

# CITY of ALBUQUERQUE

## TWENTY-THIRD COUNCIL

COUNCIL BILL NO. R-19-177 ENACTMENT NO. \_\_\_\_\_

SPONSORED BY: Isaac Benton, by request

1 RESOLUTION

2 APPROVING AND AUTHORIZING THE FILING OF THE ATTACHED GRANT  
3 APPLICATION FOR A CLEAN DIESEL GRANT WITH THE U.S.  
4 ENVIRONMENTAL PROTECTION AGENCY AND PROVIDING AN  
5 APPROPRIATION TO THE ENVIRONMENTAL HEALTH DEPARTMENT IN  
6 FISCAL YEAR 2020.

7 WHEREAS, the Environmental Health Department has a performance  
8 measure that it will protect and enhance air quality for current and future  
9 generations and thereby protect public health, economic well-being and  
10 aesthetic values for the community (Bernalillo County); and

11 WHEREAS, the operation of the Air Quality Programs of the Environmental  
12 Health Department provides the technical means of accomplishing these  
13 goals; and

14 WHEREAS, the City of Albuquerque is desirous of applying for these  
15 federal funds for which there is a seventy-five percent (75%) match  
16 requirement; and

17 WHEREAS, Congress has provided the U.S. Environmental Protection  
18 Agency with special funding to address special projects designed to enhance  
19 public health by reducing air pollution.

20 BE IT RESOLVED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF  
21 ALBUQUERQUE:

22 Section 1. That the attached application for the Clean Diesel Grant in the  
23 amount of \$3,638,785 for the period of July 1, 2019 – June 30, 2021, is hereby  
24 approved and its submission and filing with the appropriate official or office of  
25 the Environmental Protection Agency is in all respects approved.

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1       Section 2. That in the event that the grant is awarded, federal funds from  
2 the Environmental Protection Agency in the amount of \$909,697 is hereby  
3 appropriated to the Environmental Health Department in the Operating Grants  
4 Fund, Fund 265, for Fiscal Year 2020. Existing funds from Parks and  
5 Recreation Department Fund 305 (7557050) and Solid Waste Management  
6 Division Fund 653 (5428211) will be utilized for the 75% match requirement.

7       Section 3. Of the \$909,697 from the Environmental Protection Agency, \$641  
8 is for indirect costs and of the City's match of \$2,729,088; \$1,922 is for indirect  
9 costs.

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# CITY OF ALBUQUERQUE

## Albuquerque, New Mexico


### Office of the Mayor

#### INTER-OFFICE MEMORANDUM

May 16, 2019

Mayor Timothy M. Keller

**TO:** Klarissa Pena, President, City Council

**FROM:** Timothy M. Keller, Mayor 

**SUBJECT:** Resolution approving and authorizing the filing of the FY/19 Diesel Emission Reduction Act (DERA) Grant Application and providing an appropriation to the Environmental Health Department in Fiscal Year 2020.

For your consideration, please find the attached resolution which will allow the Environmental Health Department to apply for funds from the National Clean Diesel Assistance Program in Fiscal Year 2020. The program supports projects that protect human health and improve air quality by reducing harmful emissions from diesel engines.

The attached grant application is seeking federal funding from the U.S. Environmental Protection Agency for \$909,697 for the period of July 1, 2019 through June 30, 2021. City matching funds in the amount of \$2,729,088 are required and have already been appropriated to the Parks and Recreation Department Fund 305 (7557050) and Solid Waste Management Department Fund 653 (5428211).

The attached resolution is submitted for consideration and action by the Council.

**Title/ Subject of Legislation:** Resolution approving and authorizing the filing of the FY/19 Diesel Emission Reduction Act (DERA) Grant Application and providing an appropriation to the Environmental Health Department in Fiscal Year 2019.

**Approved:**

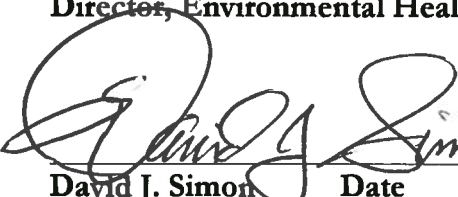
 6/25/19  
\_\_\_\_\_  
Sarita Nair Date  
Chief Administrative Officer

**Approved as to Legal Form:**

 6-11-19  
\_\_\_\_\_  
Esteban Aguilar Date  
City Attorney EMP 6/11/19

**Recommended:**

 4/18/19  
\_\_\_\_\_  
Sandra Begay Date  
Director, Environmental Health Department

 5/1/19  
\_\_\_\_\_  
David J. Simon Date  
Director, Parks & Recreation Department

 5/1/19  
\_\_\_\_\_  
Matthew Whelan Date  
Director, Solid Waste Management Department

## **Cover Analysis**

### **1. What is it?**

**The Clean Diesel Grant.**

### **2. What will this piece of legislation do?**

**Authorize the Mayor to apply for a grant with the United States Environmental Protection Agency, National Clean Diesel Funding Program, and request an appropriation for Fiscal Year 2020. The project period for this grant is July 1, 2019 – June 30, 2021.**

### **3. Why is the project needed?**

**The grant will provide funds to replace heavy-duty highway vehicles with newer, cleaner vehicles that operate on diesel and alternative fuels which reduce diesel emissions.**

### **4. How much will it cost and what is the funding source?**

**The City's grant application seeks \$909,697 from the Environmental Protection Agency for the period of July 1, 2019 through June 30, 2021, of which \$641 is for City indirect costs. This EPA grant requires a City match of \$2,729,088 of which \$1,922 is City indirect costs. This amount is currently appropriated in Fund 305, Activity 7557050 (Parks and Recreation) and Fund 653, Activity 5428211 (Solid Waste) for replacement of equipment and vehicles.**

### **5. What will happen if the project is not approved?**

**The City will miss out on the opportunity to reduce diesel emissions and replace aging heavy-duty diesel equipment.**

# FISCAL IMPACT ANALYSIS

TITLE: DERA Grant

R:  
FUND: 265

DEPT: EHD

- ☐ No measurable fiscal impact is anticipated, i.e., no impact on fund balance over and above existing appropriations.
- ☒ (If Applicable) The estimated fiscal impact (defined as impact over and above existing appropriations) of this legislation is as follows:

		2019	Calendar Year 2020	2021	Total
Base Salary/Wages		12,448			12,448
Fringe Benefits at	50.28%	6,259			6,259
Subtotal Personnel		18,707			18,707
Operating Expenses		3,617,515			3,617,515
Property		-			-
Indirect Costs	13.70%	2,563			2,563
Total Expenses		\$ 3,638,785			\$ 3,638,785
<input type="checkbox"/> Estimated revenues not affected					
<input checked="" type="checkbox"/> Estimated revenue impact					
Revenue from program					0
Amount of Grant	\$	909,697.00			\$ 909,697.00
City Cash Match	\$	2,727,166.00			\$ 2,727,166.00
City Inkind Match					
City IDOH		1,922			1,922
Total Revenue		\$ 3,638,785			\$ 3,638,785

These estimates do not include any adjustment for inflation.

\* Range if not easily quantifiable.

Number of Positions created

**COMMENTS:** Revenue anticipated is from the US EPA for the Diesel Emission Reduction Grant for FY/19 is \$909,656 , and the City contribution is \$2,729,088 (75% of total expenses). It is anticipated that the General fund will receive \$1,922.00 in the form of Indirect Overhead of Federal Funds and \$641.00 from Fund 305 (7557050) and Fund 653 (5428211).

## COMMENTS ON NON-MONETARY IMPACTS TO COMMUNITY/CITY GOVERNMENT:

PREPARED BY:

  
FISCAL ANALYST

APPROVED:

 6/10/19  
DIRECTOR (date)

REVIEWED BY:

 6/10/19  
CIP Program Manager (date)

**ENVIRONMENTAL PROTECTION AGENCY (EPA)**  
**Clean Diesel Funding Assistance Program FY 2018**  
**Request for Proposals (RFP)**  
**EPA-OAR-OTAQ-18-03**

**EPA Region:** EPA Region 6

**Project Title:** City of Albuquerque  
National Clean Diesel Assistance Program FY 2018

**Applicant Information:** City of Albuquerque  
Environmental Health Department  
Air Quality Program  
P.O. Box 1293-  
Albuquerque, NM

**Eligible Entity:** Municipal Government

**Total Project Cost:** \$3,638,785.00

**EPA Funds Requested:** \$909,697.00

**Mandatory Cost-Share:** \$2,729,088.00

**Voluntary Cost Share:** N/A

**Target fleet:** Refuse Hauler

**Type of Upgrade:** Replacement of highway diesel vehicles with newer, cleaner vehicles that operate on diesel or alternative fuels and use engines certified by EPA and, if applicable CARB to meet a more stringent set of engine emission standards.

**Short Project Description:** Replace 14 aging Class 8 refuse hauler diesel vehicles with new, cleaner vehicles.

**Place of Performance:** Albuquerque, Bernalillo County, New Mexico

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## **Work Plan**

### **Section 1. Project Summary and Overall Approach:**

#### **A. VEHICLES AND TECHNOLOGIES:**

The City of Albuquerque (COA) proposes to administer grant funds for the implementation of a diesel emission reduction project to replace 14 diesel fueled, medium and heavy-duty, on-road vehicles operated by the COA's Solid Waste and Parks and Recreation Departments.

The annual replacement of the refuse haulers is contingent on funding. The COA's goal is to follow the manufacturer's recommendations for replacement based on the useful life of the vehicle. The vehicles that are replaced will be rendered permanently disabled. Evidence of proper disposal (engine serial number and VIN) will be provided to EPA.

With the exception of one vehicle, the vehicles included in this proposal have a remaining useful life of 5-9 years, therefore meeting the criteria for early replacement. The replacement vehicles will serve the same function as the original vehicle and will have the same gross weight rating and similar horsepower. At the time of this application, the proposed vehicles are working properly and are used in performing normal duty operations and are maintained in accordance with manufacturer specifications.

#### **B. ROLES AND RESPONSIBILITIES:**

The City of Albuquerque is responsible for all aspects of project implementation to include technical and financial reporting, procurement, coordination of delivery of equipment and submission of certificates of destruction. The vehicles will not be salvaged.

The COA will use a competitive process for obtaining services and products as required by OMB Supercircular Grant Guidance. In addition, the COA through established mechanisms, will ensure that local vendors are properly notified of the RFP so that they can fully participate. The COA will retain ownership of all equipment purchased for this project.

#### **C. TIMELINE AND MILESTONES:**

The table below details the timeline for completion of the proposed project:

<b>Activity:</b>	<b>Date of Completion:</b>	<b>Responsibility:</b>
Request for Proposals for Vehicles	7/1/19-01/31/20	Accountant and EH Specialist
Evaluation & Award of Proposals	3/1/20 – 5/31/20	Accountant and EH Specialist
Purchase of Equipment	6/1/20 – 02/28/21	EH Specialist and Fleet



		Managers
Financial Status Reports	30 days after end of each quarter	Accountant
Technical Report	To EPA by 9/30/2021	EH Specialist
Final Financial Status Report	9/30/2021	Accountant

#### Air Toxics Assessment Areas:

Bernalillo County is not listed as a priority county.

### **Section 3. Project Sector**

#### **A. PROJECT SECTOR:**

The project sector for this project is refuse hauling

#### **B. GOODS MOVEMENT:**

The replacement vehicles are primarily used as refuse haulers and operate in neighborhood settings throughout Bernalillo County. These vehicles remove and transport household waste and recyclables to the Cerro Colorado landfill.

### **Section 4. Benefits to the Community**

The general population will benefit from the reduced diesel emissions as the replacement vehicles will operate in neighborhoods throughout Bernalillo County. Within the County, there are neighborhoods that have voiced environmental justice concerns such as San Jose, Greater Gardner and Mountain View. These predominantly minority neighborhoods are located within mixed-use industrial areas.

### **Section 5. Community Engagement and Partnerships**

Quarterly reports regarding the DERA project progress will be provided at the Air Quality Control Board Meetings and in written form on the CABQ air quality web page. Any documents targeted to the public will be posted to the web page in both English and Spanish.

### **Section 6. Project Sustainability**

The project will continue to provide reduced emissions across Bernalillo County after the DERA project is completed. The vehicles have an operational life of 8-10 years.

Bernalillo County is currently at 100% of the ozone standard. The COA recently completed a 2018 Ground-Level Ozone Photochemical Modeling Assessment. The work included VOC and NOx sensitivity analysis, identification of source contributions, identification of future-year scenarios and strategies for mitigation. The COA will incorporate this project into any future-year analysis.

## **Section 7. Environmental Results—Outputs, Outcomes and Performance Measures**

### **A. OUTPUTS AND OUTCOMES:**

<b>Anticipated Outputs and Outcomes</b>		
<b>Activities</b>	<b>Outputs</b>	<b>Outcomes</b>
Replace 14 heavy-duty diesel fueled vehicles	No. of vehicles replaced = 14	Lifetime Emissions Reductions NO <sub>x</sub> = 88.8% PM <sub>2.5</sub> = 96.8% HC = 89.0% CO = 88.8% CO <sub>2</sub> = 90.9% Fuel = 90.9%

### **B. PERFORMANCE MEASURES:**

The COA will track vehicle performance, miles per gallon improvements, vehicle miles traveled and operational and maintenance conditions. These metrics are tracked in the COA Fleet Focus Management System. The Fleet Focus Management System data will help the COA quantify reduced emissions by tracking fuel savings in its Solid Waste Collection processes as well as assist with making an informed decision to progress to alternative fuels for the Solid Waste Department's fleet.

### **C. PERFORMANCE PLAN:**

On a quarterly basis, the Solid Waste and Parks and Recreation Departments will provide Fleet Focus reports to the Air Quality Division detailing vehicle performance, miles per gallon improvements, vehicle miles traveled, and operation and maintenance conditions. This data will be used to quantify emissions reductions. This information will be included in all technical reports to EPA.

## **Section 8. Programmatic Capability and Past Performance**

- **PAST PERFORMANCE:** The COA has received and successfully managed Clean Air Act Section 103 and Section 105 grants for several years. The following table lists the assistance agreements that the COA has received the last three years:

<b>Project Title:</b>	<b>Assistance Agreement Number:</b>	<b>Funding Agency and CFDA:</b>	<b>Project Period:</b>
Air Quality Programs – Section 105 - Clean Air Program Management	A00615816	EPA 66.001	10/01/15-09/30/16
	A00615817		10/01/16-09/30/17
	A00615818		10/01/17-09/30/18
PM Fine Grant	PM00F96401	EPA 66.034	04/01/15-03/31/16
	PM01F17101		08/09/16-3/31/17
	PM01F35601		04/01/17-3/31/18

In FY 2005 and FY 2007, The COA received EPA funds to implement three retrofit projects involving exhaust control and idling reduction strategies. In FY 2008-2010, 52 refuse trucks were retrofitted with exhaust control technologies. The COA was able to successfully implement all aspects of the projects including coordination, installation, technical and financial reporting. The COA has a long history of successfully implementing these types of projects.

The COA has a proven record of accomplishment of successfully administering grant funds and complies with all grant related financial and technical reporting requirements.

- **REPORTING REQUIREMENTS:**

The COA will provide quarterly reports to EPA Region 6 regarding progress of the project that will include expenditure details. In addition, quarterly financial reports will be submitted 30 days after the end of each quarter. The Final Financial Report will be submitted 90 days after the end of the project period.

- **ORGANIZATIONAL EXPERIENCE:**

The COA Air Quality Program has been managing Clean Air Act program grants for several decades. The COA has a proven record of accomplishment of successfully administering grant funds and complies with all grant related financial and technical reporting requirements. The COA documents progress toward achieving work plan goals and objectives via conference calls, quarterly reports and final technical reports. Throughout the project period, the COA Air Quality Program maintains contact with EPA Region 6 via conference calls, meetings and written correspondence.

- **STAFF AND RESOURCES:**

Staff responsible for implementing this project are experienced with implementing projects that achieve significant reductions in diesel emissions. The COA has technical and fiscal staff who are experienced in grants management and the implementation of retrofit and idle reduction technologies. In preparation for this project, participating Departments have been in contact with qualified vendors regarding this project to evaluate equipment availability.

COA Department Fleet Managers embrace this project as they recognize this as an opportunity for emissions reductions, fiscal savings, and ultimately stimulation of the local economy.

## **Section 9. Budget Narrative and Detail**

### **A. EXPENDITURE OF AWARDED GRANT FUNDS:**

The COA will use a competitive process for obtaining equipment as required by OMB Supercircular Uniform Grant Guidance. In addition, the COA through established mechanisms will ensure that local vendors are notified of the RFP so they can fully participate.

**B. BUDGET NARRATIVE:**

The total budget for the proposed project is \$3,638,785. The requested amount from EPA is \$909,697 and the COA's mandatory 75% cost-share for the project is \$2,729,088.

C. BUDGET TABLE:

**Budget Table**

	EPA Funding	Cost-Share
<b>Personnel</b>		
Accountant I (.10 FTE)	\$1,480.00	\$4,441.00
Environmental Scientist (.10 FTE)	\$1,632.00	\$4,895.00
<b>TOTAL PERSONAL</b>	<b>\$3,112.00</b>	<b>\$9,336.00</b>
<b>Fringe Benefits</b>		
Fringe Benefits @ 50.2817%	\$1,565.00	\$4,694.00
<b>TOTAL FRINGE BENEFITS</b>	<b>\$1,565.00</b>	<b>\$4,694.00</b>
<b>Travel</b>	<b>\$0.00</b>	<b>\$0.00</b>
<b>TOTAL TRAVEL</b>	<b>\$0.00</b>	<b>\$0.00</b>
<b>Equipment</b>		
Replace 13 heavy-duty, diesel fueled vehicles	\$904,379.00	\$2,713,136.00
<b>TOTAL EQUIPMENT</b>	<b>\$904,379.00</b>	<b>\$2,713,136.00</b>
<b>Office Supplies</b>	<b>\$0.00</b>	<b>\$0.00</b>
<b>TOTAL SUPPLIES</b>	<b>\$0.00</b>	<b>\$0.00</b>
<b>Contractual</b>	<b>\$0.00</b>	<b>\$0.00</b>
<b>TOTAL CONTRACTUAL</b>	<b>\$0.00</b>	<b>\$0.00</b>
<b>Other</b>	<b>\$0.00</b>	<b>\$0.00</b>
<b>TOTAL OTHER</b>	<b>\$0.00</b>	<b>\$0.00</b>
Indirect Charges@13.7%	\$641.00	\$1,922.00
<b>TOTAL INDIRECT</b>	<b>\$641.00</b>	<b>\$1,922.00</b>
<b>TOTAL FUNDING</b>	<b>\$909,697.00</b>	<b>\$2,729,088.00</b>
<b>TOTAL PROJECT COST</b>	<b>\$3,638,785.00</b>	

**Application for Federal Assistance SF-424****\* 1. Type of Submission:**

- ☐ Preapplication  
☒ Application  
☐ Changed/Corrected Application

**\* 2. Type of Application:**

- ☒ New  
☐ Continuation  
☐ Revision

**\* If Revision, select appropriate letter(s):****\* Other (Specify):****\* 3. Date Received:****4. Applicant Identifier:****5a. Federal Entity Identifier:****5b. Federal Award Identifier:**

NM - New Mexico

**State Use Only:****6. Date Received by State:****7. State Application Identifier:****8. APPLICANT INFORMATION:****\* a. Legal Name:**

City of Albuquerque

**\* b. Employer/Taxpayer Identification Number (EIN/TIN):**

85-6000102

**\* c. Organizational DUNS:**

9494370650000

**d. Address:****\* Street1:**

P.O. Box 1293

**Street2:****\* City:**

Albuquerque

**County/Parish:****\* State:**

NM: New Mexico

**Province:****\* Country:**

USA: UNITED STATES

**\* Zip / Postal Code:**

87103-1293

**e. Organizational Unit:****Department Name:**

Environmental Health

**Division Name:**

Air Quality Program

**f. Name and contact information of person to be contacted on matters involving this application:****Prefix:**

Ms.

**\* First Name:**

Sandra

**Middle Name:**

K

**\* Last Name:**

Begay

**Suffix:****Title:**

Director

**Organizational Affiliation:**

City of Albuquerque, Environmental Health Department

**\* Telephone Number:**

505-768-2631

**Fax Number:**

505-768-2617

**\* Email:**

skbegay@cabq.gov

## Application for Federal Assistance SF-424

### \* 9. Type of Applicant 1: Select Applicant Type:

C: City or Township Government

Type of Applicant 2: Select Applicant Type:

Type of Applicant 3: Select Applicant Type:

\* Other (specify):

### \* 10. Name of Federal Agency:

Environmental Protection Agency

### 11. Catalog of Federal Domestic Assistance Number:

66.039

CFDA Title:

National Clean Diesel Emissions Reduction Program

### \* 12. Funding Opportunity Number:

EPA-OAR-OTAQ-18-03

\* Title:

National Clean Diesel Funding Assistance Program

### 13. Competition Identification Number:

Title:

### 14. Areas Affected by Project (Cities, Counties, States, etc.):

Add Attachment

Delete Attachment

View Attachment

### \* 15. Descriptive Title of Applicant's Project:

Albuquerque/Bernalillo County Clean Diesel Program

Attach supporting documents as specified in agency instructions.

Add Attachments

Delete Attachments

View Attachments

**Application for Federal Assistance SF-424****16. Congressional Districts Of:**\* a. Applicant \* b. Program/Project 

Attach an additional list of Program/Project Congressional Districts if needed.

Add Attachment

Delete Attachment

View Attachment

**17. Proposed Project:**\* a. Start Date: \* b. End Date: **18. Estimated Funding (\$):**

* a. Federal	<input type="text" value="909,697.00"/>
* b. Applicant	<input type="text" value="2,729,088.00"/>
* c. State	<input type="text"/>
* d. Local	<input type="text"/>
* e. Other	<input type="text"/>
* f. Program Income	<input type="text"/>
* g. TOTAL	<input type="text" value="3,638,785.00"/>

**\* 19. Is Application Subject to Review By State Under Executive Order 12372 Process?**

- ☒ a. This application was made available to the State under the Executive Order 12372 Process for review on
- ☐ b. Program is subject to E.O. 12372 but has not been selected by the State for review.
- ☐ c. Program is not covered by E.O. 12372.

**\* 20. Is the Applicant Delinquent On Any Federal Debt? (If "Yes," provide explanation in attachment.)**☐ Yes ☒ No

If "Yes", provide explanation and attach

Add Attachment

Delete Attachment

View Attachment

**21. \*By signing this application, I certify (1) to the statements contained in the list of certifications\*\* and (2) that the statements herein are true, complete and accurate to the best of my knowledge. I also provide the required assurances\*\* and agree to comply with any resulting terms if I accept an award. I am aware that any false, fictitious, or fraudulent statements or claims may subject me to criminal, civil, or administrative penalties. (U.S. Code, Title 218, Section 1001)**

☒ \*\* I AGREE

\*\* The list of certifications and assurances, or an internet site where you may obtain this list, is contained in the announcement or agency specific instructions.

**Authorized Representative:**

Prefix:  \* First Name:

Middle Name:

\* Last Name:

Suffix:

\* Title: \* Telephone Number:  Fax Number: \* Email: 

\* Signature of Authorized Representative:

\* Date Signed:



**BUDGET INFORMATION - Non-Construction Programs**

OMB Approved No. 0348-0044

**SECTION A - BUDGET SUMMARY**

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Un-obligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1. FY 2018	66.039			\$909,696	\$2,729,088	\$3,638,784
2.						
3.						
4.						
5. TOTALS				\$909,696	\$2,729,088	\$3,638,784

**SECTION B - BUDGET CATEGORIES**

6. OBJECT CLASS CATEGORIES		GRANT PROGRAM, FUNCTION OR ACTIVITY				Total  (5)		
		(1)	EPA	(2)	City		(3)	(4)
a.	Personnel	\$	3,112.00	\$	9,336.00		\$	12,448
b.	Fringe Benefits@50.2817%	\$	1,565.00	\$	4,694.00		\$	6,259
c.	Travel/Training	\$	-	\$	-		\$	-
d.	Equipment	\$	904,379.00	\$	2,713,136.00		\$	3,617,515
e.	Supplies/Printing	\$	-	\$	-		\$	-
f.	Contractual	\$	-	\$	-		\$	-
g.	Construction	\$	-	\$	-		\$	-
h.	Other (Veh. Exps., Repairs, Work Comp)						\$	-
i.	Total Direct Charges (sum of 6a - 6h)	\$	909,056.00	\$	2,727,166.00		\$	3,636,222
j.	Indirect Charges (personnel @ 13.7%)	\$	641.00	\$	1,922.00		\$	2,563
k.	TOTALS (sum of 6i and 6j)	\$	909,697.00	\$	2,729,088.00		\$	3,638,785
7. Program Income			\$0					\$0

SECTION C - NON - FEDERAL RESOURCES					
(a) Grant Programs	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS	
8. National Clean Diesel Funding Assistance Program	\$ 909,697			\$	909,697
9.					
10.					
11.					
12. TOTAL (sum of lines 8 and 11)	\$ 909,697			\$	909,697
SECTION D - FORECASTED CASH NEEDS					
	(Total for 1st year)	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	\$ 2,729,088	\$682,272.00	\$682,272.00	\$682,272.00	\$682,272.00
14. Nonfederal	\$ 909,697	\$227,424.25	\$227,424.25	\$227,424.25	\$227,424.25
15. TOTAL (sum of lines 13 and 14)	\$ 3,638,785	\$909,696.25	\$909,696.25	\$909,696.25	\$909,696.25
SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT					
(a) Grant Programs	FUTURE FUNDING PERIODS (Years)				
	(b)	(c)	(d) Third	(e) Fourth	
16.					
17.					
18.					
19.					
20. TOTALS (sum of lines 16 - 19)					
SECTION F - OTHER BUDGET INFORMATION					
(Attach additional sheets if Necessary)					
21. Direct Charges: \$ 3,636,222	22	Indirect Charges Personnel @13.7%	Year 2019	\$	2,563.00
23.					

## CERTIFICATION REGARDING LOBBYING

### Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

### Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

#### \* APPLICANT'S ORGANIZATION

City of Albuquerque

#### \* PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE

Prefix: Ms.

\* First Name: Sarita

Middle Name:

\* Last Name: Nair

Suffix:

\* Title: Chief Administrative Officer

\* SIGNATURE:



\* DATE:

6/25/19

## ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.


**PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.**

**NOTE:** Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee- 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.
10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.
19. Will comply with the requirements of Section 106(g) of the Trafficking Victims Protection Act (TVPA) of 2000, as amended (22 U.S.C. 7104) which prohibits grant award recipients or a sub-recipient from (1) Engaging in severe forms of trafficking in persons during the period of time that the award is in effect (2) Procuring a commercial sex act during the period of time that the award is in effect or (3) Using forced labor in the performance of the award or subawards under the award.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL 	TITLE Chief Administrative Officer
APPLICANT ORGANIZATION City of Albuquerque	DATE SUBMITTED 6/25/19

## EPA KEY CONTACTS FORM

**Authorized Representative:** *Original awards and amendments will be sent to this individual for review and acceptance, unless otherwise indicated.*

<b>Name:</b>	Prefix: Ms.	First Name: Sarita	Middle Name:	
	Last Name: Nair		Suffix:	
<b>Title:</b>	Chief Administrative Officer			
<b>Complete Address:</b>				
Street1:	PO Box 1293			
Street2:				
City:	Albuquerque	State:	NM: New Mexico	
Zip / Postal Code:	87103	Country:	USA: UNITED STATES	
Phone Number:	505-768-3000		Fax Number:	
E-mail Address:	snair@cabq.gov			

**Payee:** *Individual authorized to accept payments.*

<b>Name:</b>	Prefix: MS.	First Name: Marianne	Middle Name:	T
	Last Name: Kemp		Suffix:	
<b>Title:</b>	Grant Administrator			
<b>Complete Address:</b>				
Street1:	PO Box 1293			
Street2:				
City:	Albuquerque	State:	NM: New Mexico	
Zip / Postal Code:	87103	Country:	USA: UNITED STATES	
Phone Number:	505-768-3134		Fax Number:	505-768-2264
E-mail Address:	mkemp@cabq.gov			

**Administrative Contact:** *Individual from Sponsored Programs Office to contact concerning administrative matters (i.e., indirect cost rate computation, rebudgeting requests etc).*

<b>Name:</b>	Prefix: Ms.	First Name: Sandra	Middle Name:	K
	Last Name: Begay		Suffix:	
<b>Title:</b>	Director			
<b>Complete Address:</b>				
Street1:	PO Box 1293			
Street2:				
City:	Albuquerque	State:	NM: New Mexico	
Zip / Postal Code:	87103	Country:	USA: UNITED STATES	
Phone Number:	505-768-2631		Fax Number:	505-768-2617
E-mail Address:	skbegay@cabq.gov			

# EPA KEY CONTACTS FORM

**Project Manager:** *Individual responsible for the technical completion of the proposed work.*

---

**Name:** Prefix:  First Name:  Middle Name:

Last Name:  Suffix:

**Title:**

**Complete Address:**

**Street1:**

**Street2:**

**City:**

**State:**

**Zip / Postal Code:**

**Country:**

**Phone Number:**

**Fax Number:**

**E-mail Address:**

## Preaward Compliance Review Report for All Applicants and Recipients Requesting EPA Financial Assistance

Note: Read Instructions before completing form.

### I. A. Applicant/Recipient (Name, Address, City, State, Zip Code)

Name: City of Albuquerque/Environmental Health Department

Address: P.O. Box 1293

City: Albuquerque

State: NM: New Mexico

Zip Code: 87103

B. DUNS No. 949437065

II. Is the applicant currently receiving EPA Assistance? ☒ Yes ☐ No

III. List all civil rights lawsuits and administrative complaints pending against the applicant/recipient that allege discrimination based on race, color, national origin, sex, age, or disability. (Do not include employment complaints not covered by 40 C.F.R. Parts 5 and 7.)

See attached Ex. A, List as of March 26, 2019.

IV. List all civil rights lawsuits and administrative complaints decided against the applicant/recipient within the last year that allege discrimination based on race, color, national origin, sex, age, or disability and enclose a copy of all decisions. Please describe all corrective actions taken. (Do not include employment complaints not covered by 40 C.F.R. Parts 5 and 7.)

See attached Ex. B, List, Decisions and Corrective Actions Taken, Mar. 27, 2018-Mar. 26, 2019.

V. List all civil rights compliance reviews of the applicant/recipient conducted by any agency within the last two years and enclose a copy of the review and any decisions, orders, or agreements based on the review. Please describe any corrective action taken. (40 C.F.R. § 7.80(c)(3))

None

VI. Is the applicant requesting EPA assistance for new construction? If no, proceed to VII; if yes, answer (a) and/or (b) below.

☐ Yes

☒ No

a. If the grant is for new construction, will all new facilities or alterations to existing facilities be designed and constructed to be readily accessible to and usable by persons with disabilities? If yes, proceed to VII; if no, proceed to VI(b).

☐ Yes

☐ No

b. If the grant is for new construction and the new facilities or alterations to existing facilities will not be readily accessible to and usable by persons with disabilities, explain how a regulatory exception (40 C.F.R. 7.70) applies.

VII. Does the applicant/recipient provide initial and continuing notice that it does not discriminate on the basis of race, color, national origin, sex, age, or disability in its program or activities? (40 C.F.R. 5.140 and 7.95)

☒ Yes

☐ No

a. Do the methods of notice accommodate those with impaired vision or hearing?

☒ Yes

☐ No

b. Is the notice posted in a prominent place in the applicant's offices or facilities or, for education programs and activities, in appropriate periodicals and other written communications?

☒ Yes

☐ No

c. Does the notice identify a designated civil rights coordinator?

☒ Yes

☐ No

VIII. Does the applicant/recipient maintain demographic data on the race, color, national origin, sex, age, or handicap of the population it serves? (40 C.F.R. 7.85(a))

☒ Yes

☐ No

IX. Does the applicant/recipient have a policy/procedure for providing access to services for persons with limited English proficiency? (40 C.F.R. Part 7, E.O. 13166)

☒ Yes

☐ No



- X. If the applicant is an education program or activity, or has 15 or more employees, has it designated an employee to coordinate its compliance with 40 C.F.R. Parts 5 and 7? Provide the name, title, position, mailing address, e-mail address, fax number, and telephone number of the designated coordinator.

Torri Jacobus, Managing Attorney, Office of Civil Rights, City of Albuquerque, One Civic Plaza NW, 2nd Floor, Suite 201, Albuquerque, NM 87102, oei@cabq.gov, 505-768-4525(o); 505-768-4525(f)

- XI. If the applicant is an education program or activity, or has 15 or more employees, has it adopted grievance procedures that assure the prompt and fair resolution of complaints that allege a violation of 40 C.F.R. Parts 5 and 7? Provide a legal citation or Internet Address for, or a copy of, the procedures.

<http://www.cabq.gov/office-of-equity-inclusion/grievance-procedure>

**For the Applicant/Recipient**

I certify that the statements I have made on this form and all attachments thereto are true, accurate and complete. I acknowledge that any knowingly false or misleading statement may be punishable by fine or imprisonment or both under applicable law. I assure that I will fully comply with all applicable civil rights statutes and EPA regulations.

A. Signature of Authorized Official



B. Title of Authorized Official



C. Date



**For the U.S. Environmental Protection Agency**

I have reviewed the information provided by the applicant/recipient and hereby certify that the applicant/recipient has submitted all preaward compliance information required by 40 C.F.R. Parts 5 and 7; that based on the information submitted, this application satisfies the preaward provisions of 40 C.F.R. Parts 5 and 7; and that the applicant has given assurance that it will fully comply with all applicable civil rights statutes and EPA regulations.

A. \*Signature of Authorized EPA Official



B. Title of Authorized Official



C. Date



**\* See Instructions**

Instructions for EPA FORM 4700-4 (Rev. 06/2014)

General. Recipients of Federal financial assistance from the U.S. Environmental Protection Agency must comply with the following statutes and regulations.

Title VI of the Civil Rights Acts of 1964 provides that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. The Act goes on to explain that the statute shall not be construed to authorize action with respect to any employment practice of any employer, employment agency, or labor organization (except where the primary objective of the Federal financial assistance is to provide employment). Section 13 of the 1972 Amendments to the Federal Water Pollution Control Act provides that no person in the United States shall on the ground of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under the Federal Water Pollution Control Act, as amended. Employment discrimination on the basis of sex is prohibited in all such programs or activities. Section 504 of the Rehabilitation Act of 1973 provides that no otherwise qualified individual with a disability in the United States shall solely by reason of disability be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. Employment discrimination on the basis of disability is prohibited in all such programs or activities. The Age Discrimination Act of 1975 provides that no person on the basis of age shall be excluded from participation under any program or activity receiving Federal financial assistance. Employment discrimination is not covered. Age discrimination in employment is prohibited by the Age Discrimination in Employment Act administered by the Equal Employment Opportunity Commission. Title IX of the Education Amendments of 1972 provides that no person in the United States on the basis of sex shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance. Employment discrimination on the basis of sex is prohibited in all such education programs or activities. Note: an education program or activity is not limited to only those conducted by a formal institution. 40 C.F.R. Part 5 implements Title IX of the Education Amendments of 1972. 40 C.F.R. Part 7 implements Title VI of the Civil Rights Act of 1964, Section 13 of the 1972 Amendments to the Federal Water Pollution Control Act, and Section 504 of The Rehabilitation Act of 1973. The Executive Order 13166 (E.O. 13166) entitled; "Improving Access to Services for Persons with Limited English Proficiency" requires Federal agencies work to ensure that recipients of Federal financial assistance provide meaningful access to their LEP applicants and beneficiaries.

Items "Applicant" means any entity that files an application or unsolicited proposal or otherwise requests EPA assistance. 40 C.F.R. §§ 5.105, 7.25. "Recipient" means any entity, other than applicant, which will actually receive EPA assistance. 40 C.F.R. §§ 5.105, 7.25. "Civil rights lawsuits and administrative complaints" means any lawsuit or administrative complaint alleging discrimination on the basis of race, color, national origin, sex, age, or disability pending or decided against the applicant and/or entity which actually benefits from the grant, but excluding employment complaints not covered by 40 C.F.R. Parts 5 and 7. For example, if a city is the named applicant but the grant will actually benefit the Department of Sewage, civil rights lawsuits involving both the city and the Department of Sewage should be listed. "Civil rights compliance review" means any review assessing the applicant's and/or recipient's compliance with laws prohibiting discrimination on the basis of race, color, national origin, sex, age, or disability. Submit this form with the original and required copies of applications, requests for extensions, requests for increase of funds, etc. Updates of information are all that are required after the initial application submission. If any item is not relevant to the project for which assistance is requested, write "NA" for "Not Applicable." In the event applicant is uncertain about how to answer any questions, EPA program officials should be contacted for clarification. \* Note: Signature appears in the Approval Section of the EPA Comprehensive Administrative Review For Grants/Cooperative Agreements & Continuation/Supplemental Awards form.

**EX. A, HRD/EEOC REPORT FOR EPA GRANT FUNDING AS OF 03/26/2019**

Civil rights lawsuits and administrative complaints pending against the applicant/recipient  
that allege discrimination based on race, color, national origin, sex, age or disability

This report includes any responsive lawsuits or administrative complaints that are brought against either the City of Albuquerque (the applicant) or the Environmental Health Department (the recipient). It does not include complaints brought against other departments of the City of Albuquerque if the complaint did not name either the City of Albuquerque or the Environmental Health Department as a defendant, per EPA request.

<b>Name</b>	<b>EEOC No.</b>	<b>HRD No.</b>	<b>Basis of Charge</b>	<b>Matter ID</b>
Adkinson, Hamp M.	543-2015-00205		Race; Color; Religion; Retaliation	29.041
Andujo, Shalene	39B-2019-00120	18-10-19-0377	Sex; Retaliation	22.054
Apodaca, Anntoinette	39B-2018-01798	18-08-15-0274	Sex; Retaliation	10.970
Archuleta, Roberta D.	543-2015-00815		Sex; National Origin	10.735
Aswani, Poonam		15-04-08-0143	Race; Color; National Origin; Retaliation	12.196
Ballor, Keith P.	543-2018-00673		Retaliation; Age	11.272
Barnett, Noe	543-2014-00804		Retaliation	10.626
Bennett, Delano	39B-2018-00731	18-02-05-0038	Disability	12.296
Bennett, Delano	39B-2019-00562	19-01-22-0025	Retaliation; Disability	12.336
Brinkley, Deby	543-2018-00484		Sex; Retaliation	24.287
Brito, Brian	543-2014-00408		Disability	17.069
Burk, Michael	39B-2018-01248	18-04-26-0129	Race; Sex; Retaliation; Age	11.266
Chavez, Angela N.	846-2015-14491		Sex; Retaliation; Disability	10.703
Chavez, Jared		19-01-24-0008	Retaliation; Spousal Affiliation	10.1000
Chavez, Remberto M	543-2017-00092		National Origin	12.245
Chavez, Seth G.	543-2013-00171		Sex; Retaliation; Disability	10.456
Collins, Freddie	543-2017-00292		Retaliation; Race; Age	12.252
Dix, Tiffani	543-2015-00855		Sex, Religion; National Origin; Retaliation	10.739
Dobbins-Azure, Dillon	39B-2019-00662	19-02-20-0067	Retaliation	17.144
Eliason, Kevin O.	543-2014-00953		Retaliation; Race; Age	29.039
Ellison, Joshua R.	543-2018-00210		Sex; Equal Pay	11.255
Fernandez, Jesse	846-2015-21381		National Origin	38.124
Ficke, Veronica	39B-2014-02363		Sex; Retaliation	10.613
Fulton, Jennifer F.	39B-2016-00604	6-01-27-0633	Sex	29.044
Gallegos, Gilbert G.	543-2016-00294		Disability	31.022
Garcia, Anthony	543-2017-01109		Retaliation	31.030
Gutierrez, Joshua	543-2016-00078		Disability; Failure to Accommodate	17.095

**EX. A, HRD/EEOC REPORT FOR EPA GRANT FUNDING AS OF 03/26/2019**

Civil rights lawsuits and administrative complaints pending against the applicant/recipient  
that allege discrimination based on race, color, national origin, sex, age or disability

This report includes any responsive lawsuits or administrative complaints that are brought against either the City of Albuquerque (the applicant) or the Environmental Health Department (the recipient). It does not include complaints brought against other departments of the City of Albuquerque if the complaint did not name either the City of Albuquerque or the Environmental Health Department as a defendant, per EPA request.

Name	EEOC No.	HRD No.	Basis of Charge	Matter ID
Harrison, Lark	543-2018-00103		Race	33.047
Hernandez, Edward A.	543-2015-01034		Disability; Retaliation	17.091
Houston, Barbara L	543-2015-00821		Race; Sex	10.744
Jaramillo, Orlando		18-09-06-0315	Serious Medical Condition; Retaliation; Gender Identity	12.316
Korovlev, Phillip W.	543-2015-00303		Race; Sex	10.692
Loggins, Jr., Aaron B	543-2014-00830		Retaliation	20.131
Lujan, Lydia	39B-2016-01008	16-04-25-0133	Race; National Origin	10.817
McDonald, Joshua	39B-2019-00181	18-11-20-0424	Race	10.990
Miller, Wesley K.	543-2016-00893		Retaliation; Disability	10.835
Montoya, Robert J.	543-2016-00847		Age	12.235
Nadas, Tamas	39B-2018-00927	18-03-26-0093	National Origin; Retaliation	10.950
Nilsson-Lund, Jennifer M.	543-2015-00660		Retaliation	10.715
Paez, Ted S.	543-2018-00672		Age; Disability	11.271
Paiz, Veronica, E.	543-2015-00120		Retaliation	29.040
Peltier-Seibel, Ramona L.	543-2018-00676		Race; Sex; Age	11.273
Ramirez, Arturo	39B-2019-0229	18-11-09-0407	Race; National Origin	17.141
Rodarte-Wolf, Kimberly L.	846-2015-21614		Sex	38.126
Romero, Teresa C.	543-2018-00570		Retaliation; Disability	10.959
Sanchez, Christella B.	543-2015-00793		Sex; National Origin; Retaliation; Disability	10.731
Sanchez, Randy	39B-2018-01326		Race; National Origin; Retaliation	11.268
Silva, Michaela		18-11-20-0417	Sex	12.324
Soto, Judy V.	543-2018-00898		Sex; Age; National Origin	17.136
Summerville, Joseph	543-2014-00120		Retaliation; Race	19.040
SWOP Civil Rights			OCR Complaint	48.007-4

**EX. A, HRD/EEOC REPORT FOR EPA GRANT FUNDING AS OF 03/26/2019**

Civil rights lawsuits and administrative complaints pending against the applicant/recipient  
that allege discrimination based on race, color, national origin, sex, age or disability

This report includes any responsive lawsuits or administrative complaints that are brought against either the City of Albuquerque (the applicant) or the Environmental Health Department (the recipient). It does not include complaints brought against other departments of the City of Albuquerque if the complaint did not name either the City of Albuquerque or the Environmental Health Department as a defendant, per EPA request.

Name	EEOC No.	HRD No.	Basis of Charge	Matter ID
Complaint				
Tafoya, Jonell	39B-2018-01187		Sex; Retaliation	12.302
Zamora, Charles	543-2015-01152		Age	15.074

460859

### EX. B, HRD/EEOC REPORT FOR EPA GRANT FUNDING AS OF 3/26/2019

Civil rights lawsuits and administrative complaints decided against the applicant/recipient between March 27, 2018 and March 26, 2019,  
that allege discrimination based on race, color, national origin, sex, age or disability

This report is based on any responsive lawsuits or administrative complaints that were decided against either the City of Albuquerque (the applicant) or the Environmental Health Department (the recipient). It does not include complaints decided against other departments of the City of Albuquerque if the complaint did not name either the City of Albuquerque or the Environmental Health Department as a defendant, per EPA request.

Name	EEOC No.	HRD No.	Basis of Charge	Matter ID
Sizemore, Furman G.	39B-2018-01871	18-08-06-0264	Race; Retaliation; NM Human Rights Act	10.838
Sizemore, Furman G.	39B-2018-01871	18-08-06-0264	Race; Retaliation	10.968

#### Enclose a Copy of All Decisions

The final decisions in this matter are provided following this page. All decisions were issued by the Second Judicial District Court for the County of Bernalillo, State of New Mexico. They are:

Judgment, *Sizemore v. City of Albuquerque*, Case No. D-202-CV-2016-05356 (May 16, 2018) ProLaw Doc. No. 405511

Order on Plaintiff's Cost Bill, *Sizemore v. City of Albuquerque*, Case No. D-202-CV-2016-05356 (Jun. 19, 2018) ProLaw Doc. No. 411576

Attorney Fee Award, *Sizemore v. City of Albuquerque*, Case No. D-202-CV-2016-05356 (Sep. 6, 2018) ProLaw Doc. No. 424039

Full and Final Release of Claims, executed by Mr. Sizemore and the City on January 1, 2019

Request for Closure of Charge of Discrimination Due to Settlement, signed and dated March 22, 2019

#### Corrective Actions Taken

The City paid the judgment awarded by a jury of compensatory damages of \$37,939.20 to Mr. Sizemore for a violation of the NM Human Rights Act; paid his costs of \$19,344.34 and paid his attorneys fees of \$341,424.38.

Mr. Sizemore settled all claims with the City; he entered into a Full and Final Release of Claims with the City on January 1, 2019. A copy of the Full and Final Release of Claims is attached hereto.

462080

SECOND JUDICIAL DISTRICT  
COUNTY OF BERNALILLO  
STATE OF NEW MEXICO

FURMAN G. SIZEMORE, Ph.D.,

Plaintiff,

Case No. D-202-CV-2016-05356

vs.

CITY OF ALBUQUERQUE,

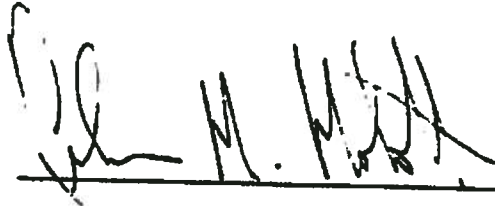
Defendant.

**JUDGMENT**

THIS MATTER having come on for a jury trial before the Honorable Alan M. Malott, District Court Judge from April 30, 2018 through May 4, 2018, and the jury having completed the Special Verdict form provided to them, which is separately filed in this matter, which Special Verdict determined that the City of Albuquerque discriminated against Plaintiff in matters of compensation in violation of the New Mexico Human Rights Act, judgment is hereby entered;

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED, judgment be, and hereby is entered in favor of the Plaintiff, Furman G. Sizemore, Ph.D., and against the Defendant City of Albuquerque for compensatory damages as set forth in the Special Verdict form, in the amount of \$37,939.20.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED, that Plaintiff, Furman G. Sizemore, Ph.D., may be awarded his costs and reasonable attorney's fees pursuant to NMSA 1978, §28-1-13(D)(2005) to be determined pursuant to further order of this Court.



Alan Malott  
District Court Judge

5-15-18

APPROVED BY:

J. EDWARD HOLLINGTON & ASSOCIATES, P.A.

/s/ J. Edward Hollington

J. Edward Hollington

Attorney for Plaintiff

708 Marquette Avenue N.W.

Albuquerque, NM 87102-2035

(505) 843-9171/(505) 843-7027 (fax)

[Edward708@aol.com](mailto:Edward708@aol.com)

APPROVED AS TO FORM:

CITY OF ALBUQUERQUE

Submitted to Defendant's counsel for position on 5/8/18 alternative form submitted & rejected

Samantha M. Hults, Acting City Attorney

Melissa M. Kountz, Assistant City Attorney

Post Office Box 2248

Albuquerque, New Mexico 87103

(505) 768-4500

[shults@cabq.gov](mailto:shults@cabq.gov)

[mkountz@cabq.gov](mailto:mkountz@cabq.gov)



BROWN LAW FIRM, BROWN & GURULÉ

Submitted to Defendant's counsel for position on 5/8/18

Desiree G. Gurulé

3777 The American Rd. NW, Suite 100

Albuquerque, NM, 87114

(505) 292-9677

(505) 292-9680 (facsimile)

[desiree@brownlawnm.com](mailto:desiree@brownlawnm.com)

Attorney for Defendants

STATE OF NEW MEXICO  
COUNTY OF BERNALILLO  
SECOND JUDICIAL DISTRICT COURT

FURMAN G. SIZEMORE, Ph.D,

Plaintiff,

vs.

Case No. D-202-CV-2016-05356

CITY OF ALBUQUERQUE,

Defendant.

**ORDER ON PLAINTIFF'S COST BILL**

THIS MATTER having come before the Court upon Plaintiff's Cost Bill; the Court having reviewed the Cost Bill and the parties' briefing; the Court having reviewed the file; and being sufficiently advised;

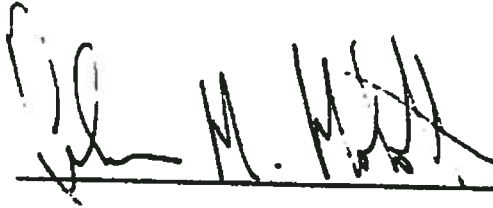
THE COURT FINDS:

1. There is jurisdiction over the parties and the subject matter ;
2. Further hearing on this matter is not necessary for an appropriate determination of the issues presented. *Nat'l Excess Ins. Co. v. Bingham*, 1987-NMCA-109, ¶ 9, 742 P.2d 537; *State Trans. Dep't. v. Yazzie*, 1991-NMCA-098, ¶ 12, 817 P.2d 1257; *Flagstar Bank v. Licha*, 2015-NMCA-086, ¶ 28, 356 P.3d 1102.
3. Plaintiff was the prevailing party at trial and should recover his costs reasonably incurred in proving his case. Rule 1-054 NMRA; *Dunleavy v. Miller*, 1993 NMSC 059. An award of costs is not limited solely to those categories delineated in Rule 1-054 NMRA, but may extend to those costs reasonably and necessarily incurred in establishing a litigants' claims or defending against claims brought against a litigant. *Smith v. Village of Ruidoso*, 1999 NMCA 151.
4. Defendant's objections to the Cost Bill are not well taken and should be denied.

5. Plaintiff's reasonable costs incurred both in establishing his claims at trial and in defending against Defendant's dispositive Motion practice are \$19,344.34.

WHEREFORE, IT IS ORDERED:

Plaintiff is hereby awarded his costs of \$19,344.34 to be paid by Defendant.

A handwritten signature in black ink, appearing to read 'Alan Malott', is written over a horizontal line.

Alan Malott  
District Court Judge

6-19-18

Copies of the foregoing were e-mailed, mailed, or delivered  
to the following on the date of filing/e-filing:

J. Edward Hollington  
J. Edward Hollington & Associates, P.A.  
708 Marquette Avenue NW  
Albuquerque NM 87102-0423  
[edward708@aol.com](mailto:edward708@aol.com)

Desiree D. Gurulé  
Brown Law Firm, Brown & Gurulé  
333 Rio Rancho Blvd. Suite 102  
Rio Rancho, NM 87124  
[desiree@brownlawnm.com](mailto:desiree@brownlawnm.com)

Samantha M. Hults  
Melissa M. Kountz  
City of Albuquerque Legal Department  
Post Office Box 2248  
Albuquerque, New Mexico 87103  
[shults@cabq.gov](mailto:shults@cabq.gov)  
[mkountz@cabq.gov](mailto:mkountz@cabq.gov)

*Susan L. Gibson*

---

Susan L. Gibson, TCAA  
Division XV

SECOND JUDICIAL DISTRICT  
COUNTY OF BERNALILLO  
STATE OF NEW MEXICO

FURMAN G. SIZEMORE, Ph.D,

Plaintiff,

vs.

Case No. D-202-CV-2016-05356

CITY OF ALBUQUERQUE,

Defendant.

**ATTORNEY FEE AWARD**

THIS MATTER having come before the Court by Plaintiff's Motion for Attorney Fees pursuant to the New Mexico Human Rights Act, Defendant having filed a Response and Plaintiff having filed his Reply and a hearing was held on August 29, 2018 at which counsel of record presented oral arguments and the Court having reviewed the record, having heard arguments of counsel and being otherwise advised in the premises, FINDS:

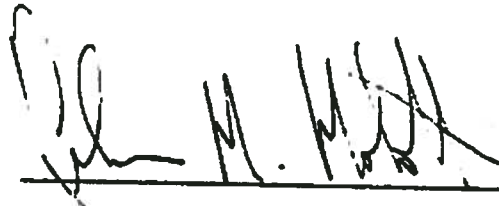
1. The New Mexico Human Rights Act, NMSA 1978 §28-1-13[D] provides for award of reasonable attorney fees to prevailing plaintiffs. Plaintiff is the prevailing party in this case.

2. The Lodestar method is the appropriate method for determining reasonable time expended and a reasonable hourly rate.

3. Based on the Affidavits submitted by Plaintiff and the Court's knowledge of the hourly rates charged for civil rights employment cases by attorneys in this community with similar knowledge, training, skill and experience to that of Plaintiff's counsel and hourly rates for contract lawyer and paralegals, the Court determines the following hourly rates to be reasonable hours and applies those rates to the following hours of reasonable time expended in the prosecution of Plaintiff's case:

- a. Attorney J. Edward Hollington 750 hours at \$350 per hour for a total of \$262,500.00;
- b. Contract attorney 140 hours at \$200 per hour for a total of \$28,000.00; and
- c. Paralegal 400 hours at \$65 per hour for a total of \$26,000.00.

IT IS THEREFORE ORDERED that Plaintiff be and hereby is awarded attorney fees in the amount of \$316,500.00, plus applicable New Mexico gross receipt tax of 7.875% for a total of \$341,424.38. No interest shall accrue on this award.



Alan Malott  
District Court Judge

9-6-18

APPROVED BY:

J. EDWARD HOLLINGTON & ASSOCIATES, P.A.

/s/ J. Edward Hollington

J. Edward Hollington  
Attorney for Plaintiff  
708 Marquette Avenue N.W.  
Albuquerque, NM 87102-2035  
(505) 843-9171/(505) 843-7027 (fax)  
[Edward708@aol.com](mailto:Edward708@aol.com)

APPROVED AS TO FORM:

CITY OF ALBUQUERQUE

/s/ Melissa M. Kountz, 9/4/2018

Samantha M. Hults, Assistant City Attorney  
Melissa M. Kountz, Assistant City Attorney  
Post Office Box 2248  
Albuquerque, New Mexico 87103  
(505) 768-4500  
[shults@cabq.gov](mailto:shults@cabq.gov)  
[mkountz@cabq.gov](mailto:mkountz@cabq.gov)

BROWN LAW FIRM, BROWN & GURULÉ

/s/ Desiree D. Gurulé, 9/4/2018

Desiree G. Gurulé

333 Rio Rancho Blvd. NE, Suite 102

Rio Rancho, NM, 87124

(505) 292-9677

(505) 292-9680 (facsimile)

[desiree@brownlawnm.com](mailto:desiree@brownlawnm.com)

Attorney for Defendant

### **FULL AND FINAL RELEASE OF CLAIMS**

**This Full Final Release of Claims ("Agreement") is made and entered into by and between Dr. Furman Sizemore, Ph.D. (referred to as the "Employee") and the City of Albuquerque (referred to as the "City" or "Employer") (the Employee and Employer are collectively referred to as the "Parties").**

**WHEREAS, Employee is employed by the Albuquerque Police Department as a Senior Forensic Scientist.**

**WHEREAS, Employee has cross filed a charge of discrimination with both the EEOC (No. 39B-2018-01871) and New Mexico HRB (No. 18-08-06-0264) (the "Charge"), which alleges discrimination based upon race and retaliation.**

**WHEREAS, Employer denies such allegations.**

**WHEREAS, the Employee and the Employer have agreed that it is in the interest of the Parties to avoid any further legal proceedings regarding the employer-employee relationship and to enter into this Agreement.**

**WHEREAS, the Parties now wish to enter into a full and final release of all claims the Employee or Employer have or may have had against each other, whether such claims are under a formal charge, complaint or otherwise, and arise from or are related to Employee's employment with Employer.**

**NOW, THEREFORE, intending to be legally bound and in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by entering into this Agreement, the Parties state:**

**1. "EFFECTIVE DATE": The Parties agree that, so long as both Parties sign this Agreement, the "Effective Date" is the date the last party signs the agreement.**



**2. CONSIDERATION.**

**A. Employer's Obligation:**

a. Employer shall increase Employee's rate of pay retroactive to July 25, 2015 in the following manner:

- i. From July 25, 2015 through September 19, 2015, Employee's rate of pay shall be \$40.85 per hour.
- ii. From September 19, 2015 through July 9, 2016, Employee's rate of pay shall be \$41.46 per hour.
- iii. From July 9, 2016 through July 7, 2018, Employee's rate of pay shall be \$42.29 per hour.
- iv. From July 7, 2018 through February 1, 2019, Employee's rate of pay shall be \$43.14 per hour.

Employer shall pay the resulting back wages in the amount of \$77,160.80 (seventy-seven thousand one hundred sixty dollars and eighty cents), less \$37,939.20 (thirty-seven thousand nine hundred thirty-nine dollars and twenty cents), for a total of \$39,221.60 (thirty nine thousand two hundred and twenty-one dollars and sixty cents), less all applicable deductions, to Employee, within thirty (30) calendar days of the Effective Date. Employer shall remit applicable PERA contributions for the increased rate of pay to PERA, for the period July 25, 2015, through February 1, 2019. Employer shall also confirm to PERA that Employee's rate of pay for the period of July 25, 2015, through current are the amounts set forth above in paragraph 2(A)(a). Employer shall also pay Employee for accrued and unused leave at the rate of \$43.14 pursuant to Personnel Rules and Regulations Sections 401.2 and 401.4(E) upon his separation from the City. Payment for accrued and unused leave shall be made to Employee's Nationwide 457b account, account number 11304636. This payment made to Employee shall be reported on United States Internal Revenue Service Form W2, as required by law.

b. Within 30 days from when Employee provides Employer with the amount required to purchase one (1) year of PERA service credit (i.e. "air time"), Employer shall pay that amount to Employee. This payment made to Employee shall be reported on United States Internal Revenue Service Form 1099, as required by law.

c. These payments, which sums are in full and complete settlement and release of any and all claims of the Employee against the City, that may exist, known or unknown, as of the Effective Date of this Agreement and that Employee will not seek anything further from the City for any reason whatsoever for any events preceding the Effective Date (the "Settlement"). Employee understands, acknowledges and agrees that he would not otherwise be entitled to the payments set forth in this section were it not for the covenants, promises, and releases set forth in this Agreement. Included in the total of the payments described in subsection are any and all attorney's fees and costs, which are Employee's sole obligation.

d. The City makes no representations, takes no position, and assumes no responsibility with respect to the taxable consequences of the Settlement. Employee acknowledges he is responsible for and will pay any tax consequences determined by any government tax agency or authority resulting from any payment resulting from the Settlement. Employee shall pay for the defense of, including attorney's fees, costs and any other expenses, any claim asserted against the Released Parties (defined below) relating to the taxable consequences of the settlement or for unpaid taxes, withholdings, penalties or interest, and shall indemnify and hold the Released Parties harmless from and against any such claims. Employee represents and warrants that neither the City, its attorneys, nor anyone affiliated with the City has made any representations regarding the Settlement provided for by this Agreement and that Employee has not relied upon any such representation in entering into this Agreement. Employee understands, acknowledges, and agrees that in the event the Internal Revenue Service, or any other governmental entity, including but not limited to the State of New Mexico, or any court or other tribunal of competent jurisdiction, alleges that any or all of the Settlement constitutes income for which any taxes remain due and owing, or that additional deductions should have been taken out for the benefit of Employee, that Employee shall be responsible for the payment of such taxes or for the payment of any applicable interest or penalties. Employee further agrees to indemnify the City for any taxes due and owing with respect to the Settlement, as well as any interest, costs, expenses, fees, including all reasonable attorneys' fees, penalties, or other payments which may be incurred as a result of an allegation that any taxes are due and owing with respect to any monies paid by the City to Employee. In the event it is ultimately determined that any monies are due and owing with respect to the Settlement, the validity of this Agreement shall not be affected in any way.

e. Upon inquiry, Employer shall only provide a neutral reference for Employee, which shall only include his hire and resignation dates, job title(s), and rate of pay.

f. Employer shall keep in force Employee's life insurance policy at the retirement benefit face amount of \$25,000.00.

**B. Employee's Obligation:**

a. Employee shall announce his retirement from his employment with the City effective February 1, 2019. Within 30 days of the Effective Date, Employee shall submit an announcement of retirement to the City stating: "I announce my retirement from my position with the City of Albuquerque, effective February 1, 2019." Employee shall no longer be employed by the City as of February 1, 2019, and will be on administrative leave with pay until that time.

b. Within 30 days of the Effective Date, Employee shall request from PERA the exact amount required to purchase one year of service credit (i.e. "air time"). Immediately upon receipt of this information, Employee will provide it to the Employer.

c. Employee shall withdraw the Charge and any other pending formal or informal charges, claims, grievances, arbitrations, or litigation and hereby dismisses, abandons, and forever renounces any and all claims, cross-claims, or counterclaims of any nature arising from, or in any way related to the employee-employer relationship and matters specific to this Agreement as well as any other claims he has or might have arising prior to the Effective Date, and he shall not permit any other person to pursue any such claims on his behalf. Furthermore, Employee shall take no action to attempt to revive, reinstate, or otherwise refile any claims, cross-claims, or counterclaims of any nature arising from, or in any way related to the employee-employer relationship or relating to any other matter released in this Agreement.

3. **RELEASE BY EMPLOYEE.** For and in consideration of this Agreement, Employee, for himself, his spouse, heirs, successors, and assigns, hereby releases and discharges the City, its successors, assigns, agents, representatives, attorneys, insurers, its past and present directors, officers, shareholders, members, and employees and any and all other persons, firms, or corporations who are or might be liable through the City (the "Releasees" or "Released Parties"), from any and all claims, actions, causes of action, damages, demands, loss of service, expenses, wages, or compensation of any kind that the Employee may have (hereinafter, "Claims"), whether such Claims are known or unknown, arising from the beginning of time to the Effective Date of this Agreement. The Claims released by this Agreement include, but are not limited to, any and all Claims arising out of or relating to the statements, actions, or omissions of the City, all alleged Claims for unlawful discrimination, harassment, retaliation, or reprisal, or other alleged unlawful practices arising under any federal, state, or local statute, ordinance, or regulation, or common law, including, without limitation: Claims under Title VII of the Civil Rights Act of 1964; the Civil Rights Act of 1991; the Americans With Disabilities Act; the Age Discrimination in Employment Act; the Older Workers Benefit Protection Act; the Employee Retirement Income Security Act; the Equal Pay Act; the Fair Credit Reporting Act; the Fair Labor Standards Act; the Occupational Safety and Health Act; the New Mexico wage laws; the New Mexico Human Rights Act, 1978 NMSA 28-1-1 *et seq.*; the Fair Pay for Women Act, 1978 NMSA 28-23-1, *et seq.*; the Whistleblower Protection Act, 1978 NMSA 10-16C-1 *et seq.*; the Family and Medical Leave Act; the City of Albuquerque Merit System Ordinance, ROA 1994 3-1-1 *et seq.*; the City of Albuquerque Labor-Management Relations Ordinance, ROA 1994 3-2-1 *et seq.*; the City of

Albuquerque's Administrative Instructions; the City of Albuquerque Personnel Rules and Regulations; any similar state laws or statutes and all alleged Claims for: wrongful discharge; breach of contract; breach of implied contract; failure to keep any promise; breach of a covenant of good faith and fair dealing; breach of fiduciary duty; estoppel; defamation; infliction of emotional distress; fraud; misrepresentation; negligence; harassment; retaliation; reprisal; constructive discharge; invasion of privacy; interference with contractual or business relationships; any other wrongful employment practices; or violation of any other principle of common law. This also includes any alleged Claims for damages of: emotional distress; past, present or future mental injuries; compensation of any kind, including, but not limited to, salary, wages, vacation pay, Public Employee Retirement Association (PERA) contributions; back pay; front pay; reinstatement; other equitable relief; compensatory damages; damages for alleged personal injury; liquidated damages; punitive damages; attorneys' fees; costs; interest; or any other Claims for damages relating to Employee's employment with the City, and all Claims for damages relating, in any way, to the facts underlying any grievance, charge or complaint or lawsuit.

4. **ACKNOWLEDGMENT OF RIGHTS AND WAIVER OF CLAIMS.** All Parties acknowledge that this Agreement does not limit any party's right, where applicable, to file or participate in an investigative proceeding of any federal, state, or local governmental agency as related to the employer-employment relationship of Employee and the Employer. To the extent permitted by law, Employee agrees that if any administrative claim is made, Employee shall not be entitled to recover any individual monetary relief or other individual remedies.

5. **NO CONFIDENTIALITY.** The Parties agree that this Agreement is subject to the confidentiality and disclosure requirements of City of Albuquerque Code of Ordinances, Section 2-8-2-11. The Parties understand that this document is subject to production under the New Mexico Inspection of Public Records Act ("IPRA") should a request be made.

6. **ADDITIONAL PROVISIONS.**

A. **Ownership of Claims.** Employee represents and warrants that: (i) he is the sole and lawful owner of all rights, title, and interests in and to all released matters, claims and demands referred to herein; (ii) there has been no assignment or other transfer of any interest in such matter, claims or demands which Employee may have against the City in particular but not limited to any portion of any claim which is waived, released, or discharged herein, (iii) do not have or know of any outstanding claims other than those released herein and (iv) do not reserve any claims against the City or any of the Releasees from the effect of this Agreement. If any party, including Employee, brings any related action on any matters, claims, or demands released herein, against any Releasee, Employee shall indemnify said Releasee for any related judgment, costs, or fees, including attorney's fees.

B. **No Other Actions.** Employee affirms that he has no pending lawsuits, charges, administrative proceedings, or other claims of any nature whatsoever against the City in any state or federal court, or before any state or federal agency or any other body.

**C. No Admission of Liability by Parties.** It is understood and agreed that this Agreement is a compromise settlement of the disputed formal or informal allegations, claims, grievances or arbitrations or litigation, claims, cross-claims, or counterclaims of any nature. This Agreement is not to be construed as an admission of any form of liability, fault, or wrongdoing on the part of the Parties, such liability, fault, or wrongdoing being expressly denied.

**D. Term of Agreement.** This Agreement shall not terminate and all provisions of this Agreement shall remain in full force and effect for the life of the Parties and shall be binding on their estate, their heirs, and their assigns.

**E. Entire Agreement.** The Parties agree that all the terms of this Agreement are contained in this document, that no statements or inducements have been made contrary to or in addition to the statements herein, that the terms hereof are binding on and enforceable for the benefit of the Parties, that the Agreement shall be deemed to have been drafted equally by both Parties, and that the provisions of this Agreement are severable, so that if any paragraph of this Agreement is determined to be unenforceable, the other paragraphs shall remain valid and fully enforceable.

**F. Enforcement Costs.** The Parties agree that in the event any party breaches any provision of this Agreement, the prevailing party shall be entitled to recover all costs and reasonable attorneys' fees incurred in conjunction with enforcement of this Agreement to the maximum extent permitted by law.

**G. Governing Law and Jurisdiction.** Regardless of where this Agreement is executed or performed, this Agreement shall be construed in accordance with and governed by the laws of the State of New Mexico, without regard to conflicts of laws principles. The Parties agree and consent to the jurisdiction of the courts of the State of New Mexico. The Parties further agree that the venue for any litigation that may arise from this Agreement is the Second Judicial District Court of New Mexico, Bernalillo County, located in Albuquerque, New Mexico.

**H. Counterparts.** This Agreement may be executed in counterparts. Each counterpart shall be deemed an original, all of which together shall constitute one and the same instrument.

**I. Compliance with Terms and Non-waiver.** The failure to insist upon compliance with any term, covenant, or condition contained in this Agreement shall not be deemed a waiver of that term, covenant, or condition, nor shall any waiver or relinquishment of any right or power contained in this Agreement at any one time or more times be deemed a waiver or relinquishment of any right or power at any other time or times.

**J. No Precedent.** This matter is unique; this Agreement shall not be used as precedent or constitute past practice for any other matter. The Parties hereto acknowledge that this Agreement, the compromise and settlement evidenced thereby, and any evidence relating thereto, each and all: (i) shall never be admissible as evidence against the persons herein released in any present or future

suit, claims or proceeding of any nature, except as necessary to enforce rights granted pursuant to this Agreement and the instruments, documents and agreements referenced herein; (ii) but may be asserted by and introduced as evidence for the persons hereby released as an absolute and final defense and bar to any claim released herein in any present or future suit or proceeding of any nature. Further, should any party file a lawsuit to enforce the Agreement, the prevailing party will be entitled to reasonable attorneys' fees and costs. This relates solely to enforcing the Agreement and not to any claim either party might have against the other in the future.

**K. Implementation.** The Parties shall sign any documents and perform any other actions in the future that are needed to implement this Agreement.

**L. Complete and Binding Agreement.** The terms of this Agreement are contractual and not a mere recital. All agreements and understandings between the Parties are expressed in this Agreement. This Agreement shall be binding upon and shall inure to the benefit of the Parties named herein, their legal representatives, successors and assigns.

**M. Modification.** This Agreement is not subject to any modification, waiver, or addition that is made orally. This Agreement is subject to modification, waiver, or addition only by means of a writing signed by each of the Parties.

**N. Voluntary and Knowing.** The Parties agree that this Agreement is executed voluntarily and without any duress or undue influence on the part or behalf of the Parties hereto.

**6. FULL OPPORTUNITY TO OBTAIN LEGAL ADVICE.** By signing this Agreement, the Parties acknowledge that they each have been represented by an attorney and counselor and have had ample opportunity to consult with their attorneys, and they are settling with and releasing the Parties released herein voluntarily after due and careful consideration of all relevant matters. The Parties further acknowledge that no representations or statements by the Parties, not reflected herein, have influenced them to any extent in entering into this Agreement.

**IN WITNESS WHEREOF,** the Parties hereto, personally or by their authorized representatives, have subscribed to and signed this Agreement as of the day and year first above written.

**SIGNATURES BEGIN ON NEXT PAGE**

**REMAINING PART OF PAGE LEFT INTENTIONALLY BLANK**

[Signature]  
Furman Sizemore, Ph.D., Employee

Date: 1/10, 2018<sup>9</sup>

STATE OF NEW MEXICO           )  
  )ss.  
COUNTY OF BERNALILLO       )

The foregoing instrument was acknowledged before me this 10<sup>th</sup> day of January, 2018<sup>9</sup> by Furman Sizemore, Ph.D.

[Signature]  
NOTARY PUBLIC

My Commission Expires:

10/25/22



Approved as to legal form:

[Signature]  
J. Edward Hollington  
Attorney for Employee  
Date: 1/10, 2018<sup>9</sup>

SIGNATURES CONTINUE ON NEXT PAGE

REMAINING PART OF PAGE LEFT INTENTIONALLY BLANK

CITY OF ALBUQUERQUE


By: 

Sarita Nair


Chief Administrative Officer

Date: 1/31/19

Recommended by:

  
Mary Scott, Director  
Human Resources Department  
Date: 1/16/19

Recommended by:

  
Michael Geier, Chief  
Albuquerque Police Department  
Date: 1-17-19

Approved as to Legal Form:

  
Melissa M. Kountz, Managing Assistant City Attorney  
Date: 1/10/19



MICHELLE LUJAN GRISHAM  
GOVERNOR



BILL McCAMLEY  
SECRETARY

HOWIE MORALES  
LT. GOVERNOR

STATE OF NEW MEXICO  
DEPARTMENT OF WORKFORCE SOLUTIONS  
Labor Relations Division  
Human Rights Bureau  
1596 Pacheco Street, Suite 103  
Santa Fe, New Mexico 87505  
(505) 827-6838 / Fax (505) 827-6878

March 25, 2019

Furman Sizemore  
C/o Edward Hollington  
708 Marquette Avenue NW  
Albuquerque, NM 87102

City of Albuquerque  
Nicholas Nunez  
PO Box 2248  
Albuquerque, NM 87103

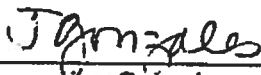
Re: Furman Sizemore vs. City of Albuquerque  
HRB No. 18-08-06-0264 EEOC#39B-2018-01871

Dear Mr. Sizemore:

This office is in receipt of your Request for Closure of Charge of Discrimination Due to Settlement, signed and dated March 22, 2019.

Your Charge of Discrimination is hereby dismissed *with prejudice*.

BILL McCAMLEY  
SECRETARY

  
\_\_\_\_\_  
Jacqueline Gonzales  
Bureau Manager