

**JOINT CITY/COUNTY
COMMISSION SPECIAL
MEETING**

**WEDNESDAY
May 28, 2008**

**WILLIE ESTRADA MEMORIAL
CIVIC CENTER
800 E. 1ST STREET**

**CONTRACT BETWEEN OTERO COUNTY AND
THE CITY OF ALAMOGORDO FOR HOUSING OF CITY PRISONERS**

This Contract is entered into by and between the Board of County Commissioners of Otero County, New Mexico hereinafter referred to as "Otero" and the City of Alamogordo, hereinafter referred to as "Alamogordo". The parties hereto are authorized to enter into this Contract pursuant to state and local purchasing procedures for contracts of this type and amount.

IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

ARTICLE 1. PURPOSE AND SCOPE OF WORK:

a. The purpose of this Contract is to provide for the housing of Alamogordo's City prisoners who have been committed to the custody of the Otero County Correctional Services Department.

b. Otero agrees to accept custody of and provide care of Alamogordo's City prisoners subject to the terms and conditions of this Contract.

c. Otero will provide and operate the Otero County Correctional Services Department in accordance with and as required by law. Except as specifically set forth herein, Otero will provide security for Alamogordo's City prisoners.

d. Upon reasonable notice to Otero, Alamogordo may inspect the Detention Center at prearranged times.

e. Otero will give no preference, (first come-first booked), to any arresting agency, unless the facility is at full capacity in which case the protocol set forth in Exhibit "A" will be followed.

f. Alamogordo is responsible for providing all appropriate court orders for the booking and release of its detainees.

ARTICLE 2. TERMS: The period of the Contract is from the date of the last signature through June 30, 2008. The services may be extended for additional annual periods by mutual consent of both parties. The Contract may be terminated pursuant to Article 8 of this Contract.

ARTICLE 3. GOVERNING LAWS: This Contract is governed by local, state and federal law. Both parties shall comply with the terms and conditions of the federal, state and local laws applicable to the County Detention as those apply to the activities of each.

ARTICLE 4. COMPENSATION:

- a. Daily Rate: Alamogordo shall pay Otero eighty dollars (\$80.00) per day per City prisoner effective July 01, 2007, the date of the last signature. The daily rate is a function of the annual direct and indirect cost of operation divided by total prisoner days. Change of daily rates shall be re-computed on an annual basis at renewal time. Otero will provide Alamogordo with notice of its intent to request an increase in cost at least six months before the proposed increase.
- b. Minimum Stay: Otero will bill Alamogordo for any prisoner who stays in the jail for twelve hours or less ½ the daily rate. Otero will bill for a full day for any prisoner who stays more than twelve hours at the detention center.
- c. Terms: Otero shall bill Alamogordo on a monthly basis. All payments shall be due within thirty (30) days of the statement date. Should either party institute legal action and prevail, the prevailing party shall recover reasonable attorneys' fees and costs from the other.
- d. Adjustments: The daily rate may be renegotiated by either party prior to the termination date of the contract if significant changes, which increase Otero's expense, occur in the Otero County Correctional Services Department operations or facilities resulting from a court order.

ARTICLE 5. CARE OF CITY PRISONERS:

- a. General Medical Care: All prisoners are responsible for the cost of their own medical care unless a Court of competent jurisdiction orders otherwise. Otero may not deny prisoners access to medical care. Otero does provide limited medical care within the Detention Center and may expand medical care services during the term of the Contract. Otero shall not be responsible nor liable for the cost of prisoner treatment for any pre-existing sickness, illness or injuries prior to incarceration. In the event that a prisoner is solely facing City charges and is unable to pay for his own medical care because the prisoner does not have Medicare, Medicaid, or private insurance and does not qualify for indigent care, Alamogordo agrees to reimburse Otero for the costs associated with that care. Otero will assist prisoners with the indigent claim process in the instances where the prisoner qualifies for the program and has medical debt that will qualify per the Otero County Indigent Ordinance #03-01/12-28-01. Otero assumes no responsibility or liability for the results of health care services. In case of emergency and Otero is unable to contact Municipal Court, Otero may seek emergency care for prisoner but will notify the Court as soon as possible.

**CITY OF ALAMOGORDO, NEW MEXICO
JOINT CITY/COUNTY COMMISSION SPECIAL MEETING AGENDA
WILLIE ESTRADA MEMORIAL CIVIC CENTER, 800 E. 1ST STREET
WEDNESDAY, MAY 28TH, 2008
2:00 P.M.**

CITY COMMISSION:

**MAYOR STEVE BROCKETT
MAYOR PRO-TEM CHRIS LUJAN
COMMISSIONER RON GRIGGS
COMMISSIONER ED COLE
COMMISSIONER MARION LEDFORD
COMMISSIONER ERIC BREWER
COMMISSIONER JOE FERGUSON**

COUNTY COMMISSION:

**CHAIRMAN DOUG MOORE
VICE CHAIRPERSON CLARISSA McGINN
MEMBER MICHAEL NIVISON**

Call Meeting to Order and Roll Call.

1. Otero County Detention Center Fees.
2. Dispatch Services.
 - a. Public Safety Answering Point.
3. Discussion on Relief Route connector on First St.
4. Subdivision Ordinance Consolidation.
5. Joint Water Plan.
6. Water Development Plans.
7. Development of Bypass Route.
8. Flood Control Projects/Updates.

Adjournment.

- b. Transportation: Otero shall be responsible for transporting Alamogordo's City prisoners to all medical appointments and hospital visits. Otero shall be responsible for the offender at the hospital should the offender be admitted or until a release order is obtained. When possible, the Otero County Correctional Services Department will notify the Municipal Court prior to the transport. If the Otero County Correctional Services Department is unable to guard offender, they will contact Municipal Court for other options. If the Otero County Correctional Services Department is not able to contact the Municipal Court and the inmate must be guarded, the Otero County Correctional Services Department will make arrangements for a security company to guard the inmate and Alamogordo will reimburse the County for actual charges incurred by the security company.
- c. Video Hearings: The Detention Center and Municipal Court will conduct video arraignments at times agreeable to both parties. The Detention Center will guard and be responsible for the video court arrangements at the Detention Center and will work in conjunction with Municipal court to provide video arraignments for municipal inmates in a professional and timely manner.
- d. Protective Custody: Protective Custody persons will be accepted by the Detention Center only when the individual is being held pending a transport to an emergency mental health evaluation facility and will be held in the Otero County Detention Center no longer than 12 hours.
- e. Day Reporting Program: Otero operates a Day Reporting Custody Program for offenders in lieu of incarceration in the Detention Center. This program may be used if the offender meets the program criteria established by the Otero County Correctional Services Department and the program is allowed by the Municipal Court. If an offender participates in the Day Reporting Custody Program, he/she will be responsible for all fees to include a one time administrative fee and a determined weekly amount based on services provided. Alamogordo will not be charged a fee for prisoners accepted into the program.

ARTICLE 6. DEFINITION OF ALAMOGORDO PRISONERS: An Alamogordo prisoner is any person who has been apprehended by Alamogordo Law Enforcement Officers solely for violation of an Alamogordo ordinance.

ARTICLE 7. ACCEPTANCE OF ALAMOGORDO PRISONERS: Upon arrival in the Detention Center, all Alamogordo prisoners shall complete a medical and mental health screening evaluation prior to the booking process. If further medical or mental health screening is needed for safe incarceration, then the Otero County Correctional Services Department may refuse acceptance and admittance of the prisoner. The decision of further medical care will be based on the Otero County Detention Policy:

OCDC 601.1.3.B: Staff will not accept an inmate bearing signs of injury or illness unless he has been treated by a physician or examined at the hospital and is not in need of immediate care or treatment.

- 1. An Inmate should not be held in jail if such imprisonment would endanger his/health or his/her life.*

If the detainee does not meet the requirements of Policy 601.1.3.B, then the Otero County Correctional Services Department may refuse acceptance and admittance of the prisoner. In this event, Alamogordo shall be responsible for transporting the City prisoner, providing access to medical care, and obtaining written medical clearance for incarceration. Should the Otero County Correctional Services Department change the criteria it uses to determine medical admissibility into the Detention Center, Otero will give Alamogordo notice, thirty (30) days advance notice in writing, of the change in criteria before it goes into effect.

ARTICLE 8. TERMINATION: The Contract may be terminated by Otero upon thirty (30) days written notice to Alamogordo, in care of the City Manager, and the City Commissioners, prior to the intended date of termination. Alamogordo may also terminate the Contract upon thirty (30) day written notice to the Otero County Administrator, 1000 New York Ave., Rm. 101, Alamogordo, New Mexico 88310. Conditions for termination include but are not limited to: a) a court order requiring either closure or reduction of inmate population, b) Otero determines it is necessary to terminate this contract due to remodeling, construction or replacement of the Detention Center, c) Otero determines termination is necessary for health, safety, or welfare reasons, d) destruction of or damage to twenty percent (20%) or more of the facility, if such damage renders the facility or at least twenty percent (20%) of the facility unsuitable for use as a Detention Center. e) riot or other disturbance rendering fifteen percent (15%) or more of the berthing capacity of the facility unusable for three or more days, f) recommendation or requirement of Otero's insurance carrier(s), g) recommendation by a grand jury, h) any loss of kitchen facilities lasting three or more days, i) Otero's non-appropriation of funds, and j) any other agencies that require Otero to house prisoners outside the facility at an expense to Otero which exceeds the daily rate paid by Alamogordo to Otero. Neither party may nullify obligations incurred prior to the date of termination.

ARTICLE 9. ASSIGNMENT: Otero shall not assign or transfer any interest in the Contract nor assign any claims for money due or to become due, under the contract without prior written approval of Alamogordo.

ARTICLE 10. RECORDS:

- a. Otero shall maintain adequate and satisfactory booking and custody records and accounts, including records of offenses classified by type of offenses and arresting agency.

b. Otero shall provide one (1) copy of an invoice to Alamogordo on a monthly basis as a condition precedent to receiving full payment for the detention, housing and feeding of its Alamogordo prisoners. The invoice shall include a listing of the charges on which the prisoner is held and any medical charges shall be itemized.

c. Both parties shall keep a strict accounting of all receipts and disbursements on the Contract. Such records shall be available for inspection by the parties during business hours at the office of the respective parties.

ARTICLE 11. AMENDMENTS: This contract shall not be altered, changed or amended except by instrument in writing executed by the parties hereof.

ARTICLE 12. WAIVER: Any waiver of breach of any covenant, term, condition or agreement in this Contract to be kept and performed by either party shall not be deemed or considered as a continuing waiver and shall not operate to bar or prevent the other party from declaring a default for any succeeding breach either of the same covenant, term, condition, or agreement or another. All remedies afforded in this Contract shall be taken and construed as cumulative, that is, in addition, to every other provided herein or by law.

ARTICLE 13. MERGER OF CONTRACT: This Contract incorporates all the agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements, and understandings have been merged into this written contract. No prior statements, representative, promises or agreement of understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this contract.

ARTICLE 14. SOVEREIGN IMMUNITY: Otero and Alamogordo and their "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense(s) and/or do not waive any limitation(s) or liability pursuant to the New Mexico Tort Claims Act. No provisions in this Contract modifies and/or waives any provision of the New Mexico Tort claims Act, as it relates to Otero, Alamogordo and their public employees.

ARTICLE 15. LIABILITY: Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this agreement. Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Sections 41-4-1, et seq. NMSA 1978. Each party agrees to defend and indemnify the other for any actions brought seeking damages for the other party's acts or omissions.

ARTICLE 16. CO-PARTNERS: Nothing herein contained is intended or should be construed in any way to create or establish the relationship of Co-Partners between the parties or to establish as an agent, representative or employee of the other for any purpose or manner whatsoever.

Neither party nor its employees shall accrue leave, retirement, insurance, or any other benefits afforded to employees of the other as a result of the Contract.

ARTICLE 17. THIRD PARTY BENEFICIARIES: It is specifically agreed between the parties executing this Contract that it is not intended by any of the provisions of any part of the Contract to create the public or any other member thereof a third party beneficiary or to authorize anyone not a party to the Contract to maintain pursuant to the provisions of the Contract a suit of any nature based upon this Contract.

ARTICLE 18. EQUAL OPPORTUNITY COMPLIANCE: Otero agrees to abide by all federal and state laws, 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, Otero agrees to assure that no person will, on the grounds of race, color, nation origin, sex, age, or disability, be excluded from employment.

ARTICLE 19. BREACH OF CONTRACT: In the event any action or suit or proceedings are brought by either party for failure of the other to observe any of the covenants, terms, conditions and/or agreements, the losing party shall pay the prevailing party's reasonable fees of attorney(s), costs and/or expenses incurred by winner. Any action brought to enforce the Contract or for its breach shall be tried only by the Court, and jury trials shall not be allowed. Venue shall be proper only in Otero County, New Mexico.

ARTICLE 20. SUBCONTRACT: Otero may subcontract any or all services or operations of the Detention Facility, subject to approval of Alamogordo, said approval not to be unreasonably withheld as well as approval of any necessary contractual adjustments.

ARTICLE 21. LIMITATIONS OF LIABILITY: No elected or appointed official, employee, servant, agent or law enforcement officer shall be held personally liable under the Contract or any renewal thereof because of its enforcement or attempted enforcement provided they are acting within the course and scope and scope of their employment or governmental duties and responsibilities.

ARTICLE 22. PRISONER RELEASE: Both parties agree that the release of Alamogordo prisoners shall be made only pursuant to an order of a Municipal Judge, or other Court of competent jurisdiction. Municipal Court will be notified before an Alamogordo prisoner is transferred to another facility. In case of an emergency, notification will be made as soon as possible.

ARTICLE 23. INSURANCE: Both Otero and Alamogordo will maintain liability insurance or qualify as a self-insured entity, as required by law.

ARTICLE 24. PROCUREMENT CODE: The Procurement Code, Section 13-1-25 through 13-1-199, NMSA 1978 *as amended*, imposes civil and criminal penalties for its violation. In addition, New Mexico Criminal Statutes imposes felony penalties for illegal bribes, gratuities, and kickbacks.

ARTICLE 25. SEVERABILITY: If any clause of provision of the Contract is held to be illegal, invalid or unenforceable, then it is the intention of the parties hereto that the remainder of the Contract shall remain full force and effect. However, in the event that either party can no longer reasonable perform pursuant to the remaining contract terms, or if the purpose of the Contract cannot longer be carried out by either party, the Contract is void able and no damages shall accrue to either party.

ARTICLE 26. NOTICE TO PROCEED: It is expressly understood that this Contract is not binding upon either party until approved and signed by both parties.


ARTICLE 27. NOTICES: Invoices shall be mailed to Administrative Manager, 700 Virginia Avenue, Alamogordo, New Mexico 88310. All other correspondence or notices shall be sent to:

Otero County Administrator
Otero County Commissioners
1000 New York Ave., Rm. 101
Alamogordo, NM 88310
(505) 437-7427
(505) 443-2904 Fax

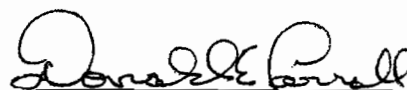
City Manager
1376 E. Ninth Street
Alamogordo, NM 88310
(505) 439-4200
(505) 439-4396 Fax

ARTICLE 28. DUPLICATE ORIGINAL DOCUMENTS: This document shall be executed in no less than two (2) counterparts, each of which shall be deemed an original.

OTERO COUNTY


Doug Moore, Chairperson
Board of County Commissioners

CITY OF ALAMOGORDO


Donald E. Carroll, Mayor

Date: May 8, 2007

Date: 4/8, 2007

EXHIBIT A

PROTOCOL FOR JUDICIAL RELEASE OF OFFENDERS WHEN THE OTERO COUNTY DETENTION CENTER IS AT FULL CAPACITY

1. The Correctional Services Staff and/or County Attorney shall contact the District, Magistrate, and Municipal Courts seeking release of offenders when the facility is at full capacity.
2. The Municipal, Magistrate, and District Judges will determine which offenders shall be released.
3. If a sufficient number of offenders are not released, the Correctional Services Director will contact the City Manager and inform him that no Municipal Offenders will be accepted in the facility unless alternative custody arrangements (at City's expense) can be arranged.
4. The Detention Center will continue to accept Municipal DWI and violent offenders.



State of New Mexico
County of Otero

JOINT POWERS AGREEMENT
AMENDMENT
AMBULANCE SERVICES

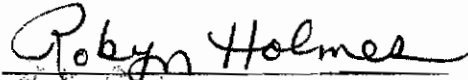
This agreement amends the 2003 Joint Powers Agreement between the City of Alamogordo, Village of Tularosa and Otero County for Ambulance Services for fiscal year 2007/2008.

The City of Alamogordo, the Village of Tularosa and Otero County agree to pay a per capita amount not to exceed \$4.58572 for the term of this agreement.

This amendment reflects a total annual cost to the City of Alamogordo of \$163,169.09, \$13,133.50 to the Village of Tularosa and \$78,430.41 to Otero County. There are no increases for the ambulance services for fiscal year 2007/2008.

BOARD OF COUNTY COMMISSIONERS
OTERO COUNTY, NEW MEXICO

ATTEST:


Robyn Holmes, County Clerk

(SEAL)


Doug Moore, Chairman

Date: 5-28-08

CITY OF ALAMOGORDO
A New Mexico Municipal Corporation

ATTEST:

Renee Cantin, City Clerk

(SEAL)

Donald E. Carroll, Mayor

Date: _____

ATTEST:

**VILLAGE OF TULAROSA
A New Mexico Municipal Corporation**

Dianne Brusuelas, Village Clerk

Ray Cordova, Mayor

(SEAL)

Date: _____

AGENDA REPORT

Otero County Commission

Meeting Date: 01/24/2008

Report Date: 01/02/2008

Submitted by: Donna Brandon

Approved for Agenda: 


Subject:

Consider approval of an amendment to the Joint Powers Agreement between Otero County, The City of Alamogordo and the Village of Tularosa for Ambulance Services for fiscal year 2007/2008.

Research/Background:


There are no changes in the allocation of the costs for the participants in the joint ambulance service agreement for fiscal year 2007/2008.

This report and all attached documents have been reviewed by:


Name

Administration
Department

Recommend approval
 yes no


Name

Administration
Department

Recommend approval
 yes no

Name

Department

Recommend approval
 yes no

This item was approved/disapproved by the Board of County Commissioners on 1/24/08.



Email: oteroadm@co.otero.nm.us
COMMISSION / ADMINISTRATION
(505) 437-7427
FAX (505) 443-2904

1000 NEW YORK AVE., RM 101
ALAMOGORDO, NM 88310-6935

State of New Mexico
County of Otero

May 12, 2008

Mr. Carl Moore
16 Camino Delilah
Santa Fe, New Mexico 87506
VIA FACSIMILE AND EMAIL TO:

Re: Public Safety Answering Point Joint Powers Agreement between Alamogordo and Otero County.

Dear Mr. Moore

I am enclosing two original Joint Powers Agreements, which have been executed by both the City of Alamogordo and Otero County.

After negotiating these Agreements we submitted them to our respective legal staff for review to determine whether the form of these Agreements satisfied the statutory requirements of the Joint Powers Agreement Act and the statutory requirements of the Enhanced E 911 Act. It is our belief that the Agreement satisfies the conditions of these two statutory schemes.

In making the above referenced statement, we are fully aware of the fact that DFA has taken the position that pursuant to its regulations enacted pursuant the Enhanced E 911 Act, we are required to physically consolidate both Public Safety Answering Point and our other law enforcement/public safety dispatch functions.

However, Article 10 § 8 of the New Mexico Constitution provides that we are not required to submit to a rule or regulation at the department level unless and until funding or a funding stream for the mandated service or program has been provided: It states:

Sec. 8. [New activity or service mandated by state rule or regulation.]

A state rule or regulation mandating any county or city to engage in any new activity, to provide any new service or to increase any current level of activity or to provide any service beyond that

required by existing law, shall not have the force of law, unless, or until, the state provides sufficient new funding or a means of new funding to the county or city to pay the cost of performing the mandated activity or service for the period of time during which the activity or service is required to be performed. (As added November 6, 1984.)

Accordingly, we submit that our JPA satisfies the requirements that are actually and currently enforceable against the two governing bodies.

We are aware and agree that the County has received partial funding on a request for capital improvements necessary to effectuate actual physical consolidation, however, at this time the funding is woefully inadequate to accomplish consolidation.

In addition, we have been communicating with the General Services Department in an effort to obtain the Murray Morgan building, because that would be an excellent location for a consolidated dispatch public safety answering point and dispatch center that could also serve the New Mexico State Police District located here. Those efforts are ongoing, but we are not able to state with certainty that physical consolidation of all dispatch can occur on a given date. Thus, we chose the word "may" in the whereas clause and in Article IV.

In addition, there is the question that remains concerning back up services for the statutory PSAP. As we understand our conversations, back up services are required, but how or where we get those services is at our discretion. We have a plan that we believe will provide the ability to develop a local back up PSAP in the event there is a catastrophic failure at the consolidated PSAP, which prevents it from being able to provide communication services.

The City and County are having high level discussions to bring that portion of the plan into fruition.

In addition, negotiations are underway with other entities to create a consolidated PSAP. They include the Mescalero Apache Tribe (an agreement has been reached and signed) the Village of Cloudcroft (an agreement has been reached and signed) the Village of Tularosa (discussions are ongoing). Copies of the Mescalero and Cloudcroft agreements are enclosed.

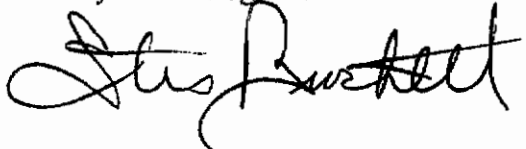
Accordingly, in our assessment, it appears that the various communities in Otero County have worked together to develop a consolidated PSAP system that works in our area. The State's need, to reduce funding expenses has been addressed. Our need for local back up has been addressed. As time progresses, the City and County may be able to fully physically consolidate their dispatch operations. It simply is not prudent for either of these governmental entities to obligate themselves to the future expenditure of hundreds of thousands of dollars in capital expenses when no funding mechanism is in site.

In our view there are two distinct matters under consideration. The first is whether the JPA between the County and Alamogordo is a lawful Joint Powers Agreement; the second is the

whole funding mechanism and whether or not a legitimate consolidated PSAP plan is in the works and being pursued. As to the first matter, as indicated above, we believe the agreement complies in all respects with the Joint Powers Agreement act. As to the second, we believe that, in light of all three Joint Powers Agreements, that we have a legitimate consolidated PSAP plan in place that should be entitled to funding. We look forward to your consideration and approval.

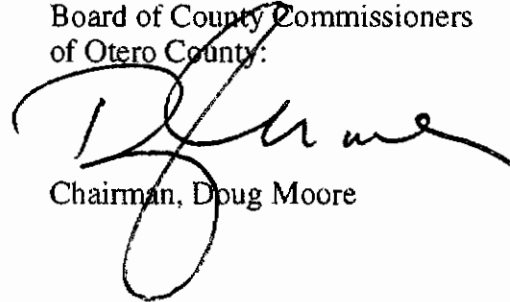
Sincerely,

City of Alamogordo:



Mayor, Steve W. Brockett

Board of County Commissioners
of Otero County:



Chairman, Doug Moore

cc: Alamogordo City Council Members
Otero County Commission Members
Rick Martinez
Sam Ojinaga
Joyce Johnson
Bill Range
Bill Harris

**JOINT POWERS AGREEMENT
BETWEEN THE BOARD OF COUNTY COMMISSIONERS
OF OTERO COUNTY, NEW MEXICO
AND THE CITY OF ALAMOGORDO
ESTABLISHING A BOARD TO RECEIVE E-911 MONIES AND
DEVELOP A SINGLE FACILITY FOR PSAP AND DISPATCH SERVICES**

THIS JOINT POWERS AGREEMENT, (the "Agreement") is entered into on this the 22nd day of April, 2008 by and between the Board of County Commissioners of Otero County, New Mexico, hereinafter referred to as "the County", the City of Alamogordo, hereinafter referred to as "the City", and such other entities who may join in this agreement.

PURPOSES

The purposes of this Joint Powers Agreement (JPA) are: to define the terms and conditions for transitioning into, and operating, administrating and maintaining a joint enhanced 911 Regional Public Safety Answering Point (PSAP) in a single facility; including emergency dispatch; to provide emergency telephone access for the citizens of the participating entities; to obtain needed emergency services including fire, EMS and law enforcement services; and to provide for the emergency communications needs of the public safety agencies of the participating entities.

RECITAL

WHEREAS, The New Mexico Department of Finance and Administration (DFA) is requiring the County and the City to enter into this Joint Powers agreement as a condition to receive any monies collected under the New Mexico Enhanced E-911 Act which monies are administered by DFA; and

WHEREAS, the County and the City desire to provide a JPA which will provide for the Health, Welfare and Safety of our citizens with regards to E-911 services and recapture some of the monies paid by the citizens of the County and the City into the E-911 Fund; and

WHEREAS, the State of New Mexico DFA is requiring the County and the City to place the PSAP and the Dispatch operations in one (1) single facility, as a condition of providing to the County and the City any E-911 funds for operation of the PSAP; and

WHEREAS, the County and City agree in principle to attempt the aforementioned consolidation contingent upon receiving adequate State funding to acquire, design, equip, and build facilities to properly house said services; and

WHEREAS, in the intervening time prior to full development and deployment of said consolidated facility, it is expected by both the County and the City that DFA will continue to monetarily support the Board, as described below, at an adequate level to provide E-911 services for the area served;

NOW THEREFORE, the County and the City agree as follows:

ARTICLE I

ESTABLISHMENT OF PUBLIC SAFETY ANSWERING POINT BOARD

Pursuant to the New Mexico Enhanced 911 Act, NMSA 1978, 63-9D- 4 (et. Seq.) (1993) (the "Act") the Regional Public Safety Answering Point (PSAP) Board is formed as an entity for the express purpose of exercising the powers conferred upon it by the County and the City under the Act.

ARTICLE II

Composition and Powers of the Board

A. REPRESENTATIVES:

- 1) The Board is hereby established to provide administrative oversight and direction for the PSAP equipment and single facility and shall advise the County and the City. The Elected Body(ies) are the recognized legal Political Organization(s) in the State of New Mexico that are authorized to levy taxes and approve this Joint Powers Agreement (JPA).
- 2) The Board shall consist of nine (9) individuals with five (5) appointed by the County, and four (4) appointed by the City.
- 3) Individuals may be removed by their respective Elected Body.
- 4) Individuals shall serve until replaced by their respective Elected Body.

B. DUTIES AND POWERS OF BOARD:

The duties of the Board shall include, but not be limited to the following:

1. Annually elect one member to act as the Chairperson of the Board, a second member to serve as vice-chair, and a third member to serve as secretary. The Chairperson shall rotate between participating members from the different Elected Bodies on an annual basis.
2. Establish Backup Services for the PSAP equipment and single facility.
3. Recommend Operating Procedures for the PSAP.
4. Review operations and procedures for services delivered by the Board.
5. Pursue development of a facility adequate for housing the PSAP and Dispatch services.

6. Suspend voting rights of members of the Board whose Elected Bodies do not make payments to the Board in a timely manner.
7. Review concerns from the public concerning operations.
8. Appoint an Advisory Committee made up of not less than three (3) and not more than seven (7) individuals who are directly involved in receiving dispatch services from the PSAP. The Advisory Committee may provide guidance and recommendations to the Board on delivery of service, correction of problems or issues on operating procedures.
9. From time to time consider the inclusion of additional members to be seated on the Board, who will contribute monetarily via contract for expanded services. These new members are included in the total number of members listed above.
10. Provide recommendations to the County and the City on means and methods to improve delivery of PSAP and Dispatch services in the area served.

C. MEETINGS:

1. The Board shall meet regularly but no less than quarterly (or at the call of the Chairperson or Vice- Chairperson, upon proper notice and in compliance with the Board's duly adopted Open Meetings Act resolution).
2. The Board shall cause minutes of all meetings to be kept as provided for in the open meetings act, and shall provide copies of said meeting minutes to

the Board.

- 3 All Board meetings shall be held in accordance with the New Mexico Open Meetings Act.

D. LIMITATION TO POWERS OF THE BOARD:

1. The Board shall not be involved in the day-to-day management of the Communications delivery systems except as outlined above and shall only have such powers as have been expressly delegated by the County and the City pursuant to this Agreement, along with such incidental powers as may be reasonably necessary to effectuate the purposes and intent of this Agreement.
2. The Board shall not institute litigation against any party without first submitting the issue concerning litigation to the respective Elected Bodies of this agreement and obtaining the written approval of each Elected Body prior to instituting suit.

ARTICLE III

FINANCING OF THE PUBLIC SAFETY ANSWERING POINT BOARD

A. FISCAL AGENT:

1. One of the Elected Bodies shall be the Fiscal Agent as approved by the Board. Initially the County shall act as Fiscal Agent for the Regional Public Safety Answering Point Communications Center and shall be responsible for maintaining a set of books in

accordance with Generally Accepted Accounting Practices (GAAP) for the Board.

All records relative to the Board finances shall be kept in a separate Fund(s).

2. The Fiscal Agent shall make at least quarterly financial reports to the Board, to include a summary of all transactions and comparison to budget as well as balances on hand for the quarter.
3. The Fiscal Agent shall arrange annual audits of the financial records and shall provide a copy of such audits to each of the Elected Bodies.
4. The Fiscal Agent shall provide financial reporting to the State office(s) as a discrete component unit of their Elected Body.
5. The Fiscal Agent shall prepare and present the Two Year Budget to the Board prior to January 31st of each year for the next two (2) years.
6. The Fiscal Agent shall submit billings to the Elected Bodies quarterly for their share of any Two (2) Year Budget costs. Elected Bodies shall remit payments to the Fiscal Agent within thirty days of bill being received. Failure to submit timely payment will suspend the voting rights of any Elected Body on the Board.
7. The Fiscal Agent shall collect all revenues accruing to and make all disbursements for the Board as adopted in the budget.

B. PURCHASING:

The purchasing practices of the Fiscal Agent shall be used by the Board.

C. BUDGET:

1. The Board shall review, modify, and recommend a budget for the operation of the PSAP. This budget shall be recommended to the Elected Bodies not later than February 28th preceding the end of the current fiscal year. If the Board cannot agree upon the budget to be presented to the Elected Bodies prior to February 28th, then the budget prepared by the Fiscal Agent shall be presented to the Elected Bodies by the Fiscal Agent. The budget shall be a two (2) year budget for the upcoming fiscal years.

EXAMPLE: If the first Fiscal year begins on July 1, 2008: Then the Board, with assistance from the Fiscal Agent, shall prepare a budget for the time periods of July 1, 2008 through June 30, 2009 and July 1, 2009 through June 30, 2010. Prior to February 28th, 2009 the Board shall present to the Elected Bodies (Those entities who have membership on the Board) a new two (2) year budget for the years July 1, 2009 to June 30, 2010 (which shall be the same as the budget presented in the first budget as stated above) and a budget for the period July 1, 2010 through June 30, 2011.

2. The Board or Fiscal Agent may propose adjustments to the Two (2) Year Budget to the Elected Bodies during the course of any fiscal year. Any changes to the adopted Two (2) Year Budget require concurrence of all Elected Bodies.
3. The proposed Two (2) Year Budget shall include any estimated Fund balances, any proposed income from any source, all proposed expenses and any estimated accumulated reserves (such as operating or capital reserves).
4. The respective Elected Bodies shall agree to the two (2) year budget and

incorporate it into their respective Budgets ("Adoption"). Failure of the respective Elected Bodies to approve the two (2) year budget prior to May 31, immediately preceding the start of the new fiscal year, shall be considered notice that the Elected Body is withdrawing from the PSAP JPA.

EXAMPLE: The Elected Body receives the proposed two (2) year budget from the Board for the time period July 1, 2009 through June 30, 2011 by February 28, 2009. The Elected Body has until May 31, 2009 to adopt the proposed two (2) year budget and notify the Board. Failure to adopt or notify the Board of Adoption by May 31, 2009 will serve as notice the Elected Body is withdrawing from the JPA, effective June 30, 2010.

ARTICLE IV

TERMS OF AGREEMENT

A . TERM :

This JPA shall not become effective until approved by the Secretary of the New Mexico Department of Finance and Administration and subsequently adopted by the Elected Bodies. The term of this JPA shall be indefinite unless terminated as hereinafter provided.

B . TERMINATION :

Any Elected Body may withdraw from this JPA by providing written notice to the Board and Fiscal Agent prior to May 31 of the close of the current fiscal year. The date

of withdrawal of the Elected Body shall not relieve the Elected Body of any financial obligations previously approved by that Elected Body, unless agreed to by remaining Elected Bodies.

EXAMPLE: The Elected Body may provide notice at any time during the fiscal year such as December 1, 2008. The Elected Body would still be obligated to provide its share of the current fiscal year, July 1, 2008 through June 30, 2009, and for the second fiscal year, July 1, 2009 through June 30, 2010.

When an Elected Body withdraws from the Board, any uncommitted Fund balances shall be distributed to the withdrawing Entity in proportion to the amount paid by that entity in the year immediately preceding the withdrawal. Any Capital Assets established in the Fund shall remain with the Fund. Any reserves for capital replacement shall remain with the Fund.

C. LIABILITY:

No party shall be responsible for liability incurred as a result of another party's acts or omissions in connection with this JPA. Any liability incurred in connection with this JPA is subject to the immunities and limitations of the New Mexico Tort Claims Act, section 41-4-1, et seq., NMSA 1978, as amended and/or the express immunity granted pursuant to section 63-9D-10 of the Enhanced 911 Act. Nothing contained in this JPA shall be deemed to be a waiver of the provisions and protections afforded the parties by the New Mexico Tort Claims Act and/or the Enhanced 911 Act.

D. AMENDMENT:

This JPA shall not be altered, changed or amended except by instrument in writing executed by the Elected Bodies hereto.

E. GOVERNING LAW:

This JPA shall be governed by, and construed in accordance with the laws of the State of New Mexico.

F. STATUS OF AGREEMENT; JPA ACT:

The parties acknowledge and agree that this Agreement constitutes an "Agreement": as that term is used in the New Mexico Joint Powers Agreements Act, Section 11-1-1 through 11-1-7 NMSA 1978 (the "JPA Act").

G. ACCOUNTABILITY:

During the term of this JPA and for a period of three years thereafter, the Fiscal Agent will maintain accurate and complete records of all disbursements made and monies received by each under this JPA and, upon receipt of reasonable written request, shall make such records available to any other party and to the public, including any federal, state or local authority during regular business hours.

H. DISTRIBUTION OF RESIDUAL PROPERTY:

At the end of the term, the parties will distribute and dispose of all property acquired in connection with this JPA. If any property is acquired in connection with this JPA, the division or distribution of which is not specifically provided for in this JPA, then such

property shall be distributed to the party that acquired it; or if the property was acquired by more than one party, the property shall be distributed to each party in accordance with that party's pro rata share of acquisition and maintenance costs, if any, unless otherwise agreed by the parties.

I. CONFORMITY WITH JPA ACT:

The parties intend that this Agreement conform in all respects with the JPA Act; and that this JPA shall be construed and enforced in conformity with the JPA Act. In case of any inconsistency between this JPA and the JPA Act, the provisions of the JPA Act shall control and this JPA shall be deemed amended so that such controlling provisions of the JPA Act are incorporated into and made part of this JPA, and any inconsistent provisions of this JPA are deleted as and to the extent of the inconsistency.

J. ALTERNATIVE DISPUTE RESOLUTION:

The parties agree that in the event the terms and conditions of this JPA are disputed, including but not limited to all financial calculations, expenditures, bills and related matters, the parties will attempt to resolve the dispute through mediation. Notwithstanding the foregoing, the decision of any party to terminate this JPA under Article IV, Section B, above shall not be subject to mediation or binding arbitration.

L. SEVERABILITY:

If any clause or provision is held to be illegal, invalid or unenforceable, then it is the intention of the parties hereto that the remainder of the JPA shall remain in full force and effect. However, in the event that any party can no longer

reasonably perform pursuant to the remaining JPA terms, or if the purpose of the JPA can no longer be carried out by any party, the JPA is voidable and no damages shall accrue to any party.

M. MERGER OF JPA:

The JPA incorporates all the agreements, covenants and understandings between the parties here to concerning the PSAP and single facility matter hereof, and all such covenants, agreements, and understandings have been merged into this written JPA. No prior statements, representatives, promises or agreement of understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this JPA.

N. WAIVER:

Any waiver of any breach of any covenant, term, or condition or agreement in this JPA to be kept and performed by any party shall not be deemed or considered as a continuing waiver and shall not operate to bar or prevent any party from declaring a default for any succeeding breach either of the same covenant, term, condition or agreement or another. All remedies afforded in this JPA shall be taken and construed as cumulative, that is, in addition to every other provided herein or by law.

O. GOOD FAITH:

The County and the City will, in good faith, pursue centralized location of equipment and manpower for future consolidation as funding is available.

BOARD OF COUNTY COMMISSIONERS
OTERO COUNTY, NEW MEXICO

ATTEST:

Lynel Estrada, Deputy
County Clerk

[Signature]
Otero County Chairman

Date: 4-17-08



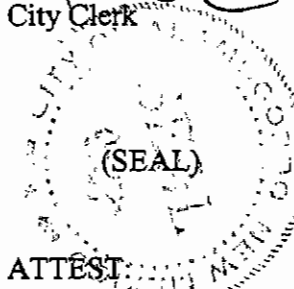
CITY OF ALAMOGORDO
A New Mexico Municipal Corporation

ATTEST:

[Signature]
City Clerk

[Signature]
Mayor

Date: 4-22-08



ATTEST:

APPROVED AS TO LEGAL FORM AND SUFFICIENCY:

[Signature]
Attorney for Otero County

Date: 04-17-08

[Signature]
Attorney for City of Alamogordo

Date: April 23, 2008

APPROVED AS TO LEGAL FORM

[Signature]
Cabinet Secretary DFA Katherine B. Miller

Date: _____

**JOINT POWERS AGREEMENT
BETWEEN CITY OF ALAMOGORDO AND
COUNTY OF OTERO**

This Joint Powers Agreement is entered into pursuant to NMSA 1978 Sections 11-1-1 through 11-1-7 by and between the City of Alamogordo, New Mexico a New Mexico municipal corporation, (City) and the County of Otero, New Mexico (County) on this 26th day of June, 2007.

WHEREAS, the City of Alamogordo is engaged in the project of realigning West First Street between White Sands Boulevard and the Alamogordo Relief Route; and,

WHEREAS, the project realigning West First Street lies within the City of Alamogordo and within the County of Otero, New Mexico; and,

WHEREAS, City and County have both entered into cooperative agreements with the New Mexico Department of Transportation by which the Department of Transportation is participating in the costs of the property acquisition, design, engineering, and construction of this West First Street realignment; and,

WHEREAS, this realignment is a "road connector" for the Alamogordo Relief Route in Otero County; and,

WHEREAS, County has entered into Contract Number D105401, Project Number ST-7535(211) with a Department of Transportation (DOT), Control Number 7814 specifically allotting \$125,000 to "construct road connectors for the Alamogordo Relief Route in Otero County"; and,

WHEREAS the above referenced contract allots \$52,000 "to design and construct connectors for the Alamogordo Relief Route in Otero County"; and,

WHEREAS, both City and County are authorized under the New Mexico Joint Powers Agreements Act to enter into Joint Powers Agreements; and,

WHEREAS, City and County are desirous of entering into a Joint Powers Agreement under the terms and conditions set forth in this documents.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS.

CITY AGREES:

1. That it will provide design, engineering and construction support and professionals for the engineering, design and construction of the West First Street Realignment Project between White Sands Boulevard and the Alamogordo Relief Route.

2. To maintain separate detailed accounts of time and money expended on the portion of the West First Street Realignment Project which is to be billed to County and paid for by County.

3. To submit invoices to County on a monthly basis detailing the type of work done, contractor doing the work, and amount of funds expended by City in fulfilling County's portion of the West First Street Realignment Project.

4. To keep strict accounts of all the sheets of any and all funds received from or on behalf of the County to reimburse City for the County's portion of the West First Street Realignment Project.

5. That in the event there are any funds remaining at the completion of this Project, or if any funds were paid in error by County to City, then City will return these funds to County within sixty (60) days of final accounting for the County's portion of the West First Street Realignment Project.

6. That County will be the "administering agency" for the County's portion of the West First Street Realignment Project, and as such, will have the right to review any and all engineering studies, plats and plans, design plats and plans, and final construction relating to the portion of the West First Street Realignment Project paid for by County funds.

COUNTY AGREES:

7. To accept the responsibility of being the "administering agency" under this Agreement and as such, to review any and all engineering work, design work and construction work submitted to it by City to be paid for out of County funds.

8. To review and provide comments to the documents and work referred to in the preceding paragraph within thirty (30) days of submittal by City to County.

9. To designate a contact person within County government with the authority and knowledge to review and provide final approval of all documents, studies, plats, plans, and final work referred to in paragraph 7.

10. To tender payment on all invoices submitted by City within thirty (30) days of receipt of invoices by County.

11. To provide City with a monthly statement of the balance of funds remaining to be expended under this Joint Powers Agreement as set forth in the Agreement between County and New Mexico Department of Transportation referred to as "Supplemental Cooperative Severance Tax Agreement Certification Project, Project Control No. 7814."

12. To advise City immediately of any event which would jeopardize or terminate County's ability to be reimbursed by New Mexico Department of Transportation under the above referenced project number.

BOTH PARTIES AGREE:

13. That this Joint Powers Agreement may be terminated by either party upon thirty (30) day written notice of intent to terminate. Should either party terminate this agreement, the County's obligation to pay for any work provided by City under this agreement prior to notice of termination shall continue until City is paid in full for its services under this agreement. Should City decide to terminate this agreement, it will provide County with detailed accounting records for any payments due and owing to City prior to notice of termination within thirty (30) days after notice of termination.

14. That this Joint Powers Agreement constitutes the entire agreement between the parties and that no oral or written agreements outside of this document shall be enforceable unless determined by statute. This agreement may be amended only by written agreement signed by both parties hereto.

15. That this agreement shall be governed by the laws of the State of New Mexico and any action required to be brought to enforce the terms of this agreement shall be brought in the District Court of Otero County, New Mexico. In the event of an unresolvable agreement, the prevailing party shall be entitled to reasonable attorney fees and court costs.

16. Recognizing that the deadline dates for the use of the funds imposed on both parties are June 30, 2008 and June 30, 2009 for the County grant and June 30, 2010 for the City, time is of the essence under this contract and both parties agree to

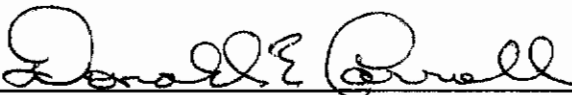
cooperate fully to assure that all deadlines are met in a timely manner for the completion of this contract.

17. That should either party determine that funding is not available for the completion of this project, they shall immediately notify the other party and this contract will terminate immediately. This determination shall not relieve either party of the obligations which the other party has incurred pursuant to this agreement prior to notification of unavailability of funding.


18. That the appropriate governing body has reviewed this agreement and has authorized the undersigned to enter into this Joint Powers Agreement and by their signature hereto binds the respective party.

CITY OF ALAMOGORDO, NEW MEXICO
a New Mexico municipal corporation


Date: 6/26/07

By: 
Donald E. Carroll, Mayor

ATTEST:

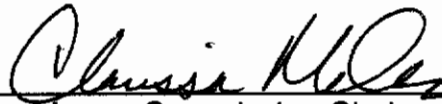

Renee L. Cantin, City Clerk

APPROVED AS TO FORM:

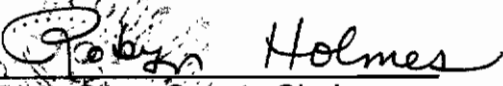


William H. Brogan, City Attorney

COUNTY OF OTERO, NEW MEXICO

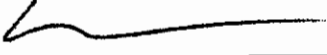
Date: 5-29-07

By: 
Doug Moore, Commission Chairman

ATTEST:



Robyn ~~Silva~~ Holmes, County Clerk
C. Holmes

APPROVED AS TO FORM:


Daniel A. Bryant, County Attorney



New Mexico DEPARTMENT OF
TRANSPORTATION
 MOBILITY FOR EVERYONE

Local Government Agreement Unit
 P.O. Box 1149, South Building 4
 Santa Fe, New Mexico 87504-1149
 (505) 827-5640 fax
 Shirley Martinez (505) 827-5608
 Elaine Medina (505) 827-5309
 Clarice Yi (505) 827-5325

*Relief Route
 Connector*

December 3, 2004

Mr. Bill Lee Parker
 Road Superintendent
 County of Otero
 409 Fairgrounds Road
 Alamogordo, New Mexico 88310

RE: Control Number 7814

Project No. ST-7535(211)

Dear Mr. Parker:

Enclosed for your coordination of signatures are five originals of the Supplemental Cooperative Severance Tax Agreement referenced above, for the purpose stated in Section Two of the Agreement. Please return them to my attention at the address shown above.

Also, please DO NOT fill in the date on the first page of the enclosed agreement. Two originals will be mailed to you at the time they are fully executed.

If you have any questions concerning the agreement or if I can be of further assistance, please contact me at the telephone number listed above.

Sincerely,

Elaine Medina

Elaine Medina
 Contract Specialist

Enclosures

Bill Richardson
 Governor

Rhonda G. Faught P.E.
 Cabinet Secretary

Commission

Johnny Cope
 Chairman
 District 2

David Schütz
 Vice Chairman
 District 5

Gregory T. Ortiz
 Secretary
 District 6

Norman Assed
 Commissioner
 District 3

Jim Franken
 Commissioner
 District 4

Bud Hettlinga
 Commissioner
 District 1

Contract No. D10540/1
Vendor No. 5240639
Project No. ST-7535(211)
Control No. 7814

**SUPPLEMENTAL COOPERATIVE SEVERANCE
TAX AGREEMENT CERTIFICATION PROJECT**

THIS AGREEMENT, made and entered into this 6th day of January, 2005, by and between the NEW MEXICO DEPARTMENT OF TRANSPORTATION, herein referred to as "DEPARTMENT," and OTERO COUNTY, herein referred to as "COUNTY."

RECITALS

WHEREAS, the DEPARTMENT and COUNTY entered into a Cooperative Severance Tax Project Agreement D10540 on November 4, 2003; and,

WHEREAS, page 7, SECTION EIGHTEEN of the original AGREEMENT allows both parties to make alterations and revisions to the said AGREEMENT; and,

WHEREAS, it is necessary to amend this AGREEMENT to incorporate funds appropriated by Severance Tax Act Laws of 2004, Chapter 126, Section 15, Subsection 33; and,

WHEREAS, the DEPARTMENT and the COUNTY agree that the original Agreement be supplemented. THE PARTIES AGREE AS FOLLOWS:

SECTION ONE -- PURPOSE:

The purpose of this AGREEMENT is to specify and delineate the rights and duties of the parties hereto as outlined in SECTION TWO. This Project shall hereafter be referred to interchangeably as "Project" or "Project Control No. 7814." The Project is a joint and coordinated effort for which the DEPARTMENT and the COUNTY each have authority or jurisdiction.

SECTION TWO -- PROJECT FUNDING BY PARTIES:

1. The total estimated cost for Project Control No. 7814, is One Hundred Seventy Seven Thousand Dollars (\$177,000) to be funded as follows:

A. **2003 Series Severance Tax Bond Issues**
Chapter 429, Section 18, Subsection 59

DEPARTMENT's 100% share shall be

\$125,000

to construct road connectors for the Alamogordo relief route in Otero county. Any unexpended funds shall revert to the originating fund within six months of completion of the project but no later than **June 30, 2008.**

B. **2004 Series Severance Tax Bond Issues**
Chapter 126, Section 15, Subsection 33

DEPARTMENT's 100% share shall be

\$ 52,000

to design and construct connectors for the Alamogordo relief route in Otero county. Any unexpended funds shall revert to the originating fund within six months of completion of the project but no later than **June 30, 2009.**

C. **The Total Estimated Project Cost**

\$177,000

2. The COUNTY shall pay all Project costs that exceed the total amount of One Hundred Seventy Seven Thousand Dollars (\$177,000).

SECTION THREE -- COUNTY SHALL:

1. Assume the lead role for the Project and be solely responsible for environmental and archaeological clearances, right-of-way acquisition, design, Project construction or implementation, construction management and testing, and Project completion.
2. Utilize the four digit Project Control No. 7814 in all correspondence and submittals to the DEPARTMENT.
3. Pay all costs, perform or contract to perform all labor, and supply all material, except as provided in SECTION TWO of this AGREEMENT, for the purpose as described in SECTION TWO.

4. Adopt a written resolution of support for the Project, including an assumption of ownership, liability and maintenance responsibility for the scope, or related amenities and required funding to support the Project.
5. Be responsible for all applicable design and pre-construction activity, such as, but not limited to, the following:
 - a. utility relocation;
 - b. drainage design;
 - c. geotechnical design;
 - d. pavement design;
 - e. traffic design;
 - f. structural design;
 - g. environmental and archaeological clearances; and
 - h. survey, right-of-way acquisition and maps.
6. Cause all designs to be performed under the direct supervision of a Registered New Mexico Professional Engineer, when applicable, as required by NMSA 1978, Section 61-23-21 (1999).
7. Complete the Project using current DEPARTMENT material specifications or American Public Works Association (APWA) specifications. COUNTY design standards and specifications may be used if approved in writing by the DEPARTMENT's District Engineer prior to project implementation.
8. Complete environmental coordination and complete the checklist contained in **Appendix A**, "Environmental and Cultural Resources Requirements." This shall be done in accordance with NMSA 1978, Section 67-3-28 (1993) and the DEPARTMENT's Commission Policy No. 44. The COUNTY shall retain a copy of the completed and signed checklist for not less than five years after Project completion.
9. Comply with the "Minimum Acceptance Requirements" specified in the attached **Appendix B**, incorporated herein by reference, or provide a list of Minimum Acceptance Requirements that are currently used by the COUNTY for their local streets and roads to the District Engineer for review and approval before implementation.
10. Use Rental Rate Blue Book rates, if not provided in the Department established equipment rates in the implementation of this Project. Any equipment rates not found in the DEPARTMENT established rates shall be reimbursed at the Blue Book rates.
11. Within sixty days of Project completion furnish the DEPARTMENT "Certification of the Construction Phase" (see **Appendix C**), which is hereby incorporated by reference into this AGREEMENT. The Chairman or his/her designee shall execute both this certification and this AGREEMENT. Failure of the COUNTY to furnish the above

certification to the DEPARTMENT upon written demand by the DEPARTMENT shall amount to a material breach of this AGREEMENT and shall entitle the DEPARTMENT to cease performance of any obligation set forth in this AGREEMENT at its sole discretion.

12. Advertise, let, and supervise the construction of Project Control No. 7814; or, mobilize the COUNTY's own forces to perform the work; or, begin procurement of construction materials or right of way acquisition.
13. Agree that any right of way to be acquired will be done so in accordance with all applicable state laws, i.e., New Mexico State Eminent Domain Code, NMSA 1978, Sections 42A-1-1 through 42A-1-33, and Sections 42-2-1 through 42-2-24, as amended.
14. Agree that the DEPARTMENT has the option to terminate this AGREEMENT if the COUNTY has not met the conditions identified in SECTION THREE, Paragraph 12, of this AGREEMENT, within six months of the date when the bonds are sold or if the COUNTY has not expended at least 85% of the allocated funds within three years after the bond sale date. Should such termination occur upon request of the DEPARTMENT, the COUNTY shall not be eligible for reimbursement by the DEPARTMENT for funds obligated in this AGREEMENT as of the date of termination.
15. Allow the DEPARTMENT the right to periodically inspect this Project for the purpose of determining if it is being constructed in a good and workmanlike manner, and for determining compliance with the plans and any specifications. If such inspection discloses a failure to substantially meet such requirements and standards as determined by the DEPARTMENT, the DEPARTMENT may terminate this AGREEMENT for default, reserving all rights and prerogatives available under New Mexico law.

SECTION FOUR -- DEPARTMENT SHALL:

Reimburse the COUNTY in accordance with SECTION TWO and SECTION THIRTEEN.

SECTION FIVE -- BOTH PARTIES AGREE:

Upon termination of this AGREEMENT, any remaining property, materials or equipment belonging to the DEPARTMENT shall be accounted for by the COUNTY and disposed of as directed by the DEPARTMENT.

SECTION SIX -- PROJECT RESPONSIBILITY:

This Project is the COUNTY's sole responsibility and nothing herein requires the DEPARTMENT to have any responsibility for future maintenance of the Project. The COUNTY shall maintain with its own funds all facilities constructed.

SECTION SEVEN -- COUNTY SOLE JURISDICTION:

By reason of the DEPARTMENT's participation in the funding of this Project, the DEPARTMENT is not incorporating this Project into the state highway system, nor is the DEPARTMENT assuming any maintenance or user responsibility or liability for participation in this Project.

SECTION EIGHT -- LEGAL COMPLIANCE:

The COUNTY shall comply with all applicable federal, state, local, and Department laws, regulations and policies in the performance of this AGREEMENT, including, but not limited to laws governing civil rights, equal opportunity compliance, environmental issues, workplace safety, employer-employee relations and all other laws governing operation of the workplace, including laws and regulations hereafter enacted.

The COUNTY shall ensure that the requirements of this compliance are made a part of each subcontract on this Project at all tiers.

SECTION NINE -- THIRD PARTY BENEFICIARY CLAUSE:

No provision of this AGREEMENT creates 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 for wrongful death, bodily and/or personal injury to person, damage to property, and/or any other claim(s) whatsoever pursuant to the provisions of this AGREEMENT.

SECTION TEN -- NEW MEXICO TORT CLAIMS ACT:

No provision of this AGREEMENT establishes any waiver of immunity from liability for alleged tortious conduct of any employee of the DEPARTMENT or the COUNTY arising from the performance of this AGREEMENT apart from that set forth in the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1, et seq.

SECTION ELEVEN -- ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS:

There shall be strict accountability for all receipts and disbursements relating hereto. The COUNTY shall maintain all records and documents relative to the Project for a minimum of five years after completion of Project. The COUNTY shall furnish the DEPARTMENT or State Auditor, upon demand, any and all such records relevant to this AGREEMENT and allow them the right to audit all records, which support the terms of this AGREEMENT. If an audit finding determines that specific funding use was inappropriate or not related to the project, the COUNTY

shall reimburse that portion to the DEPARTMENT within thirty days of written notification. If documentation is insufficient to support an audit by customarily accepted accounting practices, the expenses supported by such insufficient documentation shall be reimbursed to the DEPARTMENT within thirty days.

SECTION TWELVE – AUTHORIZATION OF EXPENDITURES:

The terms of this AGREEMENT are contingent upon sufficient appropriations and authorizations being made by the Legislature of New Mexico, for performance of this AGREEMENT. If sufficient appropriations and authorizations are not made by the Legislature, this AGREEMENT shall terminate upon written notice given by the DEPARTMENT to the COUNTY. The DEPARTMENT is expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered, and approved for expenditure by the DEPARTMENT. The DEPARTMENT's decision as to whether its funds are sufficient for fulfillment of this AGREEMENT shall be final.

SECTION THIRTEEN – REIMBURSEMENT FOR EXPENDITURES INCURRED:

The DEPARTMENT shall reimburse the COUNTY on a monthly basis, upon submittal of an invoice and/or payment request by the COUNTY, for funds expended by the COUNTY for the purposes stated in SECTION ONE and TWO of this AGREEMENT. The District Office will make the construction reimbursements. The Local Government Agreement Unit will make the pre-construction reimbursements, subject to approval by the DEPARTMENT. The DEPARTMENT will not reimburse the COUNTY 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 cost for services or deliverables. Except for appropriations to the Capital Program Fund, money from Severance Tax Bond proceeds shall not be used to pay indirect project costs. **The COUNTY shall submit monthly invoices and/or payment requests and shall have a certification authenticating work completed, amount due, remaining AGREEMENT balance and Project Control No. 7814. Incomplete submittals will be returned to the COUNTY for corrections.** All invoices and/or payment requests shall be submitted to the DEPARTMENT within six months of completion of the project and any unexpended funds shall also revert to the originating fund within six months of completion of the project but no later than **June 30, 2008, for the 2003 Severance Tax Funds and June 30, 2009, for the 2004 Severance Tax Funds.**

SECTION FOURTEEN -- TERMS OF THIS AGREEMENT:

This AGREEMENT constitutes the entire agreement between the parties. Any claimed covenant, term, condition, warranty or promise of performance not expressly included in this document or its amendments, is not part of this AGREEMENT and not enforceable pursuant to this AGREEMENT. Performance of all duties and obligations herein shall conform with and shall not contravene any state, local, or federal statutes, regulations, rules, or ordinances.

SECTION FIFTEEN -- TERMINATION:

1. This AGREEMENT shall terminate on **June 30, 2009**. Neither party shall have obligation under this AGREEMENT after said date except as stated in SECTION SIX of this AGREEMENT.
2. The DEPARTMENT may, at its option, terminate this AGREEMENT if the COUNTY fails to comply with any provisions of this AGREEMENT. By such termination neither party may nullify obligations already incurred for performance or failure to perform prior to termination of the AGREEMENT.

SECTION SIXTEEN -- SEVERABILITY:

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

SECTION SEVENTEEN -- AMENDMENT:

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

IN WITNESS WHEREOF, the parties have set their hands and seal the day and year set forth below.

NEW MEXICO DEPARTMENT OF TRANSPORTATION

By: 

Deputy Secretary

Date: 1/06/05

OTERO COUNTY

By: Clusia Melan
Chairman of County Commission

Date: 12/28/04

ATTEST:

By: Dianna Duran
County Clerk Chief Deputy

Date: 12/29/04

APPROVED AS TO FORM BY THE COUNTY ATTORNEY

By: Daniel A. Burt
County Attorney

Date: 12/28/04

APPENDIX A

Environmental and Cultural Resources Requirements

Local Government Entity _____

Project No. _____ Control No. _____ County _____

Project Description: _____

Directions: *Complete environmental coordination and complete the checklist. This shall be done in accordance with the DEPARTMENT's Commission Policy No. 44, "State Funding Assistance to Local Governments." The COUNTY shall retain a copy of this completed and signed checklist for not less than five years.*

**DATE
COMPLETED**

_____ **Land Ownership:** Determine land ownership, contact land manager to initiate coordination if project is located on state or federal land or on an easement located on state or federal land.

_____ **Noise Ordinances:** Determine if state or local noise ordinances apply to project. Initiate appropriate coordination.

_____ **Air Quality Ordinances:** Determine if federal, state, or local air quality ordinances apply to project. Initiate coordination.

_____ **Surface Water Quality:** Determine if project meets New Mexico Water Quality Control Commission Regulations. Complete Coordination with the Surface Water Quality Bureau of the New Mexico Environment Department if the project affects wetlands or violates water quality standards. Obtain National Pollutant Discharge Elimination System Permit if project disturbs five acres or more of the ground surface.

_____ **Ground Water Quality:** Determine if project is consistent with New Mexico Water Quality Standards. Submit a Notice of Intent to the Ground Water Protection and Remediation Bureau of the New Mexico Environment Department if there will be any water impounds that discharge to ground water.

_____ **Threatened and Endangered Species:** Contact U.S. Fish and Wildlife Service; New Mexico Department of Energy, Minerals, and Natural Resources; and New Mexico Department of Game and Fish if it is possible that protected species may be affected.

_____ **Hazardous Materials:** Determine if hazardous materials are within project limits. Hazardous materials include solid waste, underground storage tanks, hazardous waste, and radioactive waste. Report any materials that may be a threat to public health or the environment to the appropriate Bureau at the New Mexico Environment Department.

_____ **Historic and Cultural Properties:** Complete coordination with the New Mexico State Historic Preservation Officer to determine if historic or cultural properties may be affected by the project and also to determine if additional investigations are needed to meet requirements of the New Mexico State Cultural Properties Act and the New Mexico Prehistoric and Historic Sites Preservation Act.

_____ **Attach** copies of New Mexico State Historic Preservation Officer coordination and any other coordination documents to this form.

_____ **Other - Describe:** _____

I certify that the above is true and correct:

Signature _____ **Title** _____ **Date** _____

APPENDIX B

Minimum Acceptance Requirements

ITEM	MINIMUM TESTING REQUIREMENTS
Base Course, Sub Base, Plant Mix Bituminous Mixes & Open Graded Friction Course	One washed gradation per day's production, or 1000 tons, whichever is less, with a minimum of three per project. All aggregates must meet NMDOT Standard Specifications for Aggregate Index & Fractured Faces.
Concrete (Redi Mix)	One set, five each of cylinders per 100 cu. yds. of any increment thereof per pour. Specimens to be tested at 7, 14, and two each at 26 days with fifth specimen to be tested at 28 days if the two 28 day specimens do not meet ACI Bar Rim Criteria. Additional specimens will be required for early breaks. Curing requirements will be in accordance with current AASHTO requirements. If the concrete is to be used in a structure, then a Slump, Unit Weight and Entrained Air Content of the wet concrete must be performed at the same frequency and on the same load as the cylinders are molded from. Cement, Fly Ash, and all concrete additives must be on the DEPARTMENT's most recent approved products list.
Hot Mixed Asphaltic Mixes	One set of tests (a set of tests is defined as an Extraction & Gradation, Fractured Faces, Maximum Specific Gravity, Nuclear Density, and three Gyratory Briquettes) per 1500 tons, or a day's production, whichever is less, with a minimum of three sets of tests per project. For multiple areas of placement, at least one Density must be taken for each mutually exclusive area regardless of tonnages.
Asphalt Cements and Additives	Testing will be required in accordance with the DEPARTMENT's most current minimum testing requirements for Aggregate Acceptance, Asphalt Cements, Lime, and Liquid Anti-Strips. These agents must be on the DEPARTMENT's most recent approved products list.
Cold Milling	Visual inspection must be documented in a manner approved by the District Engineer. Width and Depth Logs are to be taken and documented at least three times per 1000 linear feet per lane with a minimum of three logs per project.
Asphalt Rejuvenating Agents	Agents and application rates proposed for this item must be submitted to the District Engineer for approval. The Entity shall submit their Inspection and Testing Plan to the District Engineer for approval prior to work commencing on the project.
Guardrail and Anchors	This item will be accepted based upon Certificates of Compliance. All certificates must be "Fully Traceable." Grade and alignment will be in accordance with NMDOT requirements unless otherwise approved by the District Engineer.
Crack Sealing	Visual Inspection must be documented. Width and Depth Logs are to be taken and documented at least three times per 100 linear feet of crack filled, with a minimum of three logs per project. Lengths of cracks must be documented in a manner approved by the District Engineer. Sealant materials will be accepted based on Certificates of Compliance. Sealants must be on the DEPARTMENT's most recent approved products list. All sealants and crack sealing processes must be approved by the District Engineer.
Permanent Pot Hole Repair	Certificates of Compliance are required for all materials. Proper alignment must be verified. DEPARTMENT approved mixes are recommended for this operation. The District Engineer must approve the procedures to be used to clean out holes, prepare them for new material, and methods to be employed to place and compact the new material. All of these steps must be documented in a method agreed upon by the District Engineer. The Entity shall submit their Inspection and Testing Plan to the District Engineer for approval prior to work commencing on the project.

ITEM	MINIMUM TESTING REQUIREMENTS
Fencing	Certificates of Compliance are required on all materials. Proper alignment must be verified. Concrete used for this item must meet the requirements for "Concrete (Redi Mix)" shown above.
Blading and Shaping	Width and Final Grade must be checked and documented three times per 100 linear feet. One Proctor per soil type and one Density/Moisture test per 100 linear feet or any increment thereof per shoulder, or per two-lane roadway with a minimum of one Density/Moisture test per area/shoulder area.
Structures	All NMDOT specifications relating to design, grade, moisture control of backfill material, compaction, and location must be followed unless otherwise approved by the District Engineer. Gradations, Proctors, and Density/Moisture tests must meet the most current NMDOT guidelines for backfilling structures. Concrete testing must meet the criteria of "Concrete (Redi Mix)" shown above.
Chip Sealing	Asphalts must meet the requirements of "Asphalt Cements" above. Application rates are to be as per the District Engineer's recommendations. Gradations are to be run at the rate of one per 250 tons of aggregate with a minimum of three per project. Inspection, testing, and quantities must be documented in a manner approved by the District Engineer for approval prior to work commencing on the project.
Borrow and Pit Run Material	One Proctor per soil type and one Density/Moisture test per 2000 cubic yards, or any increment thereof, with a minimum of one Density/Moisture test per mutually exclusive area and with a minimum of three Density/Moisture tests per project.

APPENDIX C

CERTIFICATION OF THE CONSTRUCTION PHASE

Control No. 7814

Project No. ST-7535(211)

I, _____, in my capacity as _____ of _____ do hereby certify with reference to the aforementioned Project Control Number as follows:

1. That the COUNTY has complied with all terms and conditions in the Project AGREEMENT Control No. 7814.
2. That in the construction of the Project, the COUNTY has used current DEPARTMENT material specifications, American Public Works Association (APWA) specifications, or DEPARTMENT approved COUNTY design standards and specifications.
3. That the COUNTY has completed environmental coordination and completed, signed, and retained the checklist contained in Appendix A, "Environmental and Cultural Resources Requirements."
4. That the COUNTY complied with the "Minimum Acceptance Requirements" specified in Appendix B, or the COUNTY's Minimum Acceptance Requirements that were approved by the DEPARTMENT prior to Project implementation.
5. That any right of way that the COUNTY has acquired, has been done so in accordance with all applicable state laws, i.e., New Mexico State Eminent Domain Code, NMSA 1978, Sections 42A-1-1 through 42A-1-33, and Sections 42-2-1 through 42-2-24, as amended.

IN WITNESS WHEREOF, _____ in his/her capacity as _____ of _____ does hereby certify the aforementioned matters stated herein are true to his/her knowledge and belief and does hereby set his/her hand and seal this day and year specified below:

OTERO COUNTY

By: [Signature]
Chairman of County Commission

Date: 12/28/04

ATTEST:

By: [Signature]
County Clerk [Signature]

Date: 12/29/04

When completed, please send Certification to:

Gary Shubert, District Engineer
New Mexico Department of Transportation
District 2
P.O. Box 1457
Roswell, New Mexico 88202-1457

ARTICLE 22-01. SUBDIVISION REGULATIONS*

***Editor's note:** Ord. No. 1197, §§ 1--20, adopted March 23, 2004, amended the Code by repealing former art. 22-01, and adding a new art. 22-01. Former art. 22-01 pertained to similar subject matter, and derived from the Code of 1960, §§ 11-16-1, 11-16-2, 11-16-4--11-16-16; Ord. No. 327, adopted January 22, 1963; Ord. No. 343, adopted December 10, 1963; Ord. No. 349, adopted March 24, 1964; Ord. No. 501, adopted June 12, 1973; Ord. No. 545, adopted July 13, 1976; Ord. No. 572, adopted June 27, 1978; Ord. No. 604, adopted April 8, 1980; the Code of 1981, § 22-5; Ord. No. 618-81, adopted April 14, 1981; Ord. No. 678, adopted June 12, 1984; Ord. No. 733, adopted August 9, 1988; Ord. No. 738, adopted October 25, 1988; Ord. No. 802, adopted October 23, 1990; Ord. No. 811, adopted March 26, 1991; Ord. No. 836, adopted October 22, 1991; Ord. No. 920, adopted August 8, 1994; Ord. No. 966, adopted December 21, 1995; Ord. No. 976, adopted June 25, 1996; Ord. No. 998, adopted November 12, 1996; Ord. No. 1071, adopted July 13, 1999; Ord. No. 1085, adopted February 22, 2000; and Ord. No. 1115, adopted May 8, 2001.

Cross references: Administrative fee for application for subdivision, § 2-3(f); Water system development fee, § 28-101; planning, Ch. 20; streets, sidewalks and public places, Ch. 21; zoning regulations, Ch. 29.

PHILOSOPHY

The city is interested in the economic growth and development of the city. This development must be balanced with the preservation of the quality of life that makes the city a unique and attractive place to live and work. There are numerous costs and benefits associated with development and some may benefit only a few while others may benefit the entire community. Economic benefits may initially go only to a few, but in the long term, the entire community benefits from growth. While the need for an increase in public safety may be initiated by increased development, an increase in overall service benefits everyone. The same is true with the costs associated with the increase in infrastructure as a result of development. Some, such as residential streets and other neighborhood utilities may only benefit those who live in the development and the developer should incur the associated costs of development. Other development costs, such as the extension of major thoroughfares and water and sewer lines, ultimately benefits the city as a whole and to some degree should be paid by everyone. Again, as in the balance between the quality of life and the impact of increased development, there must be a common understanding of the needs of the developer and the existing needs of the city. This article is a procedure to address and resolve these sometimes-conflicting needs.

(Ord. No. 1197, § 2, 3-23-04)

22-01-010. Definitions.

For the purpose of these regulations, which shall be known as and may be cited as "City of Alamogordo Subdivision Regulations," certain words used herein are defined as follows:

Access or access way. The public or private street by which pedestrians and vehicles shall have lawful and usable ingress and egress to a property line.

Alamogordo comprehensive plan. The current planning documents and related materials officially adopted by the city, containing the goals, objectives and policies pertaining to urban growth, community facilities, infrastructure, circulation, housing and other subjects related to the development of the city.

Alley. A public way, other than a street, intended for secondary access and service to the rear or side of the property.

Association, owner's. An association that is organized in a development in which individual owner's share common interests and responsibilities for cost and upkeep of common open space or facilities.

Block. A unit of land bounded by streets or by a combination of streets and public land, railroad right-of-way, waterways, or any other barrier to the continuity of development.

Buildable area. The portion on a lot remaining after required setbacks and open spaces have been provided.

Building permit zone. That area within the extra-territorial jurisdiction of the city that is subject to inspection for building and related matters by city staff, as adopted by the city commission.

Building setback line. An imaginary line on private property established by ordinance or plat, which regulates the location of buildings or structures as they relate to the site property lines.

Building site. The ground area for a building or structure, together with all yards and open spaces.

Commercial unit development. A platted lot, zoned for commercial, manufacturing or industrial uses, which is further divided into more than one (1) lot and where all additional lots are provided access to a public or private street through a private easement. The access shall be a parcel of land over which a private easement for road purposes, having a minimum paved width of twenty (20) feet, is granted to all owners of property within the commercial unit development. In each instance the instrument creating such private easement, including the original agreement and any changes thereto resulting from the sale, lease or creation of additional lots, shall be held in perpetuity between all signatories, owners or lessees, to the agreement or their successors in interest, shall run with the land and be unseverable, and shall be duly recorded and filed with the office of the county clerk. A copy of the private easement instrument shall be provided with all building permit applications where a property is developed as a commercial unit development.

Commission, city. The governing body of the city. Final approval of all subdivisions in the planning and platting jurisdiction of the city rests with this body or the person or persons designated such authority by the governing body of the city.

Commission, county. The county commission of the County of Otero, which is responsible for the maintenance of any offered dedications, indicated on a plat outside the city, by the entry, use or improvement within the extraterritorial jurisdiction.

Commission, planning and zoning. The commission appointed by the mayor, which is responsible for making recommendations to the city commission regarding municipal planning, zoning and development within the area of the master plan.

Common open space. The private land in a planned development in which the owners have an undivided interest.

Concept plan or master plan. A plan for implementing an integrated development scheme for all phases of a proposed development, and is intended to provide a general consensus regarding compliance with this article.

Current. That which is in effect at the time of approval.

Cul-de-sac. A local street with only one (1) outlet having an appropriate terminus for the safe and convenient reversal of traffic movement.

Dedication. The offer and acceptance of an interest in property to the public for public use.

Development agreement. An agreement between the city and a property owner through which the city agrees to vest development use and intensity or refrain from interfering with subsequent phases

of development through new city legislation in exchange for the provision of public facilities or amenities by the property owner in excess of those required under the current ordinance.

Driveway, private. A vehicular way, not serving more than one (1) lot or parcel of land.

Driveway, common. A vehicular way serving more than one (1) lot or parcel of land, where a maintenance agreement exists between the owners of the lots or parcels of land which utilize the common driveway.

Easement, private. A right-of-use granted for the limited use of private land owners and where general use and maintenance of such area is governed by an agreement which runs with the land and is recorded with the office of the county clerk. This easement is severable only by mutual consent of all of the parties that benefit from this easement.

Easement, public. An easement dedicated by subdivision plat or metes and bounds to and for use by the public, which is included within the dimensions or areas of lots or parcels.

Exempted subdivision. A division of land in the planning and platting jurisdiction of the city and qualifies to be exempt based on the seven (7) exemptions listed under the definition of a subdivision. This division is approved administratively similar to the summary procedure

Existing property. Any piece of land that has been platted or described by metes and bounds.

Extra-territorial jurisdiction (ETJ). The area within five (5) miles outside of the corporate limits of the city.

Filing. The process by which a person desiring approval of a subdivision makes application to the planning coordinator, which application meets all of the plat submission requirements.

Frontage. The line where a parcel of land, lot or site is adjacent to and contiguous to an easement or right-of-way either private or public.

Grade. The slope of any surface specified in percentage terms or in terms of elevation.

Grading. Any disturbance of the surface of the land with earth moving equipment.

Immediate family member. The husband, wife, father, step-father, mother, step-mother, brother, step-brother, sister, step-sister, son, step-son, daughter, step-daughter, grandson, step-grandson, granddaughter, step-granddaughter, nephew, and niece, whether related by natural birth or adoption.

Improvement. Any man-made, fixed item that becomes a part of or placed upon real property.

Intersection. The location where two (2) or more streets cross at grade.

Lot. A parcel of land occupied or intended to be occupied by a main building or group of main buildings and accessory buildings, together with such yards, open spaces, lot width and lot areas, as are required by this article and having frontage upon an easement or right-of-way either public or private and either shown on a plat of record or described by metes and bounds.

Lot area. The total area, measured in a horizontal plane, within the lot lines of a lot, expressed in either acres or square feet.

Lot, corner. A lot located at the intersection of two (2) or more streets.

Lot depth. The horizontal distance between the front and rear lot lines, measured as follows:

- (1) Where the lot lines are straight, from the midpoints thereof;
- (2) Where the lot line curves in (concave), from the midpoint of the chord;
- (3) Where the lot line curves out (convex), from the midpoint of the curve between the side property lines.

Lot, double frontage. Any lot having frontage on two (2) public streets which are nonintersecting.

Lot, interior. Any lot having frontage on one (1) street only.

Lot line. Any line that is a legal boundary of a lot as herein defined.

Lot line zero. The property line where the outside wall of a structure may be located.

Lot, panhandle. A lot, because of inherent limitations, lacks frontage except for access provided by way of a narrow projection of the lot to the street.

Lot, substandard. A lot that has less than the minimum area or minimum dimensions required in this article or for the zoning district in which the lot is located.

Lot width, average. The lot area divided by the lot depth.

Median. A strip of land that separates the opposing flows of traffic on a street.

Metes and bounds. A method of describing the boundaries of land by bearings and distances from a known point of reference.

Park zone. An area surrounding a proposed or existing park that can reasonably derive benefit from that park. Factors to be considered in determining a park zone shall include, but are not limited to, the following: the current city parks and recreation development zones map, the size of the park, the size and number of residential units in the surrounding neighborhoods, the amount of remaining open space in the area, and the benefit to the residential units in the area.

Pedestrian way. A specifically designated place, means, or way by which pedestrians shall be provided safe, adequate and usable circulation; normally provides access through the interior of a property or development. Does not include street or vehicular easement or right-of-way or required sidewalk along a street or vehicular way.

Phased development. A designated portion of a subdivision concept plan that has been approved for development.

Plans, street, utility and grading (SUG). The plan(s) required by the city for construction and installation of public improvements necessary to provide required services for proper development; including but not limited to, plans for grading, drainage facilities, water and sewer, open space, parks and other recreational space, streets, and illumination of streets.

Planned development. A development on property which is planned and built to achieve a cohesive relationship between uses and facilities; which has been platted in accordance with this article; and which either has received designation from the planning authority as a planned residential development or which is otherwise appropriately zoned.

Planning authority. The governing body of the City of Alamogordo, Otero County, New Mexico or the person or persons designated such authority by the governing body of the City of Alamogordo, Otero County, New Mexico.

Plat. The map, chart, survey, plan or replat certified by a licensed land surveyor containing a description of the subdivided land with ties to permanent monuments.

Plat, certificate of survey. A replat complying with section 3-20-2, NMSA 1978, as amended or superceded from time to time, provided that all applicable requirements are met. The resubdivision of platted tracts, which are less than one (1) acre and which are contiguous with each other, for the purpose of increasing or reducing the size of such contiguous tracts, but not less than the minimum standard size required by the political subdivision. A certificate of survey setting forth the legal description of tracts resulting from such resubdivision shall be filed with the proper planning authority, the county clerk and the county assessor.

Plat, correction. A plat, which may be administratively processed without city commission review, when the planning authority determines that the plat is correcting an error in the original plat. Affidavits prepared by the original surveyor and recorded with the county clerk, with city approval, are also acceptable methods of correcting minor plat errors.

Plat, final (FP). The plat that may be formally processed for final consideration by the planning authority and subsequently filed.

Plat, (conditional) preliminary. The map or plan tentatively describing the parcel of land, submitted for city staff review to permit incorporation of changes of design, street alignment and widths, lot arrangement, size and other design considerations.

Plat, preliminary/final. a plat, which may be formally processed without preliminary plat review when the planning authority determines the preliminary processing is unnecessary because of the uncomplicated nature of the plat.

Plat, summary. A plat that meets the criteria established for administrative final approval.

Plat, vacated. A subdivision, which is vacated through procedures described in this article, and is thereby made legally void.

Procedural determination conference. A conference between the subdivider or the subdivider's representative and city staff for the purpose of allowing city staff to determine specific procedural submission requirements for a given proposed subdivision and to insure that the subdivider and the subdivider's representatives are aware of and understand those requirements.

Public right-of-way. The property dedicated to and accepted by the governing body of the city, for use by the city. This transfer is in fee simple.

Recording. The act of processing a subdivision plat, which has been approved by the city as required by this article, as an official record in the office of the county clerk.

Replat. To re-subdivide all or part of a recorded subdivision and which does not require the vacation of an entire preceding plat.

Reserve strip. A parcel or tract of land that the city feels may be necessary in the future to continue and to preserve access for future developments in the area. Should development occur and this tract not be utilized it shall revert to the subdivider (also see street stub).

Re-subdivision. See "replat."

Sewage disposal system, on-site. One (1) or more systems of treatment devices and disposal facilities that are used only for disposal of sewage produced on the site where the system is located.

Sewerage facilities. The devices and systems which transport domestic wastewater from residential or commercial property, treat the wastewater, and dispose of the treated water in accordance with the minimum state standards.

Street, arterial. Streets that are used primarily for fast or heavy traffic.

Street, collector. Streets that carry traffic from local streets to the major system of arterial streets and highways, including the principal entrance streets of a residential development and streets for circulation within such a development.

Street, local. Streets used to carry traffic to the major system of arterial streets and highways, including the principal entrance streets of a residential development and streets for circulation within such a development.

Street, marginal access. A frontage road which limits the access of traffic to an arterial.

Street, public. The land dedicated to the use of the public and which has been accepted for maintenance and control by the city, county or state.

Street centerline. The line midway between the sidelines of the street right-of-way.

Street, stub. A street that has been designed to allow for the future extension of the street through subsequent subdivisions (see reserve strip).

Subdivider. Any property owner(s), or representative(s) thereof, who is/are dividing or

proposing to divide land so as to create a subdivision.

Subdivision. For the purpose of approval by the city is:

(1) For the area of land within the corporate boundaries of the city, the division of land into two (2) or more parts by platting or by metes and bounds description into tracts for the purpose of:

- a. Sales for building purposes;
- b. Laying out a municipality or any part thereof;
- c. Adding to a municipality;
- d. Laying out suburban lots; or
- e. Resubdivision.

(2) For the area of land within the extraterritorial subdivision and platting jurisdiction of the city (as defined in section 3-20-5, NMSA, 1978), the division of land into two (2) or more parts by platting or by metes and bounds description into tracts of less than five (5) acres in any one (1) calendar year for the purposes of:

- a. Sale for building purposes;
- b. Laying out a municipality or any part thereof;
- c. Adding to a municipality;
- d. Laying out suburban lots; or
- e. Re-subdivision.

(3) However, subdivision does not include:

- a. The sale or lease of apartments, offices, stores, or similar space within a building.
- b. The division of land created by court order where the order creates no more than one (1) parcel per party.
- c. The division of land resulting only in the alteration of parcel boundaries where parcels are altered for the purpose of increasing or reducing the size of contiguous parcels and where the number of parcels is not increased.
- d. The division of land to create burial plots in a cemetery.
- e. The division of land to create a parcel that is sold or donated as a gift to an immediate family member; however, this shall be limited to allow the seller or donor to sell or give no more than one (1) parcel per tract of land per immediate family member and shall be further limited to those divisions which do not result in any parcel being smaller than two (2) acres or lacking legal access, and provided further that no new parcel created may be sold or transferred, other than to an immediate family member, for a period of three (3) years after such creation.
- f. The division of land created to provide security for mortgages, liens, or deeds of trust, provided that the division of land is not the result of a seller-financed transaction.
- g. The division of land to create a parcel that is donated to any trust or nonprofit corporation granted an exemption from federal income tax, as described in section 501(c)(3) of the U.S. IRS Code of 1986, as amended; school, college, or other institution with a defined curriculum and a student body and faculty which conducts classes on a regular basis; or to any church or group organized for the

purpose of divine worship, religious teaching, or other specifically religious activity.

Technical standards, City of Alamogordo. The current detailed design standards developed in consultation with industry representatives and city staff. Said design standards and any amendments thereto are enforceable only after approval of the standards by the city commission and shall have the force of ordinance, and shall be in addition to this article and may from time to time supercede the requirements of this article.

(Ord. No. 1197, § 3, 3-23-04; Ord. No. 1228, § 1, 1-11-05)

22-01-020. Reserved.

Editor's note: Ord. No. 1228, § 2, adopted January 11, 2005, amended the Code by repealing former § 22-01-020 in its entirety. Former § 22-01-020 pertained to applicability of chapter; and derived from Ord. No. 1197, adopted March 23, 2004.

22-01-030. Procedure for conditional approval.

(a) Conditional approval procedure (not mandatory). Previous to the filing of an application for street, utility and grading (SUG) approval, the subdivider may submit a general subdivision plan. The subdivider may submit to the planning authority an application and four (4) prints of the following plans and data: (No fee is required.)

(1) General subdivision information should describe or outline the existing conditions of the site and the proposed development. This information should include land characteristics and available community facilities and utilities; and information describing the subdivision proposal such as number of residential lots, typical lot width and depth, and proposed utilities and street improvements.

(2) Location map should show the relationship of the proposed subdivision to existing community facilities, which serve or influence the subdivision. Include development name and location, main traffic arteries, public transportation lines, shopping centers, elementary and high schools, parks and playgrounds, other community features such as railroad stations, airports, hospitals and churches, title, scale, north arrow and date.

(3) Sketch plan on topographic survey if publicly available should show in simple sketch form the proposed layout of streets, lots and other features in relation to existing conditions. The sketch plan may be a free hand pencil sketch made directly on a print of the topographic survey. The sketch plan may also include the existing topographic data listed under this chapter, plats and data for conditional approval, if the subdivider wishes to present such detail at this stage.

(b) Within fifteen (15) working days the planning authority shall inform the subdivider that the plans and data as submitted or as modified do or do not comply with the city comprehensive plan, zoning regulations, or meet the objectives of these regulations. When the planning authority finds the plans and data do not meet the objectives of these regulations it shall express the reasons therefor.

(Ord. No. 1197, § 5, 3-23-04)

22-01-040. Procedure for approval of street, utility, grading plans and the final plat (SUG and FP).

Plans and data for SUG and FP approval:

(1) Topographic data required as a basis for the SUG plans shall include existing conditions as follows:

- a. Boundary lines: bearings and distances;
- b. Easements: location, width and purpose;
- c. Streets on and adjacent to the tract: name and right-of-way width and location, type, width and elevation of surfacing, any legally established center line elevations, walks, curbs, gutters, culverts;
- d. Utilities on and adjacent to the tract: location, size and invert elevation of sanitary, storm and combined sewers, location and size of water mains, location of gas lines, fire hydrants, electric and telephone poles, and street lights. If water mains and sewers are not on or adjacent to the tract, indicate the direction and distance to, and size of nearest ones, showing invert elevation of sewers;
- e. Ground elevations on the tract based on a U.S. Coast and Geodetic Survey datum plane, also all drainage channels or swales, and at selected points not more than one hundred (100) feet apart in all directions. For land that slopes less than three (3) percent contours shall be at one-foot intervals, three (3) percent to eleven (11) percent contour interval of two-foot, more than eleven (11) percent the contour interval shall be five-foot.
- f. Soil percolation tests if individual sewage disposal systems are proposed;
- g. Other conditions on the tract: watercourse, rock out-crop, and other significant features;
- h. Other conditions on adjacent land within fifty (50) feet: approximate direction and gradient of ground slope, including any embankments or retaining walls, character and location of buildings, railroads, power lines, towers and other nearby nonresidential land uses or adverse influences, owners of adjacent unplatted land; for adjacent platted land refer to the subdivision plat by name, recordation date and number, and show approximate percent built-up and typical lot size.
- i. Zoning on and adjacent to the tract.
- j. Proposed public improvements per the comprehensive plan.
- k. Location map showing location of the tract.
- l. Title and certificate: present tract designation according to official records in office of appropriate recorder, title under which proposed subdivision is to be recorded, with names and addresses of owners, notation stating acreage, scale, north arrow, datum, benchmarks, the appropriate certification of either a professional engineer or land surveyor and date of survey.

(2) Street, utility and grading plans shall be at a scale of one hundred (100) feet to one (1) inch or larger. It shall show:

- a. Streets: names, right-of-way and roadway widths, approximate grades and gradients, similar data for alleys, if any;
- b. Other rights-of-way or easements: location, width and purpose;
- c. Location of utilities, if not shown on other exhibits;
- d. Lot lines, lot numbers, and block numbers;
- e. Sites, if any, to be dedicated for parks, playgrounds or other public uses;

- f. Sites, if any, for multi-family dwellings, shopping centers, churches, industry or other nonpublic uses exclusive of single-family dwellings;
- g. Front building setback lines and site data, including number of residential lots, typical lot size and acres in parks;
- h. Scale, north arrow and date;
- i. Proposed subdivision name.
 - 1. The name of the subdivision shall not conflict with that of any other subdivision in the county.
 - 2. If several plats of a subdivision are to be filed as the development of a large area progresses, the first plat shall bear the name of the subdivision and the words "Unit One." The second and following plats shall bear the name of the subdivision and shall be numbered in consecutive order as "Unit Two" and so forth.
 - 3. If the subdivision is to be identified as a re-plat of a subdivision and the same subdivision name is to be maintained, the re-plats shall be labeled consecutively, "A," "B," "C," and so forth.
 - 4. Once a subdivision name and unit number have been submitted and accepted for processing, the name or number shall not be changed without the concurrence of the city.

(3) The SUG plans shall be accompanied by profiles showing existing ground surface and proposed street grades, including extensions for a reasonable distance beyond the limits of the proposed subdivision, typical cross sections of the proposed grading, roadway and sidewalk, and the proposed sanitary and storm water sewers, sewers with grades and sizes indicated. Profiles of streets and utilities shall be drawn to a scale no smaller than one (1) inch to fifty (50) feet horizontally, and a vertical scale of one (1) inch equals five (5) feet for slopes up to three (3) percent and one (1) inch equals ten (10) feet for slopes greater than three (3) percent. Cross sections of streets and utilities shall be drawn to a scale no larger than one (1) inch to five (5) feet horizontally one (1) inch to five (5) feet vertically.

(4) Drainage requirements for existing properties:

- a. Existing properties less than three (3) acres:
 - 1. Provide plot plan with existing ground elevations, and/or contours. Proposed finish grade elevations and finish floor elevations, flow line and top of curb elevations on adjacent streets.
 - 2. Show proposed improvements and disposition of surface runoff.
 - 3. Provide drainage report based on the ten-year storm, showing pre-developed and developed runoff conditions.
- b. Existing properties larger than three (3) acres:
 - 1. Provide plot plan with existing ground elevations, and/or contours. Proposed finish grade elevations and finish floor elevations, flow line and top of curb elevations on adjacent streets.
 - 2. Show proposed improvements and the disposition of surface runoff.
 - 3. Provide drainage report based on the ten-year storm, showing pre-developed and developed runoff conditions.
 - 4. On-site storm water detention or retention required if impervious

surfaces will exceed sixty (60) percent of developed lot area. Developed runoff rate (cfs) not to exceed pre-development runoff rate.

(5) Drainage requirements for new subdivisions and street construction or street reconstruction:

- a. Provide grading and drainage plan with:
 1. Existing ground elevations, and/or contours.
 2. Proposed finish grade elevations, including house pads, street grades, top of curb and flow line elevations.
- b. Provide drainage report for the subdivision based on the ten-year and fifty-year storm.
- c. Street design capacity, within the subdivision, shall accommodate ten-year storm runoff within the curbs at full subdivision development.
- d. Street design capacity, within the subdivision, shall accommodate fifty-year storm runoff within curbs overtopped not more than six (6) inches at full subdivision development.
- e. Building pads shall be elevated no less than six (6) inches above the fifty-year storm runoff elevation, or not less than one (1) foot above the curb line, whichever is greater.
- f. Inverted-crown street sections may be used to accommodate these requirements, when approved by the city engineer.

(6) Seven (7) copies of the SUG plans and supplementary material, as specified, shall be submitted to the city with the application and the required fee.

- a. City staff has ten (10) working days to review the SUG plans and other material submitted for conformity thereof to these regulations. On or before the tenth day, a meeting will be held with the subdivider, the subdivider's engineer, and city staff authorized as decision making staff to address staff comments. The subdivider and the subdivider's engineer will have five (5) working days to address staff comments and make changes to the SUG plans and turn the corrected information into the planning authority. Application and plans shall then be reviewed by the planning and zoning commission within five (5) working days. After review by the planning and zoning commission, the application and plans will be submitted to the city commission for consideration at the next available regular commission meeting.
- b. Upon approval by the city commission of the SUG and FP, the subdivider shall file and record the original final plat with the county clerk and recorder of the county, within ninety (90) days after approval. The subdivider shall further return one (1) electronic file and one (1) mylar reproducible, which clearly shows the recording data, to the city within thirty (30) days of filing the plat. If the final subdivision plat is not filed and recorded with the clerk of the county, and the required copies are not returned to the city, within ninety (90) days after receiving final approval, the subdivision shall revert to preliminary plat status without further notice or action by the city. After reversion to preliminary plat status, any subdivider who wishes to obtain final plat approval shall comply with the procedures set forth in chapter 22 for final plat approval and shall pay all applicable fees for final plat approval.
- c. No land shall be offered for sale by reference to such final plat until such has been approved by the city commission and recorded with the county clerk and recorder.

d. The final plat shall be submitted for approval concurrently or within six (6) months after approval of the SUG, otherwise such approval shall become null and void unless an extension of time is applied for and granted by the city.

e. Within thirty (30) days of completion of the construction of required subdivision improvements, one (1) set of stable base reproducible and one (1) set of prints of the record documents for all utility improvements, within the subject subdivision, shall be filed with the public works department.

(Ord. No. 1197, § 6, 3-23-04)

22-01-050. Final plat.

(a) The final plat shall be drawn in ink on stable base material on sheets twenty-four (24) inches by thirty-six (36) inches and shall be at a scale of one hundred (100) feet to one (1) inch or larger. Where necessary, the plat may be on several sheets accompanied by an index sheet showing the entire subdivision. The final plat shall show the following:

- (1) Primary control points approved by the city engineer, or descriptions and "ties" to such control points, to which all dimensions, angles, bearings, and similar data on the plat shall be referenced.
- (2) Tract boundary lines, right-of-way lines of streets, easements and other rights-of-way, and property lines of lots and other sites, with accurate dimensions, bearings or deflection angles, and radii, arcs and central angles of all curves.
- (3) Name and right-of-way width of each street or other rights-of-way on or adjacent to the tract.
- (4) Location, dimensions and purpose of any easements.
- (5) Number to identify each lot and block or tract.
- (6) Purpose for which sites, other than lots, are dedicated or reserved.
- (7) Minimum front building setback line on all lots.
- (8) Location and description of monuments.
- (9) Names of record owners of adjoining unplatted land.
- (10) Reference to recorded subdivision plats of adjoining platted land by record name, date and number.
- (11) Certification by a registered licensed surveyor certifying to the accuracy of the survey and plat.
- (12) Certification of title showing that applicant is the landowner.
- (13) Statement by owner establishing to whom public dedication is being made (i.e., City of Alamogordo, Otero County, etc.) and the specific purpose(s) for the dedication.
- (14) Scale, north arrow and date of survey.
- (15) Approved subdivision name.
- (16) Assigned address of each lot.
- (17) Acreage or square footage for each lot.
- (18) Proof of current tax status with the county assessor.

(b) The subdivider shall be required to enter into a contract with the city, agreeing to abide by

and to comply with the layout and drawings, as finally approved, and also, all plans and specifications as approved. The contract shall be a covenant running with the land, shall constitute a lien on the land, and shall serve for five (5) years. The contract may be renewed at the end of the five (5) years, provided that the final plat complies with the current technical standards. This lien shall not arise until the petitioner is in default and the city has incurred costs or other obligations toward the construction of required improvements. This lien may be enforced by a sale of the land to reimburse the city for the costs of installing water and sewer lines, paving streets, installing curbing, sidewalks, alley aprons and gutters, acquiring easements for streets, alleys and other utilities, and otherwise conforming to all the requirements of the subdivision regulations as provided for herein. A final inspection may be requested by either the city or a subdivider. Upon acceptance, the city inspector shall issue a "certificate of acceptance."

(c) The contract shall contain, among other provisions, the following:

(1) For a period ending one (1) year after the city accepts the subdivision improvements for maintenance, the subdivider shall agree to make all repairs to the construction work and replace all defective material or workmanship which may become apparent before or after the subdivision is accepted by the city; and no acceptance or approval by the city, its engineer or other agent or employee shall relieve the subdivider from these obligations. Nor shall the city be deemed to waive any of the requirements of this chapter by virtue of its acceptance of any easement or right-of-way from the subdivider.

(2) The subdivider shall agree to supply and install at the subdivider's own expense all water lines and sewer lines of approved size, materials and quality within the subdivision in accordance with the current technical standards, and the comprehensive plan, and also outside the subdivision a sufficient distance to connect with the city's sewer and water system, and to furnish and install approved size, materials and quality valves, fire hydrants, manhole rings and covers, with stub-outs for each property, and all appurtenances to such water and sewer system as required to service and support the subdivision.

(3) The subdivider shall agree to protect drainage structures, to build bridges, culverts and such other drainage facilities in the area as may be necessary to protect the subdivision, the city, and other lands in the area from floods by reason of such development.

(4) The subdivider shall agree to compact all backfill to ninety-five (95) percent of density as determined by the modified procter method. At six (6) months and at twelve (12) months after completion, the contractor shall re-grade and repair all backfill, if required or directed by the city.

(5) Such contract shall include an agreement with the city to lay and construct all paving, curbs and gutters, and sidewalks, using the current technical standards, and to connect such improvements with the existing paving, curbs, gutters and sidewalks as may be required by the city engineer.

(6) The subdivider shall likewise agree to repair all damages to water lines, sewer lines and manholes at the subdivider's expense.

(7) Materials used in performing the work and developing and completing such subdivision shall be of good quality and laboratory tests and reports of such materials shall be submitted to the city engineer as required. Tests and samples shall be taken and analyzed by methods prescribed by the American Society for Testing Materials, or the American Association of State Highway Officials. The subdivider shall agree to pay for such tests.

(8) The subdivider or owner shall also agree that all subdivision work and/or utilities

improvements to be constructed and/or installed by the subdivider or owner in accordance with this chapter shall be subject to inspection and approval by the city and its duly designated agents and/or employees during the progress of the work. The subdivider or owner shall, upon approval of the final subdivision plat and/or plans and specifications for utility installations to be done hereunder, pay to the city the sum of one and one-half (1.5) percent of the estimated cost of constructing all such subdivision work and/or utilities improvements, such costs to be estimated by the city, for the city's expense in connection with such checking and inspection.

(Ord. No. 1197, § 7, 3-23-04)

22-01-060. Streets.

(a) The arrangement, character, extent, width, grade and location of all streets shall conform to the general community or comprehensive plan and shall be considered in their relation to existing and planned streets, to topographical conditions, to public convenience and safety, and in their appropriate relation to the proposed uses of the land to be served by such streets.

(b) Where such is not shown in the comprehensive plan, the arrangement of streets in a subdivision shall either:

(1) Provide for the continuation or appropriate projection of existing principal streets in surrounding areas; or

(2) Conform to a plan for the neighborhood approved or adopted by the city commission to meet a particular situation where topographical or other conditions make continuance or conformance to existing streets impracticable.

(c) Local streets shall be so laid out that their use by through traffic will be discouraged.

(d) Where a subdivision abuts or contains an existing or proposed arterial street, the city may require marginal access streets, deep lots with rear alleys, or such other treatment as may be necessary for adequate protection of residential properties and to afford separation of through and local traffic.

(e) Where a subdivision borders on or contains a railroad right-of-way, the city may require a street approximately parallel to such right-of-way, and on the side of right-of-way adjacent to the subdivision, at a distance suitable for the appropriate use of the intervening land, as for park purposes in residential districts, or for commercial or industrial purposes in appropriate districts. Such distances shall also be determined with due regard for the requirements of approach grades and future grade separations.

(f) Reserve strips controlling access to streets shall be prohibited except where their control is definitely placed in the city under conditions approved by the city. Should these reserve strips become unnecessary due to adjacent development they shall revert to the subdivider or the subdivider's assigns.

(g) A tangent at least one hundred (100) feet long shall be introduced between reverse curves on arterial and collector streets.

(h) When connecting street lines deflect from each other at any one (1) point by more than ten (10) degrees, they shall be connected by a curve with a radius adequate to ensure a slight distance of not less than one hundred (100) feet for local and collector streets and of such greater radii as the city staff shall determine for special cases.

(i) Streets shall be laid out so as to intersect as nearly as possible at right angles and no street shall intersect any other street at less than sixty (60) degrees.

(j) Street right-of-way widths shall be as shown in the city technical standards, hereafter

referred to as the "technical standards."

(k) Wherever a one-half (1/2) street is adjacent to a tract to be subdivided, the other one-half (1/2) of the street shall be platted within such tract.

(l) No street names shall be used which will duplicate or be confused with the names of existing streets. Street names shall be subject to the approval of the city commission.

(m) Street grades shall comply with the comprehensive plan with due allowances for reasonable vertical curves.

(Ord. No. 1197, § 8, 3-23-04)

22-01-070. Alleys.

(a) Through alleys shall be provided in each block, unless a variance is granted and the current technical standard requirements are met.

(b) Alley intersections and sharp curves in alignment shall be avoided, but where necessary, corners shall be cut off sufficiently to permit safe vehicular movement.

(Ord. No. 1197, § 9, 3-23-04)

22-01-080. Easements.

(a) Easements across lots or centered on rear or side lot lines shall be provided for utilities where necessary.

(b) Where a subdivision is traversed by a designated FEMA flow path, there shall be provided a storm water easement or drainage right-of-way conforming substantially with the lines of such watercourse, and such further width or construction, or both, as will be adequate, to handle the volume of flood water which is based on FEMA's fifty-year storm event.

(c) Parallel streets or alleys may be required in connection with such watercourses or drainage ways.

(d) Existing detention ponds or drainage channels may be used for flood control.

(Ord. No. 1197, § 10, 3-23-04)

22-01-090. Blocks.

(a) The lengths, widths and shapes of blocks shall be determined with due regard to:

(1) Provision of adequate building sites suitable to the special needs of the type of use contemplated.

(2) Needs for convenient access, circulation, control and safety of street traffic.

(b) Block lengths longer than one thousand eight hundred (1,800) feet shall provide emergency vehicle turnarounds with a fifty-foot radius at property line.

(c) Pedestrian crosswalks, meeting the current Manual on Uniform Traffic Control Device (MUTCD) standards, shall be installed at required intersections as directed by the city engineer.

(Ord. No. 1197, § 11, 3-23-04)

22-01-100. Lots.

- (a) The lot size, width, depth, shape and orientation, and the minimum building setback lines shall be appropriate for the zoning of the subdivision and for the type of development and use contemplated.
- (b) Lot dimensions shall conform to the requirements of the zoning regulations and the comprehensive plan.
 - (1) When a lot cannot be served by a public sewer but requires an approved and registered septic tank system, the minimum lot area shall conform with the appropriate state regulations and shall be approved by the environmental improvement department of the state.
 - (2) Depth and width of properties reserved or laid out for commercial and industrial purposes shall comply with the current property zoning.
- (c) Corner lots for residential use shall have extra width to permit appropriate building setback from and orientation to both streets.
- (d) The subdividing of the land shall be such as to provide, by means of a street or easement, each lot with satisfactory access to any existing public streets.
- (e) Double frontage lots should be avoided except where essential to provide separation of residential development from traffic arteries or to overcome specific disadvantages of topography and orientation.
- (f) Side lot lines shall be substantially at right angles or radial to street lines.

(Ord. No. 1197, § 12, 3-23-04)

22-01-110. Public sites and open spaces.

- (a) Any subdivision, re-subdivision or phased development, where the subdivider is installing public infrastructure, i.e., water lines, sewer lines and curb, gutter and paving, the subdivider shall pay three (3) percent of the subdivider's own engineer's estimate of the installed cost of infrastructure. These funds shall be deposited in a fund specifically used for the acquisition and development of parks, playgrounds and/or other public recreation uses within the park zone established by the comprehensive plan in which the new development is located, or for other necessary public infrastructure. These funds must be paid at the time the subdivision is approved. For a phased development the subdivider will pay into the park zone fund five (5) percent of the estimated infrastructure costs of that phase. Should the subdivider choose, and the city agrees, the subdivider may dedicate five (5) percent of the total land area of the entire proposed subdivision to the city for use as a park, public facility, or fire station. The minimum size for this dedication shall be one (1) acre. Development by the city shall begin within two (2) years after the subdivision reaches seventy-five (75) percent occupancy of the phase in which public land dedication is located; or, the land will revert back to the subdivider.
- (b) If locations for schools are set aside by the comprehensive plan in any proposed subdivision, the school board may purchase such lands from the subdivider for school purposes.
- (c) When additional right-of-way is required by the city for streets or easements and is not shown on the comprehensive plan or designated in its floodplain management ordinance, the city shall pay the subdivider for the current appraised value of that portion of the land, as determined by an independent certified appraiser.

(Ord. No. 1197, § 13, 3-23-04)

22-01-120. Monuments.

Monuments shall be placed at all block corners, angle points, points of curves in streets, and at all property corners. Such monuments shall be made of metal at least one-half (1/2) inch in diameter and sixteen (16) inches long with the surveyor's license number on a cap affixed to the top of the rebar.

(Ord. No. 1197, § 14, 3-23-04)

22-01-130. Utility and street improvements.

(a) Utility and street improvements shall be provided in each new subdivision in accordance with the current technical standards, and in accordance with the comprehensive plan, and all amendments, modifications and/or additions thereto as may be approved and adopted by the city commission in official session. In any instance in which there is any conflict between the technical standards and the comprehensive plan, the more stringent requirement shall apply.

(c) All handicapped curb returns, alley aprons, asphaltic pavement, curbs and gutters, street improvements, water and sewer lines, and other work to be performed and/or constructed by the subdivider pursuant to this chapter shall be completed on each approved phase of development of the subdivision before the occupancy of any homes or other structures on that approved phase of development. The city may, however, issue a temporary certificate of occupancy until this work is completed.

(d) In any development in which lots have not been built-out within five (5) years of final acceptance, the subdivider shall complete the sidewalks on all vacant lots.

(Ord. No. 1197, § 15, 3-23-04)

22-01-140. Hardships.

(a) *Generally.* Where the city commission finds that extraordinary hardships may result from strict compliance with these regulations, it may vary the regulations so that substantial justice may be done and the public interest secured; provided, that such variation will not have the effect of nullifying the intent and purpose of the comprehensive plan or these regulations.

(b) *Large scale developments.* The standards and requirements of these regulations may be modified by the city commission in the case of a plan and program for a new town, a complete community, or a neighborhood unit, which in the judgment of the city commission provides adequate public spaces and improvements for the circulation, recreation, light, air and service needs of the tract when fully developed and populated and which also provides such covenants or other legal provisions as will assure conformity to and achievement of the plan.

(Ord. No. 1197, § 16, 3-23-04)

22-01-150. Conditions.

In granting variances and modifications, the city commission may require such conditions as will, in its judgment, secure substantially the objectives of the standards or requirements so varied or modified.

(Ord. No. 1197, § 17, 3-23-04)

22-01-160. Municipal liens.

Parcels of land which have been assessed for street, water, sewer or other improvements may be subdivided under the following conditions:

- (1) Payments on the assessment lien must be current.
- (2) The submission of documents to the planning authority must include a division of the outstanding assessment among the lots proposed to be created by the subdivision.
- (3) Upon the transfer of any lot in the newly created subdivision by any method, the assessment against the lot to be transferred must be paid in full.

(Ord. No. 1197, § 3, 3-23-04)

22-01-170. Summary subdivisions.

(a) *Eligibility.* The summary subdivision procedure may be used to add, move or remove lot lines provided that:

- (1) The number of total lots does not increase by more than two (2);
- (2) All resulting lots meet minimum lot size requirements;
- (3) The payments on all outstanding municipal liens are current.
- (4) Upon the transfer of any newly created lot by any method, the outstanding assessment on that lot must be paid in full.
- (5) No provisions are required by the city for utilities, easements, right-of-way or drainage;
- (6) All owners of the subject property sign the plat and application;
- (7) The summary procedure is available for original plats and re-plats, either within the city or within the extra-territorial platting jurisdiction.

(b) *Submission requirements.* The applicant is required to submit to the city the following:

- (1) Completed application form, including waiver of public hearing;
- (2) Applicable fees in accordance with Appendix I of this Code;
- (3) The original mylar and ten (10) copies of a final plat meeting all the requirements of subsection 22-01-050.
- (4) The submission to the planning authority includes a division of any remaining assessment lien among any lots created by the summary subdivision.
- (5) For subdivisions located within the city's extra-territorial jurisdiction, one (1) copy of the disclosure statement.

(c) *Procedure.*

- (1) Within ten (10) working days of receiving the application and all required submissions, the city will make an initial determination of eligibility for summary approval. If the proposal is ineligible, the city will promptly notify the applicant that the full subdivision procedure is required. If the proposal is facially eligible for summary procedure, the planning authority will forward the proposal to the city manager with staff comments and recommendations.

(2) Within ten (10) working days of receiving the application, the city manager will determine whether the subdivision is approved or should be diverted to the city commission for review.

(3) If the city manager approves the summary subdivision, the city manager shall sign the plat signifying approval by the city and shall return it to the applicant for filing.

(4) The city manager may, with sole discretion, divert the subdivision application to the city commission for consideration. In that event, the city manager shall notify the applicant in writing and place the item on the next available city commission agenda. The applicant will then be required to reimburse the city for five (5) additional copies of the plat.

(d) *Reservations.* By providing for the summary subdivision procedure, the city does not waive its rights to require the applicant to satisfy the city's usual requirements for subdivision approval including, but not limited to, the following:

- (1) Public infrastructure, such as streets, alleys, utilities and suitable access;
- (2) Public land dedication or cash contributions in lieu thereof if cash contributions are otherwise required;
- (3) Provisions for adequately addressing anticipated drainage problems or unstable soil conditions; and
- (4) Requirements for waiver of protest agreements and avigation easements.

Such requirements may be addressed as a condition of summary subdivision approval, if practicable. If agreement is not reached, either the city manager or the applicant may require that the application be placed on the next available city commission agenda.

(e) *Certificate of survey procedure.* Nothing in this section is intended to limit the availability of the certificate-of-survey procedure contained in section 3-20-2, N.M.S.A. 1978, as amended or superseded from time to time, provided that all applicable requirements are met.

(f) *Extra-territorial platting jurisdiction.* Approval by the city of a summary subdivision application will not relieve the applicant of the requirement of approval by the county for subdivisions within the city's extra-territorial platting jurisdiction.

(Ord. No. 1197, § 19, 3-23-04)

22-01-180. Exempted subdivisions.

(a) *Eligibility.* The exempted subdivision procedure may be used provided that:

- (1) The division qualifies under one (1) of the seven (7) exemptions listed in the definition of subdivision.
- (2) All resulting lots meet the current applicable minimum lot size requirements. Any resulting lots cannot create a violation of the current technical standards or zoning regulations, without an approved variance.
- (3) The payments on all outstanding liens are current.
- (4) Upon the transfer of any newly created lot by any method, the outstanding assessment on that lot must be paid in full.
- (5) All owners of the subject property sign the plat and application;
- (6) The exempted subdivision procedure is available for original plats and replats, either within the city or within the extra-territorial platting jurisdiction.

(b) *Submission requirements.* The applicant is required to submit to the city the following:

- (1) Completed application form, including waiver of public hearing;
- (2) Applicable fees;
- (3) An original mylar and two (2) copies of the final plat meeting all the requirements of subsection 22-01-140(a)
- (4) The submission to the planning authority includes a division of any remaining assessment lien among any lots created by the exempted subdivision.
- (5) Exemption 2 must be accompanied by an official copy of the court order.
- (6) Exemption 5 must be accompanied by the proposed conveyancing document and birth certificate, adoption certificate or marriage license.
- (7) Exemption 6 must be accompanied by the financing documents.
- (8) Exemption 7 must be accompanied by copies of the IRS exemption letter and/or other documents demonstrating entitlement to exemption.

(e) *Procedure.* Within ten (10) working days of receiving the application and all required submissions, the planning authority will make a determination of eligibility for exempted approval. If the proposal is ineligible, the planning authority will promptly notify the applicant that the full subdivision procedure is required. If the proposal is eligible for the exempted procedure the planning authority will forward the subdivision to the city manager for signature. Within five (5) working days, the city manager will sign the plat and return it to the owner for recording with the county clerk.

(Ord. No. 1197, § 20, 3-23-04)

Joint Water Plan - Talking Points for Chairman Moore

- Comprehensive Land Use Plan
- Time to update
- Joint update to save on costs

Water Development Plans - Talking Points for Chairman Moore

- How much water do we currently use?
- How much water is out there?
- Future plans

Development of Bypass Route - Talking Points for Chairman Moore

- What will it look like
- Abandoned feeders on Indian Wells
- Loop Theory
- Completion Date

Flood Control Projects/Updates - Talking Points for Chairman Moore

- COA Big Ditch Project
- Alamo Canyon
 - 2007 Legislative Appropriations
 - $690,000 + 48,800 = 738,800$
 - Funds expire on 6/30/2011
 - No funds spent as of yet
- Corps of Engineers
 - October 2007 – Otero County requested the assistance of the U.S. Army Corps of Engineers under the General Investigation program to evaluate Otero County's flood prone areas
 - Corps submitted a Congressional Fact Sheet for Otero County and requested \$100,000 for a new project start (result is a 905(b) report)
 - January 2008 – Letters requesting support sent to Senator Domenici, Senator Bingaman and State Representative Pearce in an effort to receive funding from a proposed supplemental appropriations bill
 - Awaiting Congress to pass their budget, could be as late as April