

# Fairgrounds Bridge Hold Harmless Agreement With the City of Alamogordo

***THIS HOLD HARMLESS AGREEMENT*** (the "Agreement") is made as of March 12th, 2020, by and between the City of Alamogordo, as the person or entity receiving indemnity (hereinafter referred to as the City"), located at 1376 East Ninth Street, Alamogordo, New Mexico 88310, and the Board of County Commissioners of Otero County (hereinafter referred to as the "County"), as the person or entity bound to provide and/or protect the City, located at 1101 New York Avenue, Alamogordo, New Mexico 88310, and at times the City or County may be referred to as the "Party" or may be collectively referred to as the "Parties."

***WHEREAS***, the County desires and wishes to hold harmless and indemnify the City and its successors and assigns from any and all liabilities, losses, claims, judgments, suits, fines, penalties, demands, or expenses, including, but not limited to, all reasonable costs for defense and investigation thereof (including but not limited to attorney's fees, court costs, and expert fees) claimed by anyone by reason of injury or damage to persons or property sustained in or around the Drainage and Utility Easement granted by the County to the City, as recorded in the Office of the Otero County Clerk on October 28th, 2002, at Book 1043, Page 348 of the Official Records of Otero County and attached hereto, as a proximate result of the acts or omissions of the City, its agents, successors, and assigns or arising out of the operation or actions of the City upon or about the bridge to be constructed in the easement is used as well as during construction of the bridge, except when such liability may result from the sole negligence of the City, its officers, directors, agents, servants, or employees; provided, however, that upon the filing of any claim with the County for damages arising out of incidents for which the City herein agrees to hold County harmless, then and in that event the County shall notify City of such claim and City shall have the right to settle, compromise, or defend the same.

### **REPRESENTATION ON AUTHORITY OF PARTIES/SIGNATORIES**

All parties signing this Agreement represent and warrant that they are duly authorized and have the legal capacity to execute and deliver this Agreement. Each party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.

### **MODIFICATION OF AGREEMENT**

This Agreement may be supplemented, amended, or modified only by and through the mutual agreement of all parties. No supplement or modification of this Agreement shall be binding unless done so in writing and signed by all parties to this Agreement.

### **GENERAL WAIVER**

The failure of any party at any time to require performance of any provision or to resort to any remedy provided under this Agreement shall in no way affect the right of that party to require performance or to resort to a remedy at any time thereafter, nor shall the waiver by any party of a breach be deemed to be a waiver of any subsequent breach. A waiver shall not be effective unless it is in writing and signed by the party against whom the waiver is being enforced.

### **ENTIRE AGREEMENT**

This is the entire agreement between the aforementioned parties. It replaces and supersedes any and all oral agreements between the parties, as well as any prior writings.

### **ENFORCEABILITY, SEVERABILITY AND/OR REFORMATION**

In the event that any covenant, provision and/or restriction is found by a court of competent jurisdiction to be unenforceable, such provision shall be modified, rewritten or interpreted to include as much of its nature and scope as will render it enforceable. In the event it cannot be so modified, rewritten or interpreted to be enforceable in any respect, it will not be given effect, and the remainder of the Agreement shall be enforced as if such provision was not included.

In the event that any court determines that any of the covenants, provisions or restrictions to be excessive in duration or scope or to be unreasonable or unenforceable under the laws of that state, it is the intention of the parties that such restriction may be modified or amended by the court to render it enforceable to the maximum extent permitted by the laws of that state.

### **GOVERNING LAWS**

The validity, construction and performance of this Agreement shall be governed and construed in accordance with the laws of New Mexico applicable to contracts made and to be wholly performed within such state, without giving effect to any form of conflict of law provisions thereof. The Federal and State courts located in Otero County, New Mexico shall have sole and exclusive jurisdiction over any disputes arising under the terms of this Agreement.

### **JURISDICTION AND VENUE**

This Agreement is to be construed pursuant to the current laws of the State of New Mexico. In the event that any dispute shall arise under or in connection with the agreement or related to any matter which is the subject of the agreement shall be subject to the exclusive jurisdiction of the state courts located in Otero County, New Mexico, and the City and County agree to submit to the jurisdiction of those courts.

**THE UNDERSIGNED HAVE READ, UNDERSTAND and ACCEPT THIS AGREEMENT,** and by signing this Agreement, all parties agree to all of the aforementioned terms, conditions and policies.

CITY OF ALAMOGORDO, NEW MEXICO  
a New Mexico municipal corporation

By: \_\_\_\_\_  
Brian Cesar, City Manager

BOARD OF COUNTY COMMISSIONERS  
OF OTERO COUNTY, NEW MEXICO

By: \_\_\_\_\_  
Pamela Heltner, County Manager

ATTEST:

\_\_\_\_\_  
Rachel Hughs, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Petria Bengoechea, City Attorney

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael Eshleman, County Attorney