part 23 – Participation by Disadvantage Business Enterprise in Airport Concessions.
- p. 49 CFR Part 24 – Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs.^{1, 2}
- q. 49 CFR Part 26 – Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs.
- r. 49 CFR Part 27 – Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance.¹
- s. 49 CFR Part 28 – Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Transportation.
- t. 49 CFR Part 30 – Denial of Public Works Contracts to Suppliers of Goods and Services of Countries That Deny Procurement Market Access to U.S. Contractors.
- u. 49 CFR Part 32 – Governmentwide Requirements for Drug-Free Workplace (Financial Assistance).
- v. 49 CFR Part 37 – Transportation Services for Individuals with Disabilities (ADA).
- w. 49 CFR Part 38 – Americans with Disabilities Act (ADA) Accessibility Specifications for Transportation Vehicles.
- x. 49 CFR Part 41 – Seismic Safety.

FOOTNOTES TO ASSURANCE (C)(1)

¹ These laws do not apply to airport planning sponsors.

² These laws do not apply to private sponsors.

³ 2 CFR Part 200 contains requirements for State and Local Governments receiving Federal assistance. Any requirement levied upon State and Local Governments by this regulation shall apply where applicable to private sponsors receiving Federal assistance under Title 49, United States Code.

⁴ Cost principles established in 2 CFR part 200 subpart E must be used as guidelines for determining the eligibility of specific types of expenses.

⁵ Audit requirements established in 2 CFR part 200 subpart F are the guidelines for audits.

SPECIFIC ASSURANCES

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

2. Responsibility and Authority of the Sponsor.

a. Public Agency Sponsor:

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

b. Private Sponsor:

It has legal authority to apply for this Grant and to finance and carry out the proposed project and comply with all terms, conditions, and assurances of this Grant Agreement. It shall designate an official representative and shall in writing direct and authorize that person to file this application, including all understandings and assurances contained therein; to act in connection with this application; and to provide such additional information as may be required.

3. Sponsor Fund Availability.

It has sufficient funds available for that portion of the project costs which are not to be paid by the United States. It has sufficient funds available to assure operation and maintenance of items funded under this Grant Agreement which it will own or control.

4. Good Title.

- a. It, a public agency or the Federal government, holds good title, satisfactory to the Secretary, to the landing area of the airport or site thereof, or will give assurance satisfactory to the Secretary that good title will be acquired.
- b. For noise compatibility program projects to be carried out on the property of the sponsor, it holds good title satisfactory to the Secretary to that portion of the property upon which Federal funds will be expended or will give assurance to the Secretary that good title will be obtained.

5. Preserving Rights and Powers.

- a. It will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in this Grant Agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor. This shall be done in a manner acceptable to the Secretary.
- b. Subject to the FAA Act of 2018, Public Law 115-254, Section 163, it will not sell, lease, encumber, or otherwise transfer or dispose of any part of its title or other interests in the property shown on Exhibit A to this application or, for a noise compatibility program project, that portion of the property upon which Federal funds have been expended, for the duration of the terms, conditions, and assurances in this Grant Agreement without approval by the

Secretary. If the transferee is found by the Secretary to be eligible under Title 49, United States Code, to assume the obligations of this Grant Agreement and to have the power, authority, and financial resources to carry out all such obligations, the sponsor shall insert in the contract or document transferring or disposing of the sponsor's interest, and make binding upon the transferee all of the terms, conditions, and assurances contained in this Grant Agreement.

- c. For all noise compatibility program projects which are to be carried out by another unit of local government or are on property owned by a unit of local government other than the sponsor, it will enter into an agreement with that government. Except as otherwise specified by the Secretary, that agreement shall obligate that government to the same terms, conditions, and assurances that would be applicable to it if it applied directly to the FAA for a grant to undertake the noise compatibility program project. That agreement and changes thereto must be satisfactory to the Secretary. It will take steps to enforce this agreement against the local government if there is substantial non-compliance with the terms of the agreement.
- d. For noise compatibility program projects to be carried out on privately owned property, it will enter into an agreement with the owner of that property which includes provisions specified by the Secretary. It will take steps to enforce this agreement against the property owner whenever there is substantial non-compliance with the terms of the agreement.
- e. If the sponsor is a private sponsor, it will take steps satisfactory to the Secretary to ensure that the airport will continue to function as a public-use airport in accordance with these assurances for the duration of these assurances.
- f. If an arrangement is made for management and operation of the airport by any agency or person other than the sponsor or an employee of the sponsor, the sponsor will reserve sufficient rights and authority to ensure that the airport will be operated and maintained in accordance with Title 49, United States Code, the regulations and the terms, conditions and assurances in this Grant Agreement and shall ensure that such arrangement also requires compliance therewith.
- g. Sponsors of commercial service airports will not permit or enter into any arrangement that results in permission for the owner or tenant of a property used as a residence, or zoned for residential use, to taxi an aircraft between that property and any location on airport. Sponsors of general aviation airports entering into any arrangement that results in permission for the owner of residential real property adjacent to or near the airport must comply with the requirements of 49 U.S.C. § 47107(s) and the sponsor assurances.

6. Consistency with Local Plans.

The project is reasonably consistent with plans (existing at the time of submission of this application) of public agencies that are authorized by the State in which the project is located to plan for the development of the area surrounding the airport.

7. Consideration of Local Interest.

It has given fair consideration to the interest of communities in or near where the project may be located.

8. Consultation with Users.

In making a decision to undertake any airport development project under Title 49, United States Code, it has undertaken reasonable consultations with affected parties using the airport at which project is proposed.

9. Public Hearings.

In projects involving the location of an airport, an airport runway, or a major runway extension, it has afforded the opportunity for public hearings for the purpose of considering the economic, social, and environmental effects of the airport or runway location and its consistency with goals and objectives of such planning as has been carried out by the community and it shall, when requested by the Secretary, submit a copy of the transcript of such hearings to the Secretary. Further, for such projects, it has on its management board either voting representation from the communities where the project is located or has advised the communities that they have the right to petition the Secretary concerning a proposed project.

10. Metropolitan Planning Organization.

In projects involving the location of an airport, an airport runway, or a major runway extension at a medium or large hub airport, the sponsor has made available to and has provided upon request to the metropolitan planning organization in the area in which the airport is located, if any, a copy of the proposed amendment to the airport layout plan to depict the project and a copy of any airport master plan in which the project is described or depicted.

11. Pavement Preventive Maintenance.

With respect to a project approved after January 1, 1995, for the replacement or reconstruction of pavement at the airport, it assures or certifies that it has implemented an effective airport pavement maintenance-management program and it assures that it will use such program for the useful life of any pavement constructed, reconstructed or repaired with Federal financial assistance at the airport. It will provide such reports on pavement condition and pavement management programs as the Secretary determines may be useful.

12. Terminal Development Prerequisites.

For projects which include terminal development at a public use airport, as defined in Title 49, it has, on the date of submittal of the project grant application, all the safety equipment required for certification of such airport under 49 U.S.C. § 44706, and all the security equipment required by rule or regulation, and has provided for access to the passenger enplaning and deplaning area of such airport to passengers enplaning and deplaning from aircraft other than air carrier aircraft.

13. Accounting System, Audit, and Record Keeping Requirements.

- a. It shall keep all project accounts and records which fully disclose the amount and disposition by the recipient of the proceeds of this Grant, the total cost of the project in connection with which this Grant is given or used, and the amount or nature of that portion of the cost of the project supplied by other sources, and such other financial records pertinent to the project. The accounts and records shall be kept in accordance with an accounting system that will facilitate an effective audit in accordance with the Single Audit Act of 1984.
- b. It shall make available to the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, for the purpose of audit and examination, any books, documents, papers, and records of the recipient that are pertinent to this Grant. The Secretary may require that an appropriate audit be conducted by a recipient. In any case in which an independent audit is made of the accounts of a sponsor relating to the disposition of the proceeds of a grant or relating to the project in connection with which this Grant was given or used, it shall file a certified copy of such audit with the Comptroller General of the United

States not later than six (6) months following the close of the fiscal year for which the audit was made.

14. Minimum Wage Rates.

It shall include, in all contracts in excess of \$2,000 for work on any projects funded under this Grant Agreement which involve labor, provisions establishing minimum rates of wages, to be predetermined by the Secretary of Labor under 40 U.S.C. §§ 3141-3144, 3146, and 3147, Public Building, Property, and Works), which contractors shall pay to skilled and unskilled labor, and such minimum rates shall be stated in the invitation for bids and shall be included in proposals or bids for the work.

15. Veteran's Preference.

It shall include in all contracts for work on any project funded under this Grant Agreement which involve labor, such provisions as are necessary to insure that, in the employment of labor (except in executive, administrative, and supervisory positions), preference shall be given to Vietnam era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns owned and controlled by disabled veterans as defined in 49 U.S.C. § 47112. However, this preference shall apply only where the individuals are available and qualified to perform the work to which the employment relates.

16. Conformity to Plans and Specifications.

It will execute the project subject to plans, specifications, and schedules approved by the Secretary. Such plans, specifications, and schedules shall be submitted to the Secretary prior to commencement of site preparation, construction, or other performance under this Grant Agreement, and, upon approval of the Secretary, shall be incorporated into this Grant Agreement. Any modification to the approved plans, specifications, and schedules shall also be subject to approval of the Secretary, and incorporated into this Grant Agreement.

17. Construction Inspection and Approval.

It will provide and maintain competent technical supervision at the construction site throughout the project to assure that the work conforms to the plans, specifications, and schedules approved by the Secretary for the project. It shall subject the construction work on any project contained in an approved project application to inspection and approval by the Secretary and such work shall be in accordance with regulations and procedures prescribed by the Secretary. Such regulations and procedures shall require such cost and progress reporting by the sponsor or sponsors of such project as the Secretary shall deem necessary.

18. Planning Projects.

In carrying out planning projects:

- a. It will execute the project in accordance with the approved program narrative contained in the project application or with the modifications similarly approved.
- b. It will furnish the Secretary with such periodic reports as required pertaining to the planning project and planning work activities.
- c. It will include in all published material prepared in connection with the planning project a notice that the material was prepared under a grant provided by the United States.

- d. It will make such material available for examination by the public, and agrees that no material prepared with funds under this project shall be subject to copyright in the United States or any other country.
- e. It will give the Secretary unrestricted authority to publish, disclose, distribute, and otherwise use any of the material prepared in connection with this grant.
- f. It will grant the Secretary the right to disapprove the sponsor's employment of specific consultants and their subcontractors to do all or any part of this project as well as the right to disapprove the proposed scope and cost of professional services.
- g. It will grant the Secretary the right to disapprove the use of the sponsor's employees to do all or any part of the project.
- h. It understands and agrees that the Secretary's approval of this project grant or the Secretary's approval of any planning material developed as part of this grant does not constitute or imply any assurance or commitment on the part of the Secretary to approve any pending or future application for a Federal airport grant.

19. Operation and Maintenance.

- a. The airport and all facilities which are necessary to serve the aeronautical users of the airport, other than facilities owned or controlled by the United States, shall be operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable Federal, state, and local agencies for maintenance and operation. It will not cause or permit any activity or action thereon which would interfere with its use for airport purposes. It will suitably operate and maintain the airport and all facilities thereon or connected therewith, with due regard to climatic and flood conditions. Any proposal to temporarily close the airport for non-aeronautical purposes must first be approved by the Secretary. In furtherance of this assurance, the sponsor will have in effect arrangements for:
 - 1. Operating the airport's aeronautical facilities whenever required;
 - 2. Promptly marking and lighting hazards resulting from airport conditions, including temporary conditions; and
 - 3. Promptly notifying aviators of any condition affecting aeronautical use of the airport. Nothing contained herein shall be construed to require that the airport be operated for aeronautical use during temporary periods when snow, flood, or other climatic conditions interfere with such operation and maintenance. Further, nothing herein shall be construed as requiring the maintenance, repair, restoration, or replacement of any structure or facility which is substantially damaged or destroyed due to an act of God or other condition or circumstance beyond the control of the sponsor.
- b. It will suitably operate and maintain noise compatibility program items that it owns or controls upon which Federal funds have been expended.

20. Hazard Removal and Mitigation.

It will take appropriate action to assure that such terminal airspace as is required to protect instrument and visual operations to the airport (including established minimum flight altitudes) will be adequately cleared and protected by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.

21. Compatible Land Use.

It will take appropriate action, to the extent reasonable, including the adoption of zoning laws, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft. In addition, if the project is for noise compatibility program implementation, it will not cause or permit any change in land use, within its jurisdiction, that will reduce its compatibility, with respect to the airport, of the noise compatibility program measures upon which Federal funds have been expended.

22. Economic Nondiscrimination.

- a. It will make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.
- b. In any agreement, contract, lease, or other arrangement under which a right or privilege at the airport is granted to any person, firm, or corporation to conduct or to engage in any aeronautical activity for furnishing services to the public at the airport, the sponsor will insert and enforce provisions requiring the contractor to:
 1. Furnish said services on a reasonable, and not unjustly discriminatory, basis to all users thereof, and
 2. Charge reasonable, and not unjustly discriminatory, prices for each unit or service, provided that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.
- c. Each fixed-based operator at the airport shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other fixed-based operators making the same or similar uses of such airport and utilizing the same or similar facilities.
- d. Each air carrier using such airport shall have the right to service itself or to use any fixed-based operator that is authorized or permitted by the airport to serve any air carrier at such airport.
- e. Each air carrier using such airport (whether as a tenant, non-tenant, or subtenant of another air carrier tenant) shall be subject to such nondiscriminatory and substantially comparable rules, regulations, conditions, rates, fees, rentals, and other charges with respect to facilities directly and substantially related to providing air transportation as are applicable to all such air carriers which make similar use of such airport and utilize similar facilities, subject to reasonable classifications such as tenants or non-tenants and signatory carriers and non-signatory carriers. Classification or status as tenant or signatory shall not be unreasonably withheld by any airport provided an air carrier assumes obligations substantially similar to those already imposed on air carriers in such classification or status.
- f. It will not exercise or grant any right or privilege which operates to prevent any person, firm, or corporation operating aircraft on the airport from performing any services on its own aircraft with its own employees (including, but not limited to maintenance, repair, and fueling) that it may choose to perform.
- g. In the event the sponsor itself exercises any of the rights and privileges referred to in this assurance, the services involved will be provided on the same conditions as would apply to the furnishing of such services by commercial aeronautical service providers authorized by the sponsor under these provisions.

- h. The sponsor may establish such reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport.
- i. The sponsor may prohibit or limit any given type, kind or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public.

23. Exclusive Rights.

It will permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public. For purposes of this paragraph, the providing of the services at an airport by a single fixed-based operator shall not be construed as an exclusive right if both of the following apply:

- a. It would be unreasonably costly, burdensome, or impractical for more than one fixed-based operator to provide such services, and
- b. If allowing more than one fixed-based operator to provide such services would require the reduction of space leased pursuant to an existing agreement between such single fixed-based operator and such airport. It further agrees that it will not, either directly or indirectly, grant or permit any person, firm, or corporation, the exclusive right at the airport to conduct any aeronautical activities, including, but not limited to charter flights, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, air carrier operations, aircraft sales and services, sale of aviation petroleum products whether or not conducted in conjunction with other aeronautical activity, repair and maintenance of aircraft, sale of aircraft parts, and any other activities which because of their direct relationship to the operation of aircraft can be regarded as an aeronautical activity, and that it will terminate any exclusive right to conduct an aeronautical activity now existing at such an airport before the grant of any assistance under Title 49, United States Code.

24. Fee and Rental Structure.

It will maintain a fee and rental structure for the facilities and services at the airport which will make the airport as self-sustaining as possible under the circumstances existing at the particular airport, taking into account such factors as the volume of traffic and economy of collection. No part of the Federal share of an airport development, airport planning or noise compatibility project for which a Grant is made under Title 49, United States Code, the Airport and Airway Improvement Act of 1982, the Federal Airport Act or the Airport and Airway Development Act of 1970 shall be included in the rate basis in establishing fees, rates, and charges for users of that airport.

25. Airport Revenues.

- a. All revenues generated by the airport and any local taxes on aviation fuel established after December 30, 1987, will be expended by it for the capital or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the airport and which are directly and substantially related to the actual air transportation of passengers or property; or for noise mitigation purposes on or off the airport. The following exceptions apply to this paragraph:
 - 1. If covenants or assurances in debt obligations issued before September 3, 1982, by the owner or operator of the airport, or provisions enacted before September 3, 1982, in governing statutes controlling the owner or operator's financing, provide for the use of the

revenues from any of the airport owner or operator's facilities, including the airport, to support not only the airport but also the airport owner or operator's general debt obligations or other facilities, then this limitation on the use of all revenues generated by the airport (and, in the case of a public airport, local taxes on aviation fuel) shall not apply.

2. If the Secretary approves the sale of a privately owned airport to a public sponsor and provides funding for any portion of the public sponsor's acquisition of land, this limitation on the use of all revenues generated by the sale shall not apply to certain proceeds from the sale. This is conditioned on repayment to the Secretary by the private owner of an amount equal to the remaining unamortized portion (amortized over a 20-year period) of any airport improvement grant made to the private owner for any purpose other than land acquisition on or after October 1, 1996, plus an amount equal to the federal share of the current fair market value of any land acquired with an airport improvement grant made to that airport on or after October 1, 1996.
3. Certain revenue derived from or generated by mineral extraction, production, lease, or other means at a general aviation airport (as defined at 49 U.S.C. § 47102), if the FAA determines the airport sponsor meets the requirements set forth in Section 813 of Public Law 112-95.
- b. As part of the annual audit required under the Single Audit Act of 1984, the sponsor will direct that the audit will review, and the resulting audit report will provide an opinion concerning, the use of airport revenue and taxes in paragraph (a), and indicating whether funds paid or transferred to the owner or operator are paid or transferred in a manner consistent with Title 49, United States Code and any other applicable provision of law, including any regulation promulgated by the Secretary or Administrator.

26. Reports and Inspections.

It will:

- a. submit to the Secretary such annual or special financial and operations reports as the Secretary may reasonably request and make such reports available to the public; make available to the public at reasonable times and places a report of the airport budget in a format prescribed by the Secretary;
- b. for airport development projects, make the airport and all airport records and documents affecting the airport, including deeds, leases, operation and use agreements, regulations and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request;
- c. for noise compatibility program projects, make records and documents relating to the project and continued compliance with the terms, conditions, and assurances of this Grant Agreement including deeds, leases, agreements, regulations, and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request; and
- d. in a format and time prescribed by the Secretary, provide to the Secretary and make available to the public following each of its fiscal years, an annual report listing in detail:
 1. all amounts paid by the airport to any other unit of government and the purposes for which each such payment was made; and
 2. all services and property provided by the airport to other units of government and the amount of compensation received for provision of each such service and property.

27. Use by Government Aircraft.

It will make available all of the facilities of the airport developed with Federal financial assistance and all those usable for landing and takeoff of aircraft to the United States for use by Government aircraft in common with other aircraft at all times without charge, except, if the use by Government aircraft is substantial, charge may be made for a reasonable share, proportional to such use, for the cost of operating and maintaining the facilities used. Unless otherwise determined by the Secretary, or otherwise agreed to by the sponsor and the using agency, substantial use of an airport by Government aircraft will be considered to exist when operations of such aircraft are in excess of those which, in the opinion of the Secretary, would unduly interfere with use of the landing areas by other authorized aircraft, or during any calendar month that:

- a. Five (5) or more Government aircraft are regularly based at the airport or on land adjacent thereto; or
- b. The total number of movements (counting each landing as a movement) of Government aircraft is 300 or more, or the gross accumulative weight of Government aircraft using the airport (the total movement of Government aircraft multiplied by gross weights of such aircraft) is in excess of five million pounds.

28. Land for Federal Facilities.

It will furnish without cost to the Federal Government for use in connection with any air traffic control or air navigation activities, or weather-reporting and communication activities related to air traffic control, any areas of land or water, or estate therein as the Secretary considers necessary or desirable for construction, operation, and maintenance at Federal expense of space or facilities for such purposes. Such areas or any portion thereof will be made available as provided herein within four months after receipt of a written request from the Secretary.

29. Airport Layout Plan.

- a. Subject to the FAA Reauthorization Act of 2018, Public Law 115-254, Section 163, it will keep up to date at all times an airport layout plan of the airport showing:
 1. boundaries of the airport and all proposed additions thereto, together with the boundaries of all offsite areas owned or controlled by the sponsor for airport purposes and proposed additions thereto;
 2. the location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars and roads), including all proposed extensions and reductions of existing airport facilities;
 3. the location of all existing and proposed non-aviation areas and of all existing improvements thereon; and
 4. all proposed and existing access points used to taxi aircraft across the airport's property boundary.

Such airport layout plans and each amendment, revision, or modification thereof, shall be subject to the approval of the Secretary which approval shall be evidenced by the signature of a duly authorized representative of the Secretary on the face of the airport layout plan. The sponsor will not make or permit any changes or alterations in the airport or any of its facilities which are not in conformity with the airport layout plan as approved by the Secretary and

which might, in the opinion of the Secretary, adversely affect the safety, utility or efficiency of the airport.

- b. Subject to the FAA Reauthorization Act of 2018, Public Law 115-254, Section 163, if a change or alteration in the airport or the facilities is made which the Secretary determines adversely affects the safety, utility, or efficiency of any federally owned, leased, or funded property on or off the airport and which is not in conformity with the airport layout plan as approved by the Secretary, the owner or operator will, if requested, by the Secretary:
 1. eliminate such adverse effect in a manner approved by the Secretary; or
 2. bear all costs of relocating such property (or replacement thereof) to a site acceptable to the Secretary and all costs of restoring such property (or replacement thereof) to the level of safety, utility, efficiency, and cost of operation existing before the unapproved change in the airport or its facilities except in the case of a relocation or replacement of an existing airport facility due to a change in the Secretary's design standards beyond the control of the airport sponsor.

30. Civil Rights.

It will promptly take any measures necessary to ensure that no person in the United States shall, on the grounds of race, color, and national origin (including limited English proficiency) in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4); creed and sex (including sexual orientation and gender identity) per 49 U.S.C. § 47123 and related requirements; age per the Age Discrimination Act of 1975 and related requirements; or disability per the Americans with Disabilities Act of 1990 and related requirements, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in any program and activity conducted with, or benefiting from, funds received from this Grant.

- a. Using the definitions of activity, facility, and program as found and defined in 49 CFR §§ 21.23(b) and 21.23(e), the sponsor will facilitate all programs, operate all facilities, or conduct all programs in compliance with all non-discrimination requirements imposed by or pursuant to these assurances.
- b. Applicability
 1. Programs and Activities. If the sponsor has received a grant (or other federal assistance) for any of the sponsor's program or activities, these requirements extend to all of the sponsor's programs and activities.
 2. Facilities. Where it receives a grant or other federal financial assistance to construct, expand, renovate, remodel, alter, or acquire a facility, or part of a facility, the assurance extends to the entire facility and facilities operated in connection therewith.
 3. Real Property. Where the sponsor receives a grant or other Federal financial assistance in the form of, or for the acquisition of real property or an interest in real property, the assurance will extend to rights to space on, over, or under such property.
- c. Duration.

The sponsor agrees that it is obligated to this assurance for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or

structures or improvements thereon, in which case the assurance obligates the sponsor, or any transferee for the longer of the following periods:

1. So long as the airport is used as an airport, or for another purpose involving the provision of similar services or benefits; or
 2. So long as the sponsor retains ownership or possession of the property.
- d. Required Solicitation Language. It will include the following notification in all solicitations for bids, Requests For Proposals for work, or material under this Grant Agreement and in all proposals for agreements, including airport concessions, regardless of funding source:
- “The **(City of Alamogordo)**, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders or offerors that it will affirmatively ensure that for any contract entered into pursuant to this advertisement, [select businesses, or disadvantaged business enterprises or airport concession disadvantaged business enterprises] will be afforded full and fair opportunity to submit bids in response to this invitation and no businesses will be discriminated against on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in consideration for an award.”
- e. Required Contract Provisions.
1. It will insert the non-discrimination contract clauses requiring compliance with the acts and regulations relative to non-discrimination in Federally-assisted programs of the Department of Transportation (DOT), and incorporating the acts and regulations into the contracts by reference in every contract or agreement subject to the non-discrimination in Federally-assisted programs of the DOT acts and regulations.
 2. It will include a list of the pertinent non-discrimination authorities in every contract that is subject to the non-discrimination acts and regulations.
 3. It will insert non-discrimination contract clauses as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a sponsor.
 4. It will insert non-discrimination contract clauses prohibiting discrimination on the basis of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability as a covenant running with the land, in any future deeds, leases, license, permits, or similar instruments entered into by the sponsor with other parties:
 - a. For the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
 - b. For the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.
- f. It will provide for such methods of administration for the program as are found by the Secretary to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the acts, the regulations, and this assurance.

- g. It agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the acts, the regulations, and this assurance.

31. Disposal of Land.

- a. For land purchased under a grant for airport noise compatibility purposes, including land serving as a noise buffer, it will dispose of the land, when the land is no longer needed for such purposes, at fair market value, at the earliest practicable time. That portion of the proceeds of such disposition which is proportionate to the United States' share of acquisition of such land will be, at the discretion of the Secretary, (1) reinvested in another project at the airport, or (2) transferred to another eligible airport as prescribed by the Secretary. The Secretary shall give preference to the following, in descending order:
 - 1. Reinvestment in an approved noise compatibility project;
 - 2. Reinvestment in an approved project that is eligible for grant funding under 49 U.S.C. § 47117(e);
 - 3. Reinvestment in an approved airport development project that is eligible for grant funding under 49 U.S.C. § 47114, 47115, or 47117, or under Public Law 117-58, Division J, Title VIII; or
 - 4. Transfer to an eligible sponsor of another public airport to be reinvested in an approved noise compatibility project at that airport.

If land acquired under a grant for noise compatibility purposes is leased at fair market value and consistent with noise buffering purposes, the lease will not be considered a disposal of the land. Revenues derived from such a lease may be used for an approved airport development project that would otherwise be eligible for grant funding or any permitted use of airport revenue.

- b. For land purchased under a grant for airport development purposes (other than noise compatibility), it will, when the land is no longer needed for airport purposes, dispose of such land at fair market value or make available to the Secretary an amount equal to the United States' proportionate share of the fair market value of the land. That portion of the proceeds of such disposition which is proportionate to the United States' share of the cost of acquisition of such land will, upon application to the Secretary, be reinvested or transferred to another eligible airport as prescribed by the Secretary. The Secretary shall give preference to the following, in descending order:
 - 1. Reinvestment in an approved noise compatibility project;
 - 2. Reinvestment in an approved project that is eligible for grant funding under 49 U.S.C. § 47117(e);
 - 3. Reinvestment in an approved airport development project that is eligible for grant funding under 49 U.S.C. §§ 47114, 47115, or 47117, or under Public Law 117-58, Division J, Title VIII; or
 - 4. Transfer to an eligible sponsor of another public airport to be reinvested in an approved noise compatibility project at that airport.
- c. Land shall be considered to be needed for airport purposes under this assurance if (1) it may be needed for aeronautical purposes (including runway protection zones) or serve as noise buffer land, and (2) the revenue from interim uses of such land contributes to the financial self-

sufficiency of the airport. Further, land purchased with a grant received by an airport operator or owner before December 31, 1987, will be considered to be needed for airport purposes if the Secretary or Federal agency making such grant before December 31, 1987, was notified by the operator or owner of the uses of such land, did not object to such use, and the land continues to be used for that purpose, such use having commenced no later than December 15, 1989.

- d. Disposition of such land under (a), (b), or (c) will be subject to the retention or reservation of any interest or right therein necessary to ensure that such land will only be used for purposes which are compatible with noise levels associated with operation of the airport.

32. Engineering and Design Services.

If any phase of such project has received Federal funds under Chapter 471 subchapter 1 of Title 49 U.S.C., or Public Law 117-58, Division J, Title VIII it will award each contract, or sub-contract for program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design, engineering, surveying, mapping or related services in the same manner as a contract for architectural and engineering services is negotiated under Chapter 11 of Title 40 U.S.C., or an equivalent qualifications-based requirement prescribed for or by the sponsor of the airport.

33. Foreign Market Restrictions.

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

34. Policies, Standards, and Specifications.

It will carry out any project funded under a Bipartisan Infrastructure Law grant in accordance with policies, standards, and specifications approved by the Secretary including, but not limited to, current FAA Advisory Circulars (<https://www.faa.gov/airports/aip/media/aip-pfc-checklist.pdf>) for BIL projects as of June 17, 2024.

35. Relocation and Real Property Acquisition.

- a. It will be guided in acquiring real property, to the greatest extent practicable under State law, by the land acquisition policies in Subpart B of 49 CFR Part 24 and will pay or reimburse property owners for necessary expenses as specified in Subpart B.
- b. It will provide a relocation assistance program offering the services described in Subpart C of 49 CFR Part 24 and fair and reasonable relocation payments and assistance to displaced persons as required in Subpart D and E of 49 CFR Part 24.
- c. It will make available within a reasonable period of time prior to displacement, comparable replacement dwellings to displaced persons in accordance with Subpart E of 49 CFR Part 24.

36. Access By Intercity Buses.

The airport owner or operator will permit, to the maximum extent practicable, intercity buses or other modes of transportation to have access to the airport; however, it has no obligation to fund special facilities for intercity buses or for other modes of transportation.

37. Disadvantaged Business Enterprises.

The sponsor shall not discriminate on the basis of race, color, national origin, sex, in the award and performance of any DOT-assisted contract covered by 49 CFR Part 26, or in the award and performance of any concession activity contract covered by 49 CFR Part 23. In addition, the sponsor shall not discriminate on the basis of race, color, national origin or sex in the administration of its Disadvantaged Business Enterprise (DBE) and Airport Concessions Disadvantaged Business Enterprise (ACDBE) programs or the requirements of 49 CFR Parts 23 and 26. The sponsor shall take all necessary and reasonable steps under 49 CFR Parts 23 and 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts, and/or concession contracts. The sponsor's DBE and ACDBE programs, as required by 49 CFR Parts 26 and 23, and as approved by DOT, are incorporated by reference in this agreement. Implementation of these programs is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the sponsor of its failure to carry out its approved program, the Department may impose sanctions as provided for under Parts 26 and 23 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. § 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. §§ 3801-3809, 3812).

38. Hangar Construction.

If the airport owner or operator and a person who owns an aircraft agree that a hangar is to be constructed at the airport for the aircraft at the aircraft owner's expense, the airport owner or operator will grant to the aircraft owner for the hangar a long term lease that is subject to such terms and conditions on the hangar as the airport owner or operator may impose.

39. Competitive Access.

- a. If the airport owner or operator of a medium or large hub airport (as defined in 49 U.S.C. § 47102) has been unable to accommodate one or more requests by an air carrier for access to gates or other facilities at that airport in order to allow the air carrier to provide service to the airport or to expand service at the airport, the airport owner or operator shall transmit a report to the Secretary that:
 1. Describes the requests;
 2. Provides an explanation as to why the requests could not be accommodated; and
 3. Provides a time frame within which, if any, the airport will be able to accommodate the requests.
- b. Such report shall be due on either February 1 or August 1 of each year if the airport has been unable to accommodate the request(s) in the six month period prior to the applicable due date.

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 8/13/2024

Report Date: 08/06/2024

Report No: 14.

Submitted By: Deborah Osborne

Subject: Consider, and act upon, acceptance of NMDOT-AD grant award number ALM-2501 to Alamogordo-White Sands Regional Airport, in the amount of \$453,120, to Reseal Taxiway A Pavement. *(Troy Orr, Airport Manager)*

Fiscal Impact: \$50,347

Amount Budgeted: \$50,347

Fund: 091

Additional Fiscal Impact: City match in the amount of \$50,347.

Recommendation: Accept NMDOT-AD grant number ALM-25-01 to Alamogordo-White Sands Regional Airport

Background: Delta Airport Consultants submitted an application to the NMDOT-Aviation Division on behalf of Alamogordo-White Sands Regional Airport to request grant funding to reseal Taxiway A pavement. Subsequently, they were awarded grant number ALM-25-01, for the amount of \$453,120.00 This project will consist of a longitudinal crack repair on partial parallel Taxiway A, seal coat application on Taxiway A, Taxiway A4, and the connector to Taxiway A at the end of Runway 22. One bid in the amount of \$1,498,675 was received for this project. Two federal grants, one for \$448,000 and one for \$547,208 were received; a \$50,347 match from the City is required.

NEW MEXICO DEPARTMENT OF TRANSPORTATION
Aviation Grant Agreement Form



Date Jul 15, 2024

Project Location ALM - ALAMOGORDO MUNICIPAL AIRPORT

Sponsor ALAMOGORDO, CITY OF

Address 1376 EAST 9TH ST

City ALAMOGORDO

NM

Zip Code 88310

Participation FAA

Funding Breakdown FAA/STAT

Contract No. _____

Project No. ALM-25-01

Vendor No. 0000054303-5

Expiration Date _____

Purchase Order No: _____

AVIATION GRANT AGREEMENT

This Agreement is between the New Mexico Department of Transportation, acting through its Aviation Division (Department), and the Sponsor. This Agreement is effective pursuant to Section 7, below.

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

1. Purpose.

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

a. Project Description:

REHABILITATE TAXIWAY A (CONSTRUCTION)

b. Site of Development. The site of development is identified on the property map, attached as Exhibit A.

c. Funding. Below is the funding for the Project. The State's contribution is the maximum amount that the Department will contribute. Attached as Exhibit B is the engineer's cost estimate.

State	Sponsor	Other	Total
\$ 453,120	\$ 50,347	\$ 995,208	\$ 1,498,675

2. The Sponsor Shall:

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

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

3. The Department Shall:

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

4. Both Parties Agree:

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

5. Method of Payment - Reimbursement.

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

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

6. Accountability of Receipts and Disbursements.

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

7. Term.

The Agreement becomes effective upon signatures of all parties. The Agreement's effective date is the date opposite of the NMDOT Cabinet Secretary or Designee's signature on the signature page. This agreement shall expire two (2) years from the effective date, unless terminated pursuant to Sections 8 and 17, below.

8. Termination for Cause.

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

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

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

9. Disposition of Property.

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

10. Representations and Certification.

The Sponsor, by signing this Agreement, represents and certifies the following:

- a. Legal Authority - The Sponsor has the legal power and authority to: (1) do all things necessary in order to undertake and carry out the Project in conformity with the provisions stated in the New Mexico Aviation Act and Rules and Regulations pursuant thereto; (2) accept, receive and disburse grant funds from the State of New Mexico in aid of the Project; and (3) carry out all provisions stated in this Aviation Grant Agreement.
- b. Defaults - The Sponsor is not in default on any obligation to the State of New Mexico relative to the development, operation or maintenance of any airport or aviation project.
- c. Possible Disabilities - The Sponsor states, by execution of this Agreement, there are no facts or circumstance (including the existence of effective or proposed leases, use agreements, or other legal instruments affecting use of the airport or the existence of pending litigation or other legal proceedings) which in reasonable probability might make it impossible for the Sponsor to carry out and complete the Project.
- d. Land - The Sponsor holds the property interest in the areas of land which are to be developed or used as part of or in connection with the Project and is identified in a current Airport Property Map. The Sponsor further certifies that the aforementioned is based on a title examination by a qualified attorney or title company who has determined that the Sponsor holds the stated property interests.

11. Assurances.

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

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

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

12. Third Party Beneficiaries.

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

13. New Mexico Tort Claims Act.

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

14. Scope of Agreement.

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

15. Terms of this Agreement.

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

16. Equal Opportunity Compliance.

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

17. Appropriations and Authorizations of State and Federal Funds.

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

18. Severability.

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

19. Applicable Law.

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

20. Principal Contacts and Notices.

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

Address: New Mexico Department of Transportation - Aviation Division
3501 Access Rd C.
Albuquerque, NM 87106
General Office: (505) 795-1401
Fax: (505) 244-1790
E-mail: Aviation.Division@dot.nm.gov

Name VERONICA ORTEGA
Title COMMUNITY SERVICES DIRECTOR
Sponsor ALAMOGORDO, CITY OF
Address 1376 EAST 9TH ST
City ALAMOGORDO NM Zip Code 88310
Office Phone +1 (575) 439-4353 Fax
E-Mail vortega@ci.alamorgordo.nm.us

21. Amendment.

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

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

NEW MEXICO DEPARTMENT OF TRANSPORTATION

By: _____
Cabinet Secretary or Designee

Date: _____

Recommended by:

By: _____
Aviation Division Director
or Designee

Date: _____

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

By: _____
Assistant General Counsel

Date: _____

SPONSOR

Print Name: _____

By: _____

Date: _____

Title: _____

EXHIBIT A

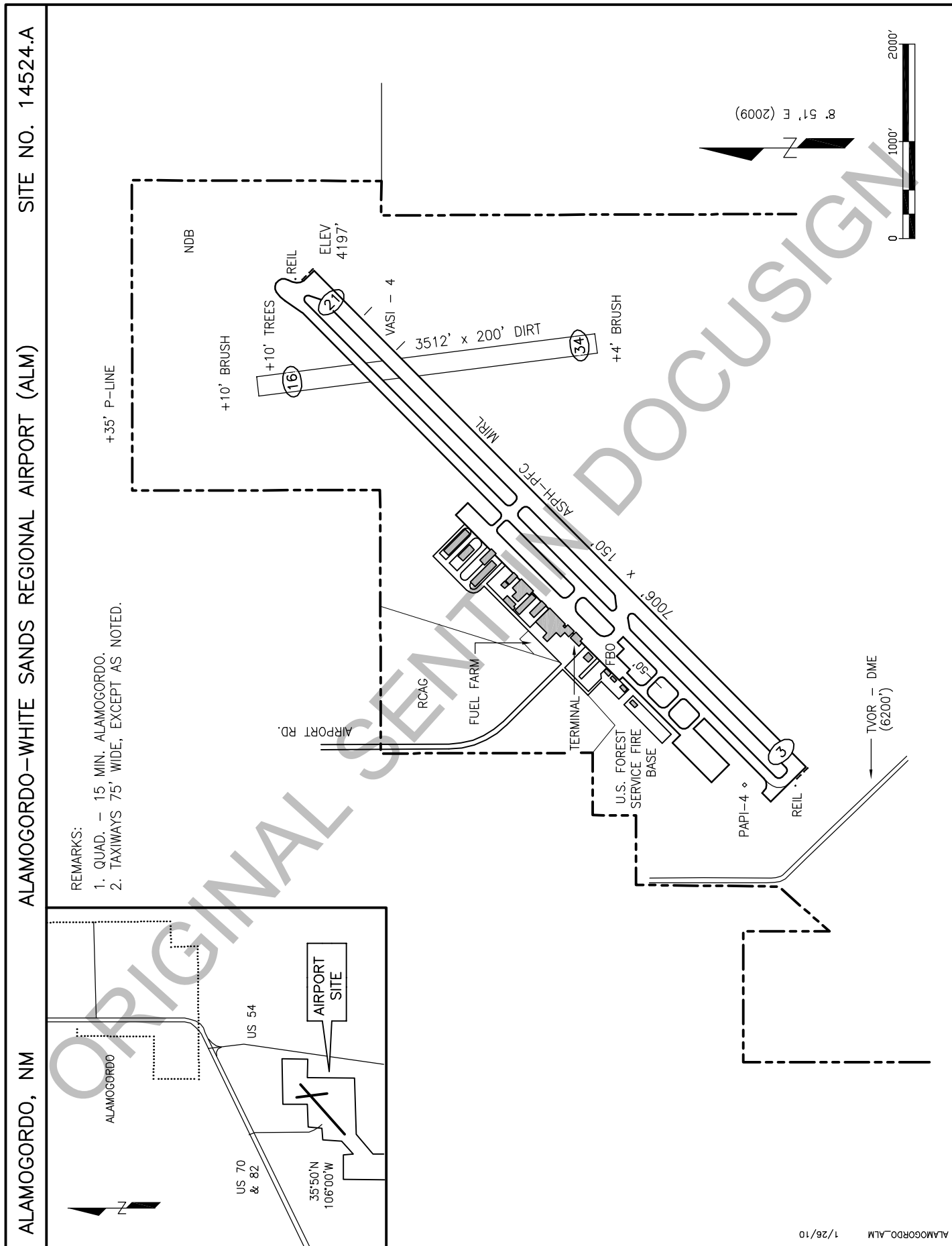


EXHIBIT B

LOCATION:
ALAMOGORDO WHITE SANDS REGIONAL AIRPORT

PROJECT:
REHABILITATE TAXIWAY A (CONSTRUCTION)

LAND ACQUISITION	
CONSTRUCTION	\$1,391,175
ENGINEERING	
ADMINISTRATIVE (DBE)	
INSPECTION	\$107,500
TESTING	
EQUIPMENT (SPECIFY)	
OTHER (PLANNING)	
TOTAL	\$1,498,675

REMARKS:
Total includes all NMGR T's

PROJECT COSTS: \$1,498,675

FAA Share (66.41%): \$995,208

STATE Share (30.23%): \$453,120

SPONSOR Share (3.36%): \$50,347

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 8/13/2024

Report Date: 08/06/2024

Report No: 15.

Submitted By: Britney Ybarra

Subject: Consider, and act upon, an agreement with Otero County for Alamo Senior Center services to County residents. The total amount budgeted is \$49,834.00 (\$29,334.00 for home-delivered meals and \$20,500.00 for transportation). (*Magdalena Morales, ASC Manager and Veronica Ortega, Community Services Director*)

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Total amount budgeted: \$49,834.00

Allocation for Home-delivered Meals: \$29,334.00

Allocation for Transportation: \$20,500.00

Recommendation: Approve the award of \$49,834.00 for Senior Center services to Otero County residents.

Background: This agreement is a memorandum of understanding providing home-delivered meals and transportation services to the residents of Otero County who reside outside the Alamogordo City limits. Otero County will award a total of \$49,834.00 (\$29,334.00 for home-delivered meals and \$20,500.00 for transportation)

ADMINISTRATION
1101 NEW YORK AVENUE
ALAMOGORDO, NM 88310



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

**Agreement for Reimbursable Community Services Funding
Between the Board of County Commissioners of
Otero County, New Mexico,
And
City of Alamogordo, Alamo Senior Center
Meals on Wheels Program**

I. General Provisions.

A. Parties

The parties to this agreement are:

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

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

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

C. Purpose

The purpose of this agreement for Otero County to provide community services funding to Recipient so that it may provide community services in Otero County in accordance with the legislative premise established by NMSA 4-38-13.2. These services are detailed in Exhibit A, which is attached to this agreement.

II. Essential Provisions.

A. Term & Effective Date

The term of this agreement shall be a term of one year, which shall be Otero County's fiscal year 2024.

This agreement shall commence upon July 1st, 2023, and this agreement shall terminate on June 30th, 2024, the last day of Otero County's fiscal year 2024.

This agreement is not renewable.

B. Amount of Funding

The parties agree that the community services reimbursable funding shall not exceed **\$29,334.00** for the fiscal year.

C. Payments

Otero County will make payments by check or warrant.

D. No Use of County Purchasing Department

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

E. Receipts for Payments

The Recipient agrees to submit receipts to Otero County for the reimbursement of payment paragraph II-C. The receipt shall reference this agreement's approved expenses, recipient's name, and the mailing address to which payment is to be sent. Receipts shall be sent to:

County of Otero
Attn: Sylvia Tillbrook, Contract Monitor
1101 New York Avenue
Alamogordo, New Mexico 88310

Receipts must be dated prior to June 30, 2025 and submitted to Otero County no later than 7/17/2025.

Recipient agrees to supply additional information to the Finance Department if the invoice information submitted is determined to be deficient. Such additional information shall be supplied by Recipient within fourteen days of the request.

F. Report on Activities

During the months of September 2024, December 2024, March 2025, and June 2025, in addition to Recipient's submission of receipts/invoices, an activities report shall be submitted to Otero County describing the use of funding during the corresponding quarter as described under this agreement. The receipts/invoices and the activities report must reflect the services provided to the community as outlined in the approved application.

The report shall be submitted to:

County of Otero
Attn: Sylvia Tillbrook, Contract Monitor
1101 New York Avenue
Alamogordo, New Mexico 88310

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

G. W-9 and Vendor ID Forms

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

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

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

H. No Receipts Accepted After June 30th, 2025

Recipient agrees that no request for payment shall be honored by Otero County if it is invoice documentation is dated after June 30th, 2025.

Recipient understands that Otero County must close its fiscal year on June 30th, 2025 and is unable to accept invoices dated after June 30th, 2025.

Recipient agrees that any receipts dated prior to July 1, 2025 or dated after June 30th, 2025 will be rejected.

Recipient agrees any request for payment received after July 17, 2025 will be rejected.

Recipient agrees that any balance under this agreement that was unpaid due to failure to submit timely requests for payment will be forfeited.

I. Non-transferrable

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

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

J. Termination

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

III. Compliance with Laws.

A. Taxes

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

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

Recipient agrees that upon demand of the County Commissioners, it shall provide evidence that it is current in its payment of Federal, State, and local taxes, including payments required under: (1) the Federal Insurance Contributions Act, 26 U.S.C. § 3101 et seq.; (2) the Unemployment Compensation Law, N.M.S.A. 1978, § 51-1-1 et seq.; (3) the Workers' Compensation Act, N.M.S.A. 1978, § 52-1-1 et seq.; and (4) the Gross Receipts and Compensating Tax Act, N.M.S.A. 1978, § 7-9-1 et seq. Recipient agrees to indemnify Otero County for any action against the Otero County arising from Recipient's failure to pay any tax or make any payment required by law.

B. Licenses and Permits

Recipient agrees to obtain all licenses or permits necessary for the conduct of its operations and will be solely responsible for the costs of the licenses or permits. Recipient agrees to indemnify Otero County against any action arising from Recipient's failure to obtain any licenses or permits. Recipient agrees to provide copies of all its licenses or permits to Otero County Commissioners upon demand.

C. Corporate Status

Recipient warrants that it is either (a) a non-profit corporation in good standing with the New Mexico Secretary of State or (b) a unit of a local government. If Recipient is a non-profit corporation, Recipient agrees that it shall keep its corporate status in good standing with the New Mexico Secretary of State. Recipient shall give Otero County notice of any change in its corporate status within fourteen days. Recipient agrees to provide Otero County a copy of a certificate of good standing upon demand.

D. Non-profit Tax Status

Recipient warrants that it has tax-exempt status with the Internal Revenue Service because it is either (a) a non-profit corporation certified as tax exempt under section 501(c)(3) of the Internal Revenue Code of 1986 or (b) a unit of a local government. If Recipient has tax-exempt status under section 501(c)(3) of the Internal Revenue Code of 1986, Recipient agrees that it shall keep this status with the Internal Revenue Service. Recipient shall give Otero County notice of any change in its tax-exempt status under the Internal Revenue Code of 1986 within fourteen days. Recipient agrees to provide Otero County proof of its tax status upon demand. Recipient agrees to provide Otero County with a copy of its Internal Revenue Service Form 990 or audited financial statements upon demand.

E. Anti-discrimination Laws

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

- 1) the Civil Rights Act of 1964, Pub. L. 88-352, 78 Stat. 741;
- 2) the Age Discrimination in Employment Act of 1967, Pub. L. 90-202, 81 Stat. 602;

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

F. Federal, State, and Local Laws

Recipient acknowledges that it is subject to Federal, state, and local laws and will comply with them.

Recipient agrees that will indemnify Otero County for any violation of Federal, state, or local law committed by it.

IV. Contract Interpretation Provisions.

A. Entire Agreement

The parties agree that this document constitutes the entire agreement between them and any prior agreements or understandings between them have been merged into this document.

B. Amendments

The parties agree that amendments to this agreement shall be done in writing and signed by representatives of them in the same manner that this contract was executed.

C. Severability

The parties agree that if any part of this agreement is found to be unenforceable under present laws or those enacted during the term of this agreement, then the illegal parts of this agreement shall be severed from the agreement and the remaining parts shall continue in force.

D. Waivers

No waiver or any breach or default by Recipient shall constitute a waiver of any subsequent default or breach by it.

E. Choice of Law

The parties agree that the laws of the State of New Mexico shall govern the interpretation of this agreement.

F. Forum-Selection

The parties agree that the exclusive forum for disputes under this agreement shall be the Twelfth Judicial District Court of the State of New Mexico sitting in Otero County. If the Twelfth Judicial District Court finds that the amount in question in the suit is below its jurisdictional limits, the parties agree that the exclusive forum for disputes

shall lie instead with the Otero County Magistrate Court.

G. Submission to Jurisdiction

The parties agree to submit to the jurisdiction of both the Twelfth Judicial District Court and the Otero County Magistrate Court.

H. Federal Court

The parties hereby waive their rights to file in or remove to Federal court any suit brought under this agreement.

J. Running of Time

If the deadline for any act required under this agreement falls upon a Saturday, Sunday, legal holiday, or other day that the Otero County offices are closed, then the act shall be timely if done on the next weekday that Otero County offices are open.

K. Non-appropriation

If the performance of Otero County is contingent upon sufficient appropriations and authorizations being made by the Legislature of New Mexico and sufficient appropriations and authorizations are not made by the Legislature of New Mexico, this agreement shall terminate upon written notice being provided by the Otero County to Recipient. Otero County's decision as to whether sufficient appropriations are available shall be accepted by Recipient and shall be final.

L. Status of Recipient

Recipient agrees that it is an independent contractor of Otero County.
Recipient agrees that none of its employees or volunteers are employees of Otero County and therefore they shall not be entitled to any salary or benefits from Otero County.

M. Notices

The parties agree to make any notices required under this agreement in writing. Any notices declaring a default or terminating this agreement shall be sent to the parties at the addresses below by the U.S. Postal Service or commercial carrier using a method of delivery that requires the addressee to sign for the item. Examples of such methods are certified mail, registered mail, and express mail.

Notices shall be sent to Otero County as follows:

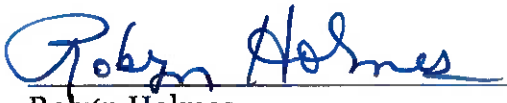
County of Otero
Attn: Sylvia Tillbrook, Contract Monitor
Otero County Administration Building
1101 New York Avenue
Alamogordo, New Mexico 88310

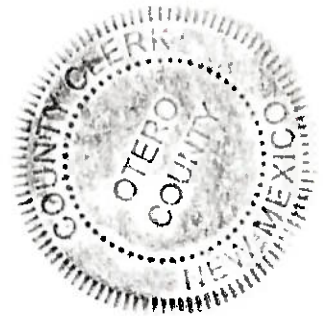
Notices shall be sent to Recipient as follows:

City of Alamogordo, Alamo Senior Center
Attn: Magdalena Morales
2201 Puerto Rico Avenue
Alamogordo, NM 88310

OTERO COUNTY, NEW MEXICO

By:  Date: 7-18-24
Pamela Heltner
County Manager

Attest:  (SEAL)
Robyn Holmes
Otero County Clerk



City of Alamogordo, Alamo Senior Center

By: _____ Date: _____
Authorized Representative

Exhibit A

Recipient agrees to provide community services as follows:

(See Attached Pages)

ADMINISTRATION
1101 NEW YORK AVENUE
ALAMOGORDO, NM 88310



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

**Agreement for Reimbursable Community Services Funding
Between the Board of County Commissioners of
Otero County, New Mexico,
and
City of Alamogordo, Alamo Senior Center
Transportation**

I. General Provisions.

A. Parties

The parties to this agreement are:

1. the Board of County Commissioners of Otero County, New Mexico, a political subdivision of the State of New Mexico established under N.M.S.A. 1978, § 4-19-1 (1899), to be referred to as "Otero County," and
2. **City of Alamogordo, Alamo Senior Center, Transportation** a unit of Local Government/A Local Non-profit, to be referred to as "Recipient."

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

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

C. Purpose

The purpose of this agreement for Otero County to provide community services funding to Recipient so that it may provide community services in Otero County in accordance with the legislative premise established by NMSA 4-38-13.2. These services are detailed in Exhibit A, which is attached to this agreement.

II. Essential Provisions.

A. Term & Effective Date

The term of this agreement shall be a term of one year, which shall be Otero County's fiscal year 2025.

This agreement shall commence upon July 1st, 2024, and this agreement shall terminate on June 30th, 2025, the last day of Otero County's fiscal year 2025. This agreement is not renewable.

B. Amount of Funding

The parties agree that the community services reimbursable funding shall not exceed **\$20,500.00** for the fiscal year.

C. Payments

Otero County will make payments by check or warrant.

D. No Use of County Purchasing Department

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

E. Receipts for Payments

The Recipient agrees to submit receipts to Otero County for the reimbursement of payment paragraph II-C. The receipt shall reference this agreement's approved expenses, recipient's name, and the mailing address to which payment is to be sent. Receipts shall be sent to:

County of Otero
Attn: Sylvia Tillbrook, Contract Monitor
1101 New York Avenue
Alamogordo, New Mexico 88310

Receipts must be dated prior to June 30, 2025 and submitted to Otero County no later than 7/17/2025.

Recipient agrees to supply additional information to the Finance Department if the invoice information submitted is determined to be deficient. Such additional information shall be supplied by the Recipient within fourteen days of the request.

F. Report on Activities

During the months of September 2024, December 2024, March 2025, and June 2025, in addition to Recipient's submission of receipts/invoices, an activities

report shall be submitted to Otero County describing the use of funding during the corresponding quarter as described under this agreement. The receipts/invoices and the activities report must reflect the services provided to the community as outlined in the approved application.

The report shall be submitted to:

County of Otero
Attn: Sylvia Tillbrook, Contract Monitor
1101 New York Avenue
Alamogordo, New Mexico 88310

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

G. W-9 and Vendor ID Forms

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

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

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

H. No Receipts Accepted After June 30th, 2025

Recipient agrees that no request for payment shall be honored by Otero County if it is invoice documentation is dated after June 30th, 2025.

Recipient understands that Otero County must close its fiscal year on June 30th, 2025 and is unable to accept invoices dated after June 30th, 2025.

Recipient agrees that any receipts dated prior to July 1, 2024 or dated after June 30th, 2025 will be rejected.

Recipient agrees any request for payment received after July 17, 2025 will be rejected.

Recipient agrees that any balance under this agreement that was unpaid due to failure to submit timely requests for payment will be forfeited.

I. Non-transferrable

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

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

J. Termination

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

III. Compliance with Laws.

A. Taxes

Recipient acknowledges that it may be subject to Federal, state, and local taxes. Recipient agrees that it is solely responsible for paying such taxes as well as any interest and penalties that may arise from its failure to do so.

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

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

B. Licenses and Permits

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

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

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

C. Corporate Status

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

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

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

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

D. Non-profit Tax Status

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

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

Internal Revenue Service.

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

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

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

E. Anti-discrimination Laws

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

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

F. Federal, State, and Local Laws

Recipient acknowledges that it is subject to Federal, state, and local laws and will comply with them.

Recipient agrees that will indemnify Otero County for any violation of Federal, state, or local law committed by it.

IV. Contract Interpretation Provisions.

A. Entire Agreement

The parties agree that this document constitutes the entire agreement between them and any prior agreements or understandings between them have been merged into this document.

B. Amendments

The parties agree that amendments to this agreement shall be done in writing and signed by representatives of them in the same manner that this contract was executed.

C. Severability

The parties agree that if any part of this agreement is found to be unenforceable

under present laws or those enacted during the term of this agreement, then the illegal parts of this agreement shall be severed from the agreement and the remaining parts shall continue in force.

D. Waivers

No waiver or any breach or default by Recipient shall constitute a waiver of any subsequent default or breach by it.

E. Choice of Law

The parties agree that the laws of the State of New Mexico shall govern the interpretation of this agreement.

F. Forum-Selection

The parties agree that the exclusive forum for disputes under this agreement shall be the Twelfth Judicial District Court of the State of New Mexico sitting in Otero County.

If the Twelfth Judicial District Court finds that the amount in question in the suit is below its jurisdictional limits, the parties agree that the exclusive forum for disputes shall lie instead with the Otero County Magistrate Court.

G. Submission to Jurisdiction

The parties agree to submit to the jurisdiction of both the Twelfth Judicial District Court and the Otero County Magistrate Court.

H. Federal Court

The parties hereby waive their rights to file in or remove to Federal court any suit brought under this agreement.

J. Running of Time

If the deadline for any act required under this agreement falls upon a Saturday, Sunday, legal holiday, or other day that the Otero County offices are closed, then the act shall be timely if done on the next weekday that Otero County offices are open.

K. Non-appropriation

If the performance of Otero County is contingent upon sufficient appropriations and authorizations being made by the Legislature of New Mexico and sufficient appropriations and authorizations are not made by the Legislature of New Mexico, this agreement shall terminate upon written notice being provided by the Otero County to Recipient. Otero County's decision as to whether sufficient appropriations are available shall be accepted by Recipient and shall be final.

L. Status of Recipient

Recipient agrees that it is an independent contractor of Otero County.

Recipient agrees that none of its employees or volunteers are employees of Otero

County and therefore they shall not be entitled to any salary or benefits from Otero County.

M. Notices

The parties agree to make any notices required under this agreement in writing. Any notices declaring a default or terminating this agreement shall be sent to the parties at the addresses below by the U.S. Postal Service or commercial carrier using a method of delivery that requires the addressee to sign for the item. Examples of such methods are certified mail, registered mail, and express mail.

Notices shall be sent to Otero County as follows:

County of Otero
Attn: Sylvia Tillbrook, Contract Monitor
Otero County Administration Building
1101 New York Avenue
Alamogordo, New Mexico 88310

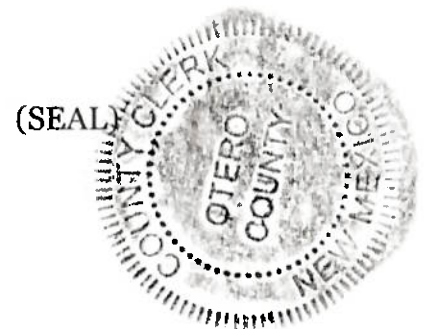
Notices shall be sent to Recipient as follows:

City of Alamogordo
Alamo Senior Center
Attn: Magdalena Morales
2201 Puerto Rico Avenue
Alamogordo, NM 88310

OTERO COUNTY, NEW MEXICO

By:  Date: 7-18-24
Pamela Heltner
County Manager

Attest: 
Robyn Holmes
Otero County Clerk



City of Alamogordo, Alamo Senior Center

By: _____ Date: _____
Authorized Representative

Exhibit A

Recipient agrees to provide community services as follows:

(See Attached Pages)

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 8/13/2024

Report Date: 08/06/2024

Report No: 16.

Submitted By: Stephanie Hernandez

Subject: Consider, and act upon, Ordinance 1706 for first publication, approving a loan agreement in the amount of 32,500,000 with the New Mexico Finance Authority for repairing, replacing, extending, and upgrading water and sewer infrastructure. *(Stephanie Hernandez, Assistant City Manager, Chris Muirhead, Modrall Sperling, and John Archuleta, Bosque Advisors)*

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation:

Background: All projects financed must be completed within 3 years. Below is a listing of projects identified as "immediate need" requiring upgrades, repairs, and replacements. List is subject to change. The project list will be provided before final publication.

1. PRV Installation Wright Streets and Hwy54
2. Reclaimed System SCADA Improvements
3. System SCADA Improvements
4. Water Distribution Upgrades (Granada Hills)
5. Water Distribution Upgrades (SMP FY22)
6. Water Pipeline Replacement First to Bypass
7. Water Pipeline Replacement Hwy 54 to Airport Road EastBound
8. Water Pipeline Replacement Hwy 54 To Airport Road West Bound
9. Welded Ground Storage Tank Renovation / Paint Callahan 2.2 MG
10. Welded Ground Storage Tank Renovation / Paint Lower Alamo 2.0 MG
11. Welded Ground Storage Tank Renovation / Paint Ocotillo 3.0 MG
12. Prather Standby Power
13. Meter Replacement Program

CITY OF ALAMOGORDO, NEW MEXICO
ORDINANCE NO. 1706

AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT BY AND BETWEEN THE CITY OF ALAMOGORDO, NEW MEXICO (THE "GOVERNMENTAL UNIT") AND THE NEW MEXICO FINANCE AUTHORITY (THE "FINANCE AUTHORITY"), EVIDENCING A SPECIAL, LIMITED OBLIGATION OF THE GOVERNMENTAL UNIT TO PAY A PRINCIPAL AMOUNT NOT TO EXCEED \$32,500,000, TOGETHER WITH INTEREST THEREON, FOR THE PURPOSE OF (1) ACQUIRING, EXTENDING, BETTERING, REPAIRING OR OTHERWISE IMPROVING THE GOVERNMENTAL UNIT'S JOINT UTILITY SYSTEM, (2) FUNDING A LOAN AGREEMENT RESERVE ACCOUNT; AND (3) PAYING EXPENSES; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE LOAN AGREEMENT SOLELY FROM THE NET REVENUES FROM THE GOVERNMENTAL UNIT'S JOINT UTILITY SYSTEM; APPROVING THE DELEGATION OF AUTHORITY TO MAKE CERTAIN DETERMINATIONS REGARDING THE LOAN AGREEMENT PURSUANT TO THE SUPPLEMENTAL PUBLIC SECURITIES ACT; RATIFYING ACTIONS HERETOFORE TAKEN; APPROVING THE FORMS OF THE LOAN AGREEMENT AND OTHER DETAILS CONCERNING THE LOAN AGREEMENT; REPEALING ALL ACTION INCONSISTENT WITH THIS ORDINANCE; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE LOAN AGREEMENT.

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

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

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

WHEREAS, the Governmental Unit may use the Net Revenues to finance the Project and the Project will provide for the public health, peace and safety of the Governmental Unit and its residents; and

WHEREAS, The Governmental Unit now owns, operates and maintains water and sewer facilities, which the Governmental Unit hereby declares shall be continued to be operated as a joint public utility; and

WHEREAS, the Governmental Unit has heretofore provided for the imposition of rates and charges against users of the System; and

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

WHEREAS, except as described in the Term Sheet, the Net Revenues have not heretofore been pledged to secure the payment of any obligation which is currently outstanding; and

WHEREAS, the Loan Agreement shall be a special, limited obligation of the Governmental Unit, payable solely from the Net Revenues and shall not constitute a general obligation of the Governmental Unit, or a debt or pledge of the faith and credit of the Governmental Unit or the State; and

WHEREAS, the Loan Agreement shall be executed and delivered pursuant to the Act, and with an irrevocable first lien, but not necessarily an exclusive first lien, on the Net Revenues; and

WHEREAS, the Governing Body intends by this Ordinance to authorize the execution and delivery of the Loan Agreement in the amount and for the purposes set forth herein; and

WHEREAS, there have been presented to the Governing Body and there presently are on file with the City Clerk this Ordinance and the form of the Loan Agreement, which are incorporated by reference and considered to be a part hereof; and

WHEREAS, the Governing Body hereby determines that the Project to be financed with the Loan is to be used for governmental purposes of the Governmental Unit and will not be used for purposes which would cause the Loan Agreement to be deemed a "private activity bond" as defined by the Internal Revenue Code of 1986, as amended; and

WHEREAS, pursuant to Sections 6-14-8 through 6-14-12 NMSA 1978, as amended (the "Supplemental Public Securities Act"), the Governing Body is authorized to adopt a Ordinance delegating to one or more of its members, officers, or employees the authority to sign a pricing certificate setting forth the terms of the Loan so long as such terms are within the parameters established by an authorizing ordinance or Ordinance adopted in conformity with the Supplemental Public Securities Act; and

WHEREAS, in order to allow the Governmental Unit flexibility, the Governing Body desires to grant to the Mayor and the City Manager or any other employee of the Governmental Unit when designated by a certificate signed by the Mayor (collectively, the "Designated Officers"), the authority (a) to determine any or all of the following terms of the Loan: (i) the interest and principal payment dates, (ii) the principal amounts, denominations, and maturity dates, (iii) the sale prices, (iv) the interest rates, (v) the interest payment periods, and (vi) the amount of underwriting discount, if any; and (b) to make any changes with respect thereto from those terms which were before the Governing Body at the time of adoption of this Ordinance, provided such terms do not exceed the parameters set forth for such terms in this Ordinance; and

WHEREAS, the Governmental Unit will approve the specific terms of the Loan and authorize execution of the Loan Agreement in a certification of the Designated Officers pursuant to the terms of this Ordinance as set forth in the Pricing Certificate; and

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

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF ALAMOGORDO THAT:

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

“Act” means the general laws of the State, including Sections 3-31-1 through 3-31-12 and Sections 6-21-1 through 6-21-31, NMSA 1978, as amended, and enactments of the Governing Body relating to the Loan Agreement, including this Ordinance.

“Aggregate Annual Debt Service Requirement” means the total principal and interest payments due and payable pursuant to the Loan Agreement and on all Parity Obligations secured by a pledge of any of the Net Revenues for any one Fiscal Year.

“Authorized Officers” means, in the case of the Governmental Unit, the Mayor, Finance Director and City Manager, and in the case of the Finance Authority the Chairman, Vice-Chairman and Secretary of the Board of Directors and the Chief Executive Officer or any other officer or employee of the Finance Authority designated in writing by an Authorized Officer.

“Bonds” means public project revolving fund revenue bonds, if any, issued hereafter by the Finance Authority to fund or reimburse the Loan Agreement.

“Closing Date” means the date of execution, delivery and funding of the Loan Agreement.

“Code” means the Internal Revenue Code of 1986, as amended, and the applicable regulations thereunder.

“Completion Date” means the date of final payment of the cost of the Project.

“Expenses” means the cost of issuance of the Loan Agreement and the Bonds, if any, and the periodic and regular fees and expenses incurred by the Finance Authority in administering the Loan Agreement, including legal fees.

“Finance Authority” means the New Mexico Finance Authority.

“Finance Authority Debt Service Account” means the debt service account in the name of the Governmental Unit within the Debt Service Fund as defined in the Indenture held and administered by the Finance Authority to pay principal and interest on the Loan Agreement as the same become due.

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

“Governing Body” means the City Commission of the Governmental Unit, and any future successor governing body of the Governmental Unit.

“Governmental Unit” means the City of Alamogordo, New Mexico.

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

“Indenture” means the General Indenture of Trust and Pledge dated as of June 1, 1995, as amended and supplemented, by and between the Finance Authority and the Trustee, as successor trustee, or the Subordinated General Indenture of Trust and Pledge dated as of March 1, 2005, as supplemented, by and between the Finance Authority and the Trustee, as successor trustee, as determined by the Finance Authority pursuant to a Pledge Notification or Supplemental Indenture (as defined in the Indenture).

“Joint Water and Sewer System,” “Joint System,” “System,” or “Utility” means the municipally owned public utility designated as the Governmental Unit's water system and sanitary sewer system (continued as a joint system) consisting of all properties, real, personal, mixed or otherwise, now owned or hereafter acquired by the Governmental Unit through purchase, construction or otherwise, and used in connection with said water system and sanitary sewer system of the Governmental Unit and in any way appertaining thereto, whether situated within or without the limits of the Governmental Unit.

“Loan” means the funds in the Loan Agreement Principal Amount to be loaned to the Governmental Unit by the Finance Authority pursuant to the Loan Agreement.

“Loan Agreement” means the Loan Agreement dated the Closing Date between the Finance Authority and the Governmental Unit which provides for the financing of the Project and requires payments by or on behalf of the Governmental Unit to the Finance Authority and/or the Trustee and any amendments or supplements thereto, and including the exhibits attached to the Loan Agreement.

“Loan Agreement Principal Amount” means the original principal amount of the Loan Agreement as shown on the Term Sheet and approved in the Pricing Certificate.

“Loan Agreement Reserve Account” means the loan agreement reserve account in the name of the Governmental Unit established under the Indenture, funded from the proceeds of the Loan Agreement, and administered by the Trustee pursuant to the Indenture.

“Loan Agreement Reserve Requirement” means, with respect to the Loan, the amount shown as the Loan Agreement Reserve Account Deposit on the Term Sheet, which amount shall not to exceed the least of (i) ten percent (10%) of the Loan Agreement Principal Amount, (ii) 125% of

the average annual principal and interest requirements under the Loan Agreement, or (iii) the maximum annual principal and interest requirements under the Loan Agreement.

“Net Revenues” means the gross revenues of the System after deducting Operation and Maintenance Expenses of the System that are pledged to payment of the Loan Agreement Payments pursuant to the Ordinance and described on the Term Sheet.

“NMSA 1978” means the New Mexico Statutes Annotated, 1978 compilation, as amended and supplemented.

“Operation and Maintenance Expenses” (or a phrase of similar import) means all reasonable and necessary current expenses of the Governmental Unit, paid or accrued, of operating, maintaining and repairing the System, and shall include, without limiting the generality of the foregoing, legal and overhead expense of the various Governmental Unit departments directly related and reasonably allocable to the administration of the System, insurance premiums, the reasonable charges of depository banks and paying agents, contractual services, professional services required by this ordinance, salaries and administrative expenses, labor, the cost of materials and supplies used for current operation, but shall not include any allowance for depreciation, liabilities incurred by the Governmental Unit as the result of its negligence in the operation of the System, extensions, enlargements or betterments, or any charges for the accumulation of reserves for capital replacements.

“Ordinance” means this Ordinance as adopted by the Governing Body on September __, 2024, approving the Loan Agreement and pledging the Net Revenues to the payment of the Loan Agreement, as amended from time to time.

“Parity Obligations” means the Loan Agreement and any other obligations, now outstanding or hereafter issued or incurred, payable from or secured by a lien or pledge of the Net Revenues and issued with a lien on the Net Revenues on parity with the Loan Agreement, including those obligations described on the Term Sheet, if any.

“Pricing Certificate” means one or more certificates executed by the Mayor, Finance Director, or City Manager pursuant to and as authorized by Section 6-14-10.2, NMSA 1978, setting forth the final terms of the Loan.

“Program Account” means the account in the name of the Governmental Unit established pursuant to the Indenture and held by the Trustee for the deposit of the net proceeds of the Loan Agreement for disbursement to the Governmental Unit for payment of the costs of the Project.

“Project” means acquiring, extending, bettering, repairing or otherwise improving the Governmental Unit’s Joint Utility System, funding the Loan Agreement Reserve Account, and paying Expenses.

“Revenues” or “gross revenues” from the System means all income and revenues derived by the Governmental Unit from the operation of the System, or any part thereof, whether resulting from extensions, enlargements or betterments to the System, or otherwise, and includes all revenues received by the Governmental Unit or any municipal corporation succeeding to the rights of the Governmental Unit from the System and from the sale and use of water, water service and facilities, sanitary sewer service and facilities, or any combination thereof to the inhabitants of the

Governmental Unit (including all territorial annexations which may be made while the Loan Agreement is outstanding), or from the sale and use of water, water service and facilities, sanitary sewer service and sewer facilities, and facilities or any combination thereof, by means of the System owned and operated by the Governmental Unit as the same may at any time exist to serve customers outside the Governmental Unit limits as well as customers within the Governmental Unit limits, and also means income derived from the investment of any money in any of the funds established herein or contained herein (but excluding such income from investments in the Rebate Fund) even though such investment income is to be credited to the particular fund from which such investment is made.

“State” means the State of New Mexico.

“Term Sheet” means Exhibit “A” to the Loan Agreement.

“Trustee” means BOKF, NA, Albuquerque, New Mexico, or any successor trust company, national or state banking association or financial institution at the time appointed the Trustee by the Finance Authority.

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

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

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

A. The Project is needed to meet the needs of the Governmental Unit and its residents and the execution and delivery of the Loan Agreement is necessary and advisable.

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

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

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

E. The Project and the execution and delivery of the Loan Agreement pursuant to the Act to provide funds for the financing of the Project are necessary and in the interest of the public health, safety, and welfare of the residents of the Governmental Unit.

F. The Governmental Unit will complete the Project, in whole or in part, with the net proceeds of the Loan.

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

H. The net effective interest rate on the Loan shall not exceed twelve percent (12.0%) per annum, which is the maximum rate permitted by State law.

Section 5. Loan Agreement - Authorization and Detail.

A. Authorization. This Ordinance has been adopted by the affirmative vote of a seventy-five percent majority of all of the members of the Governing Body. For the purpose of protecting the public health, conserving the property, protecting the general welfare and prosperity of the residents of the Governmental Unit and completing the Project, it is hereby declared necessary that the Governmental Unit, pursuant to the Act, execute and deliver the Loan Agreement evidencing a special, limited obligation of the Governmental Unit to pay a principal amount not to exceed \$32,500,000, plus interest, and the execution and delivery of the Loan Agreement are hereby authorized. The Governmental Unit shall use the proceeds of the Loan to (i) finance the Project, (ii) fund the Loan Agreement Reserve Account, and (iii) pay Expenses.

B. Detail. The Loan Agreement shall be in substantially the form presented at the meeting of the Governing Body at which this Ordinance was adopted. The Loan shall be in an aggregate principal amount not to exceed \$32,500,000, shall be payable in installments of principal due on May 1 of the years designated in Exhibit "B" to the Loan Agreement and bear interest payable on May 1 and November 1 of each year, commencing on May 1, 2025 at the rates designated in Exhibit "B" to the Loan Agreement, all as approved in the Pricing Certificate. The Loan shall be placed in a private sale at par and shall have a maximum term of 30 years. The underwriter's discount for the Loan shall not exceed 2% of the par amount of the Loan.

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

Section 7. Special Limited Obligation. The Loan Agreement shall be secured by the pledge of the Net Revenues as set forth in the Loan Agreement and this Ordinance and shall be payable solely from the Net Revenues. The Loan Agreement, together with interest thereon and other obligations of the Governmental Unit thereunder, shall be a special, limited obligation of the Governmental Unit, payable solely from the Net Revenues as provided in this Ordinance and the Loan Agreement and shall not constitute a general obligation of the Governmental Unit or the State, and the holders of the Loan Agreement may not look to any general or other fund of the Governmental Unit for payment of the obligations thereunder. Nothing contained in this Ordinance or in the Loan Agreement, or any other instruments, shall be construed as obligating the Governmental Unit (except with respect to the application of the Net Revenues), as incurring a pecuniary liability or a charge upon the general credit of the Governmental Unit or against its taxing

power, nor shall a breach of any agreement contained in this Ordinance, the Loan Agreement, or any other instrument impose any pecuniary liability upon the Governmental Unit or any charge upon its general credit or against its taxing power. The Loan Agreement shall never constitute an indebtedness of the Governmental Unit within the meaning of any State constitutional provision or statutory limitation and shall never constitute or give rise to a pecuniary liability of the Governmental Unit or a charge against its general credit or taxing power. Nothing herein shall prevent the Governmental Unit from applying other funds of the Governmental Unit legally available therefor to payments required by the Loan Agreement, in its sole and absolute discretion.

Section 8. Disposition of Proceeds: Completion of the Project.

A. Program Account, Finance Authority Debt Service Account and Loan Agreement Reserve Account. The Governmental Unit hereby consents to creation of the Finance Authority Debt Service Account to be held and maintained by the Finance Authority and to the Program Account and Loan Agreement Reserve Account to be held and maintained by the Trustee pursuant to the Indenture, each in connection with the Loan. The Governmental Unit hereby approves: (i) the deposit of a portion of the proceeds of the Loan Agreement in the Program Account as set forth in the Term Sheet; (ii) the deposit of a portion of the proceeds of the Loan Agreement in the amount of the Loan Agreement Reserve Requirement in the Loan Agreement Reserve Account as set forth in the Term Sheet; and (iii) the payment of Expenses, all as set forth in the Term Sheet.

The proceeds derived from the execution and delivery of the Loan Agreement shall be deposited promptly upon the receipt thereof in the Program Account, Finance Authority Debt Service Account and Loan Agreement Reserve Account, all as provided in the Loan Agreement and the Indenture.

The money in the Program Account shall be used and paid out solely for the purpose of completing the Project in compliance with applicable law and the provisions of the Loan Agreement and the Indenture.

The Governmental Unit will complete the Project with all due diligence.

B. Completion of the Project. Upon the Completion Date, the Governmental Unit shall execute and send to the Finance Authority a certificate stating that payment for the Project has been completed. As soon as practicable after the Completion Date, and, in any event, not more than sixty (60) days from the Completion Date, any balance remaining in the Program Account shall be transferred and deposited into the Finance Authority Debt Service Account, as provided in the Loan Agreement and the Indenture.

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

Section 9. Deposit of Net Revenues, Distributions of the Net Revenues and Flow of Funds.

A. Deposit of Net Revenues. Net Revenues shall be paid directly by the Governmental Unit to the Finance Authority for deposit in the Finance Authority Debt Service Account and remittance to the Trustee in an amount sufficient to pay principal, interest, premium, if any, and other amounts due under the Loan Agreement, including sufficient Net Revenues in the Loan Agreement Reserve Account to maintain the Loan Agreement Reserve Requirement.

B. Termination on Deposits to Maturity. No payment shall be made into the Finance Authority Debt Service Account if the amounts in the Finance Authority Debt Service Account and Loan Agreement Reserve Account total a sum at least equal to the entire aggregate amount to become due as to principal and interest on, and any other amounts due under, the Loan Agreement in which case moneys in such accounts in an amount at least equal to such principal and interest requirements shall be used solely to pay such obligations as the same become due, and any moneys in excess thereof in such accounts shall be transferred to the Governmental Unit and used as provided below.

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

Section 10. Lien on Net Revenues. Pursuant to this Ordinance and the Loan Agreement, the Net Revenues are hereby authorized to be pledged to, and are hereby pledged, and the Governmental Unit grants a security interest therein for, the payment of the principal, interest, and any other amounts due under the Loan Agreement subject to the uses thereof permitted by and the priorities set forth in this Ordinance. The Loan Agreement constitutes an irrevocable and first lien, but not necessarily an exclusive first lien, on the Net Revenues with the lien thereon of the Parity Obligations as set forth herein and in the Loan Agreement. The Governmental Unit shall not create a lien on the Net Revenues superior to that of the Loan Agreement.

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

Pursuant to the Supplemental Public Securities Act, Section 6-14-8 et seq., NMSA 1978, the Mayor, Finance Director, and City Manager are each hereby delegated authority to accept and to determine any or all of the final terms of the Loan Agreement and to execute the Pricing Certificate, subject to the parameters and conditions contained in this Ordinance. The Mayor, Finance Director,

or City Manager shall present the Pricing Certificate and the final terms of the Loan Agreement to the Governing Body in a timely manner, before or after execution and delivery of the Loan Agreement, at a regularly scheduled public meeting of the Governing Body.

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

Section 13. Ordinance Irrepealable. After the Loan Agreement has been executed and delivered, this Ordinance shall be and remain irrepealable until all obligations due under the Loan Agreement shall be fully paid, canceled and discharged, as provided therein.

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

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

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

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

(Form of Summary of Ordinance for Publication)

City of Alamogordo, New Mexico
Notice of Adoption of Ordinance

Notice is hereby given of the title and of a general summary of the subject matter contained in Ordinance No. _____ duly adopted and approved by the City Commission of the City of Alamogordo, New Mexico, on September __, 2024. A complete copy of the Ordinance is available for public inspection during the normal and regular business hours of the City Clerk, 1376 East Ninth Street, Alamogordo, New Mexico.

CITY OF ALAMOGORDO, NEW MEXICO
ORDINANCE NO. 1706

AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT BY AND BETWEEN THE CITY OF ALAMOGORDO, NEW MEXICO (THE “GOVERNMENTAL UNIT”) AND THE NEW MEXICO FINANCE AUTHORITY (THE “FINANCE AUTHORITY”), EVIDENCING A SPECIAL, LIMITED OBLIGATION OF THE GOVERNMENTAL UNIT TO PAY A PRINCIPAL AMOUNT NOT TO EXCEED \$32,500,000, TOGETHER WITH INTEREST THEREON, FOR THE PURPOSE OF (1) ACQUIRING, EXTENDING, BETTERING, REPAIRING OR OTHERWISE IMPROVING THE GOVERNMENTAL UNIT’S JOINT UTILITY SYSTEM, (2) FUNDING A LOAN AGREEMENT RESERVE ACCOUNT; AND (3) PAYING EXPENSES; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE LOAN AGREEMENT SOLELY FROM THE NET REVENUES FROM THE GOVERNMENTAL UNIT’S JOINT UTILITY SYSTEM; APPROVING THE DELEGATION OF AUTHORITY TO MAKE CERTAIN DETERMINATIONS REGARDING THE LOAN AGREEMENT PURSUANT TO THE SUPPLEMENTAL PUBLIC SECURITIES ACT; RATIFYING ACTIONS HERETOFORE TAKEN; APPROVING THE FORMS OF THE LOAN AGREEMENT AND OTHER DETAILS CONCERNING THE LOAN AGREEMENT; REPEALING ALL ACTION INCONSISTENT WITH THIS ORDINANCE; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE LOAN AGREEMENT.

(End of Form of Summary for Publication)

(Signature Page Follows)

PASSED, APPROVED AND ADOPTED THIS ____ DAY OF SEPTEMBER, 2024.

CITY OF ALAMOGORDO, NEW MEXICO

ATTEST:

Susan L. Payne, Mayor

Rachel Hughs, City Clerk

APPROVED AS TO FORM:

Ashley Smith, City Attorney

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 8/13/2024

Report Date: 08/06/2024

Report No: 17.

Submitted By: Stephanie Hernandez

Subject: Consider, and act upon, Resolution 2024-56, approving the location of the City of Alamogordo's F-4 Fighter Jet. (*Rick Holden, City Manager, and Stephanie Hernandez, Assistant City Manager*) (**Roll Call Vote Required**)

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation:

Background:

RESOLUTION NO. 2024-56

A RESOLUTION REQUESTING APPROVAL OF THE LOCATION FOR THE ALAMOGORDO'S F-4 FIGHTER JET

WHEREAS The City of Alamogordo Commission voted unanimously on January 30, 2018, to sign a letter to the General Services Administration (GSA) requesting two QF-4E aircraft from Holloman Air Force Base for use as static displays at Alameda Park and Alamogordo Airport; and

WHEREAS the City of Alamogordo was authorized to receive one static display F-4 Fighter Jet; and

WHEREAS on March 28, 2018, the City of Alamogordo received an invoice and transfer order from the General Services Administration Surplus Property; and

WHEREAS, the City of Alamogordo authorized a purchase order from Fund 91, known as the Airport Fund, in the amount of \$2,500; and

WHEREAS, the former City Manager signed the conditional transfer document agreeing to place the property in use for the stated purpose of a static display no later than 12 months; and

WHEREAS, the City received the plane and placed it at a location at the White Sands Regional Airport-Alamogordo; and

WHEREAS, in 2022, City management worked with the New Mexico Department of Transportation to obtain Right of Way access to erect a City of Alamogordo Gateway Monument and entered into an agreement; and

WHEREAS in 2023, the Airport Advisory Board expressed a desire to revisit the placement of the F-4 Fighter Jet at a more prominent location; and

WHEREAS, in 2023, an action committee was formed at the request of the City Manager to determine the best location and provide a plan to the City Commission; and

WHEREAS, it is the recommendation of the F-4 Action Committee to place the F-4 Fighter Jet at the intersection of Highway 54 and Highway 70, as detailed in the attached Exhibit A;

NOW, THEREFORE, BE IT RESOLVED BY THE ALAMOGORDO CITY COMMISSION

1. **Approval of Location:** The City Commission approves the intersection of Highway 54 and Highway 70 as the new location for the F-4 Fighter Jet static display.
- **Authorization to City Manager:** The City Manager is authorized to negotiate all appropriate contracts, Memoranda of Understanding (MOUs), and required documentation to facilitate the placement of the F-4 Fighter Jet at the approved location.

PASSED, APPROVED AND ADOPTED this _____ day of _____, 2024.

CITY OF ALAMOGORDO, NEW MEXICO
a New Mexico municipal corporation

By: _____
Susan L. Payne, Mayor

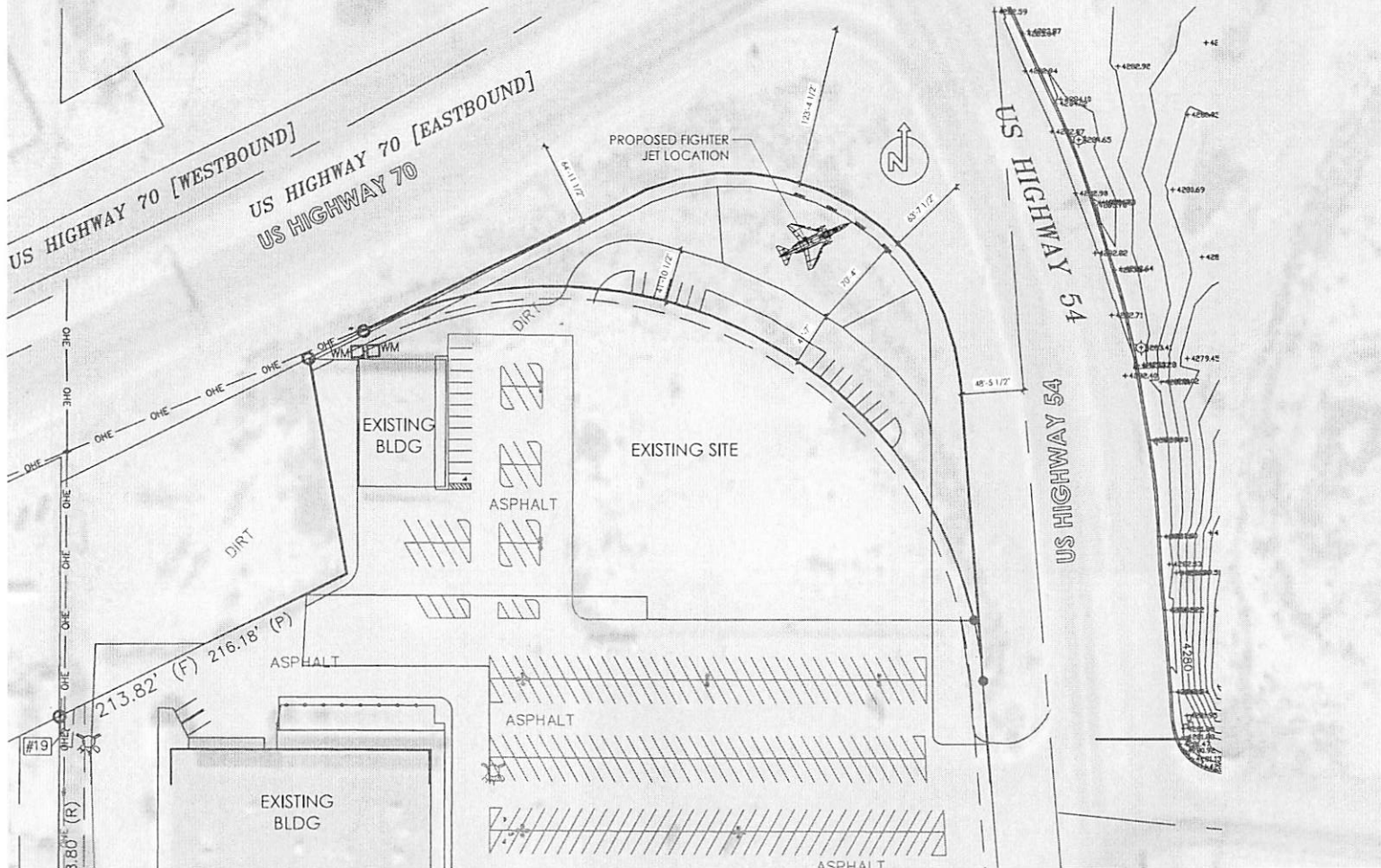
ATTEST:

Rachel Hughs, City Clerk

APPROVED AS TO FORM:

Ashley Smith, City Attorney

EXHIBIT A



A SITE PLAN- FIGHTER PLANE
1" = 40'-0"

DIZIGN X

MAKER: NICK CAMPBELL
DATE: 10/1/12

PROJECT: FIGHTER PLANE MONUMENT

FIGHTER PLANE MONUMENT
HIGHWAY 70 @ HIGHWAY 54
ALAMAGORDO, NEW MEXICO

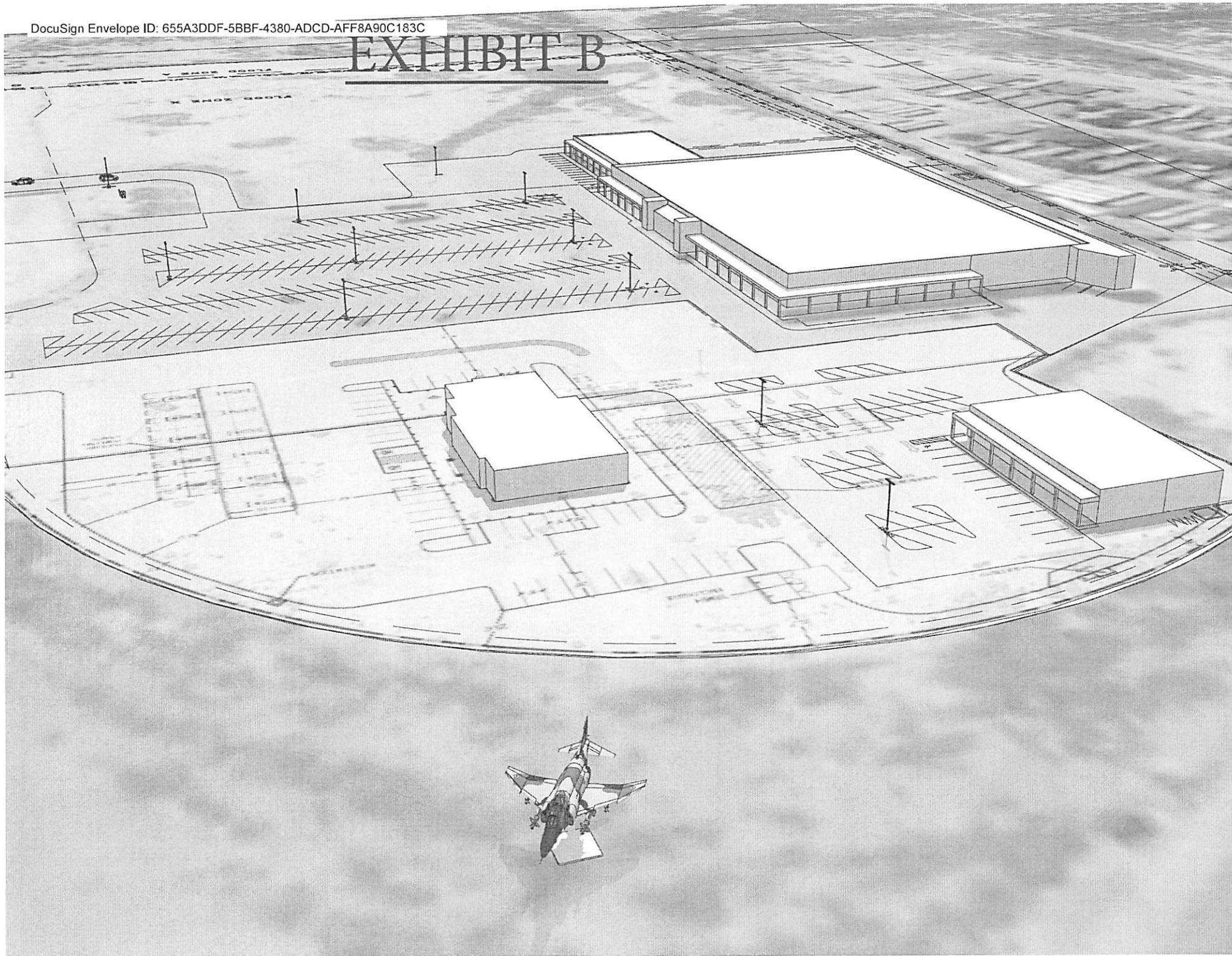
SHEET: 01

DATE: 03/09/12

SHEET NUMBER:

AS-1

EXHIBIT B



AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 8/13/2024

Report Date: 08/06/2024

Report No: 18.

Submitted By: Stephanie Hernandez

Subject: Consider, and act upon, Resolution 2024-55, a Resolution Encouraging Governor Lujan-Grisham and State Legislators to Prioritize Public Safety for the Citizens of New Mexico. (*Susan L. Payne, Mayor*) **(Roll Call Vote Required)**

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation:

Background:

RESOLUTION NO. 2024-55

**A RESOLUTION ENCOURAGING GOVERNOR LUJAN-GRISHAM AND STATE
LEGISLATORS TO PRIORITIZE PUBLIC SAFETY FOR THE CITIZENS OF NEW
MEXICO**

WHEREAS a year has passed since Officer Anthony Ferguson was tragically and senselessly killed in the line of duty by an individual with an escalating criminal background; and

WHEREAS since the death of Officer Ferguson, two other New Mexico officers have also been killed by violent individuals: Officer Jonah Hernandez of Las Cruces, who was killed by an individual suffering from mental illness, and Officer Hare, who was shot and killed by an individual with a violent past; and

WHEREAS a special session was slated for July 18, 2024, to address public safety concerns in New Mexico, and the proposed legislation to be discussed included:

- A Competency Bill to help prevent mentally incapacitated individuals from harming members of the public or themselves, emphasizing the importance of providing necessary mental health interventions;
 - Involuntary Commitment legislation to broaden the definitions of "danger to self" and "danger to others" in the involuntary commitment statute;
 - Felony Possession legislation aimed at crime prevention, recognizing that felons in possession of firearms are a primary driver of crime in New Mexico, and that this provision would help keep dangerous felons in jail longer, thereby protecting New Mexicans;
- Median Pedestrian Safety initiatives and the National Incident-Based Reporting System

WHEREAS, after hundreds of thousands of dollars were spent, the session was subsequently cut short without passing public safety legislation;

WHEREAS, the Alamogordo City Commission recognizes that, according to the National Alliance on Mental Illness (NAMI), nearly 170,000 adults in New Mexico have a serious mental illness; and

WHEREAS, in 2020, New Mexico had one of the highest suicide rates among youth aged 10-24 in the nation and nearly double the national average for overall suicide rates, with approximately 25 per 100,000 people; and

WHEREAS, New Mexico ranks poorly in terms of access to mental health care, with significant disparities between urban and rural areas, and there is a shortage of mental health professionals, with many areas designated as Mental Health Professional Shortage Areas (HPSAs); and

WHEREAS, mental health-related incidents place a significant burden on law enforcement and emergency services, with many individuals with untreated mental illness ending up in the criminal justice system or emergency rooms due to lack of appropriate mental health care; and

WHEREAS, New Mexico had the highest violent crime rates in the country in 2022, with a violent crime rate of 778.2 per 100,000 residents, significantly higher than the national average of 395.7 per 100,000 (NM Department of Public Safety); and

WHEREAS, the state experienced a 5.4% increase in aggravated assaults from the previous year, with 202 reported homicides in 2022, reflecting an increase compared to the previous year, with Albuquerque accounting for a significant portion of these homicides (NM Department of Public Safety); and

WHEREAS, property crime rates in New Mexico remained high in 2022, with a rate of 3,419 per 100,000 residents, including burglary, larceny-theft, and motor vehicle theft (NM Department of Public Safety), and motor vehicle thefts increased by 7.8% from the previous year; and

NOW, THEREFORE, BE IT RESOLVED that the Alamogordo City Commission is committed to ensuring the safety of its citizens and encourages Governor Lujan-Grisham and state legislators to come together in a bipartisan effort to sponsor and pass meaningful legislation addressing criminal reform and mental health care; and

BE IT FURTHER RESOLVED that the Alamogordo City Commission urges swift and decisive action to create safer communities for all New Mexicans, recognizing that the safety and well-being of our citizens must be a top priority for all elected officials.

PASSED, APPROVED AND ADOPTED this _____ day of _____, 2024.

CITY OF ALAMOGORDO, NEW MEXICO
a New Mexico municipal corporation

By: _____
Susan L. Payne, Mayor

ATTEST:

Rachel Hughs, City Clerk

APPROVED AS TO FORM:

Ashley Smith, City Attorney

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 8/13/2024

Report Date:

Report No: 19.

Submitted By: Stephanie Hernandez

Subject: Consider, and discuss providing staff with directions to set up a Town Hall Meeting with Governor Lujan-Grisham and state legislators to discuss crime and mental health. (*Susan L. Payne, Mayor*)

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation:

Background:

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 8/13/2024

Report Date: 08/06/2024

Report No: 20.

Submitted By:

Subject: Recess into Executive Closed Session in compliance with 10-15-1(H)(8) NMSA (as amended) to discuss: Real Property land acquisition of Mountain Park Trout Farm located at 1086 US Highway 82 and the Flores Property located at 1020 US Highway 82, High Rolls, NM. **(Roll Call Vote Required)**

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation:

Background:

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 8/13/2024

Report Date:

Report No: 21.

Submitted By:

Subject: Take any action as a result from the Executive Closed Session.

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation:

Background: