



Alamogordo City Commission

NOTICE OF MEETING

Regular Meeting Agenda

January 29, 2019 - 6:30 PM
City Hall, City Commission Chambers
1376 E. Ninth St.

Richard Boss Mayor
Jason Baldwin Mayor Pro-Tem, District 1
Nadia Sikes District 2
Susan Payne District 3
Josh Rardin District 4
Al Hernandez District 5
Dusty Wright District 6

Maggie Paluch City Manager
Petria Schreiber City Attorney
Rachel Hughs City Clerk

MISSION STATEMENT as Adopted by the City Commission on March 24, 1995.

The City of Alamogordo is a Municipal Corporation that exists solely for the purpose of providing the best possible services to our customers, the citizens of Alamogordo. We are committed to providing these services with honesty, integrity, compassion, fairness, and a commitment to excellence.

We are committed to the long-term financial stability and responsible growth of the City and all decisions will be driven by our commitment to provide the best services possible in a financially sound and responsible manner given the economic realities facing the City.

In accordance with Section 10-15-1.D, NMSA 1978 (2010 Cumulative Supplement), this agenda has been posted on the bulletin board located in the east/west lobby of the City Hall and in the glass case located outside the north entrance of the City Hall, distributed to the appropriate news media, and posted on the City website: <http://ci.alamogordo.nm.us> within the required time frame. As a courtesy, the entire Agenda Packet has also been posted on the City of Alamogordo website: <http://ci.alamogordo.nm.us>

The Mayor and City Commission request that all cell phones be turned off or set to vibrate. Members of the audience are requested to step outside the Commission Chambers to respond to or to conduct a phone conversation. The Alamogordo Commission Chambers is wheelchair accessible. Other special assistance for disabled attendees must be requested 48 hours in advance by contacting the City Clerk's Office at 575-439-4205.

CALL TO ORDER & ROLL CALL

Announce the presence of a Quorum.

INVOCATION & PLEDGE OF ALLEGIANCE

APPROVAL OF AGENDA

PRESENTATIONS

1. Information on dirt distribution between Alaska Ave and Florida Ave. (Alan Theriault, Resident)

PUBLIC COMMENT

Residents must sign up with the City Clerk to address the City Commission. Comments are limited to 3 Minutes, and there will be a maximum of 21 Minutes allowed for Public Comment.

CITY MANAGER'S REPORT

REMARKS AND INQUIRIES BY THE CITY COMMISSION

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

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

2. Approve the minutes for the January 8, 2019 Regular meeting. *(Rachel Hughs, City Clerk)*
3. Approve the statements related to the Executive Closed Session held on January 8, 2019. *(Rachel Hughs, City Clerk)*

ITEMS REMOVED FROM CONSENT AGENDA

NEW BUSINESS

4. Consider, and act upon, request waiver of weed lien in the amount of \$542.11 for property PC 01-12234. *(Fred Flores)*
5. Consider, and act upon, an Ordinance 1587 for first publication, repealing Section 02-03-052 Code of Conduct of the Alamogordo Code of Ordinances. *(City Commissioners)*
6. Consider, and act upon, Amendment No. 1 to R.A. Pratt LLC, related to construction observation, inspection, and coordination services for the 1-MGD Brackish Water Treatment Facility, in an amount not to exceed \$15,000.00, excluding NMGR. *(Bob Johnson, Engineering Manager)*
7. Consider, and act upon, approval to apply for Doppelt Family Trail Development Fund grant in the amount of \$50,000, to repair and enhance the Washington Avenue walking trail. *(Veronica Ortega, Community Services Director and Debbie Osborne, Grant Coordinator)*
8. Consider, and act upon, the lease of 5 buses to Zia Therapy Center for use by Z-Trans. *(Petria Schreiber, City Attorney and Brian Cesar, Assistant City Manager)*
9. Appointments to Boards and Committees. *(Richard Boss, Mayor)*

EXECUTIVE SESSION (Roll Call Vote Required)

10. Adjourn into Executive Closed Session in compliance with 10-15-1(H), NMSA 1978 (as amended) to discuss City Manager's evaluation.

ADJOURNMENT

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 01/29/2019

Report Date: 01/25/2019

Report No: 1.

Submitted By: Rachel Hughs

Subject: Information on dirt distribution between Alaska Ave and Florida Ave. (*Alan Theriault, Resident*)

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation: Information only.

Background: Mr. Theriault will give information on dirt that is being distributed at Alaska Ave. and Florida Ave.



RECEIVED
JAN 07 2019
CITY CLERK

City of Alamogordo City Commission Meeting

AGENDA REQUEST FORM

Date: 1, 6, 19

Request Date of Meeting: 1, 29, 19

Name: ALAN THERIAULT

Address: 704 ALASKA AVE

ALAMOGORDO, NM ZIP 88310

Phone Number: 575 434-5995

E-Mail Address: alan5552001@gmail.com

Item requested will be for: (Please check one)

☐ Information only

☒ Presentation

Brief description of topic to be discussed:

Please attach one original of any documents pertaining to the topic -
We do not allow handouts at the meeting

DIRT DISTRIBUTION CENTER BETWEEN ALASKA AVE
AND FLORIDA. WILL INVITE ANY NEIGHBOR THAT WOULD
LIKE TO COME

Signature: Alan Theriault

Please return to: Rachel Hughes, City Clerk
City of Alamogordo
1376 E. 9th Street
Alamogordo, NM 88310

Phone: (575) 439-4205

Fax: (575) 439-4396

E-mail: rhughes@ci.alamogordo.nm.us

Revised 10/13/2017

Rachel Hughs

From: Rachel Hughs
Sent: Friday, January 11, 2019 3:54 PM
To: 'Alan Theriault'
Subject: RE: Theriault IPRA 12-13-2018

Mr. Theriault,

I have forwarded your email to the Code Enforcement manager.

*Rachel Hughs
City Clerk
Alamogordo, NM
(575) 439-4205*

From: Alan Theriault [mailto:alans5552001@yahoo.com]
Sent: Thursday, January 10, 2019 10:29 PM
To: Rachel Hughs <rhughs@ci.alamogordo.nm.us>
Subject: Re: Theriault IPRA 12-13-2018

Date: 1,10,19

From: Alan Theriault
704 Alaska AVE
Alamogordo, NM 88310

To: Alamogordo City Code Enforcement Manager

I am writing to file a complaint because some of us Alamogordo residents feel the City Code Enforcement is giving special privileges to Gerald Champion Hospital and General Hydronics Construction. This involves the property the hospital owns between Alaska AVE and Florida that covers from 5th street to 7th street.

This lot is being used by General Hydronics and is a real eyesore. There are mass signs spread all over, pipes, materials and equipment spread all over, and large pieces of old metal and steel that is just trash. And most of these materials are up close to the fence and the road.

We question why they are not forced to enclose this lot since it has been brought to our attention that other residents have been forced by the city to enclose their property in cases where the city claimed their yard was an eyesore. Seems like a double standard. Especially since many of us Neighbors question if this is even a legal location for this construction company.

But this is not the first time we feel Gerald Champion Hospital Has been given special privileges. Summer after summer that lot has had weeds and grass 3 feet or higher while code enforcement gave the rest of us residents warning tickets and tickets for grass and weeds 6 inches or higher. Again seems like a double standard.

We ask that the hospital and this construction company be held to the same standards that the rest of us residents are.

Sincerely,

Alan Theriault

CC: Gerald Champion Hospital.

On Monday, January 7, 2019 11:38 AM, Rachel Hughs <rhughs@ci.alamogordo.nm.us> wrote:

Mr. Theriault,

The records are attached, sorry about that.

Rachel Hughs
City Clerk
Alamogordo, NM
(575) 439-4205

From: Rachel Hughs
Sent: Monday, January 07, 2019 11:34 AM
To: 'Alan Theriault' <alans5552001@yahoo.com>
Cc: Petria Schreiber <pschreiber@ci.alamogordo.nm.us>; Dustin Johnson <djohnson@ci.alamogordo.nm.us>; Dorothy Murphy <dmurphy@ci.alamogordo.nm.us>
Subject: RE: Theriault IPRA 12-13-2018

Good morning Mr. Theriault,

Attached are the records we have for your request. This completes your request for public records.

Have a good Monday,

Rachel Hughs
City Clerk
Alamogordo, NM
(575) 439-4205

From: Rachel Hughs
Sent: Thursday, January 03, 2019 9:05 AM
To: 'Alan Theriault' <alans5552001@yahoo.com>
Cc: Petria Schreiber <pschreiber@ci.alamogordo.nm.us>; Dustin Johnson <djohnson@ci.alamogordo.nm.us>; Dorothy Murphy <dmurphy@ci.alamogordo.nm.us>
Subject: RE: Theriault IPRA 12-13-2018

Good morning Mr. Theriault,

I have received your request for public records. I will have some information for you by January 10, 2019.

Have a great weekend,

Rachel Hughs
City Clerk

Alamogordo, NM
(575) 439-4205

From: Alan Theriault [<mailto:alans5552001@yahoo.com>]
Sent: Wednesday, January 02, 2019 2:40 PM
To: Rachel Hughs <rhughs@ci.alamogordo.nm.us>
Subject: Re: Theriault IPRA 12-13-2018

Date 1, 2 19

From: Alan Theriault
704 Alaska ave
Alamogordo, NM 88310
Phone (575) 434-5995
To: Alamogordo City Clerk Rachel Hughs

Pursuant to the state Inspection of Public Records Act, I am making the following requests:

1. I request to review the minutes of the Alamogordo Planning and Zoning Commission meeting, in 2016, when the board considered the formal request to rezone a parcel at 805 Alaska Ave. from R-1 to R-4. The request most likely would have been submitted by the property owner, Otero County Hospital Association and/or Gerald Champion Regional Medical Center. I do not know the exact date of the meeting or meetings when this item would have been discussed by the Planning and Zoning Commission in 2016, so I request your assistance in identifying the relevant meeting. Then I will review the minutes in person and subsequently request copies as is appropriate. If you are unable to supply me with the exact date or dates when the rezoning request was considered, please set aside a time for me to visit City Hall when I will look through the minutes of the Planning and Zoning Commission's meetings in 2016 to locate the relevant documents. If you can identify the relevant meeting, I of course will visit to review the minutes in person.
2. I am requesting copies of any minutes of the Planning and Zoning Commission, between January 2016 and September 2018, when the board may have considered or discussed a request by the aforementioned owners of the property at 805 Alaska Ave., Otero County Hospital Association and/or Gerald Champion Regional Medical Center, or their representatives, for a variance of or exemption to the existing R-4 zoning designation to permit the non-conforming use of a dirt storage site. I ask to review these minutes, if they exist, in person prior to submitting a request for particular copies.

Sincerely,

Alan Theriault

On Friday, December 21, 2018 10:20 AM, Rachel Hughs <rhughs@ci.alamogordo.nm.us> wrote:

I forgot a 5 in your email Sir, let me resend the email.

Rachel Hughs
City Clerk
Alamogordo, NM
(575) 439-4205

From: Rachel Hughs
Sent: Friday, December 21, 2018 10:17 AM

To: 'alans552001@yahoo.com' <alans552001@yahoo.com>
Cc: Petria Schreiber <pschreiber@ci.alamogordo.nm.us>; Dustin Johnson <djohnson@ci.alamogordo.nm.us>; Dorothy Murphy <dmurphy@ci.alamogordo.nm.us>; Maggie Paluch <mpaluch@ci.alamogordo.nm.us>; Brian Cesar <bcesar@ci.alamogordo.nm.us>
Subject: Theriault IPRA 12-13-2018

Good morning Mr. Theriault,

Attached is the contract agreement I spoke to you about yesterday over the phone, this is the only record I have for your request.

Below is a recap of the telephone conversations we had concerning this request, as I did not have your email address on the request letter and you preferred to be called.

On December 13, 2018, I called you to let you know I received your letter of request by certified mail and will begin to process it. I let you know you I would call you by December 18, 2018.

On December 18, 2018, I called you to let you know that this is private property and the contract is between the Hospital and General Hydronics and had no records of the area pertaining to your request. You asked what the regulations/zoning requirements were for dirt being brought in for a project and stated all projects have to have a procedure. I advised I would talk to Planning and Zoning Manager and the Project Manager and would call you back tomorrow.

On December 19, 2018, I called you and left a voice message saying the Planning and Zoning Manager said she has nothing on this area for your request as there is nothing being built on this lot but you may file a complaint with her office for the dirt issue. I let you know I was unable to speak with the Project Manager and would call you tomorrow.

On December 20, 2018, I called you to let you know I had a contract agreement between the City and General Hydronics for the project, but had nothing for the lot regarding your request. I asked if you would like the contract and you said yes and gave me your email address to send to you. I also let you know the Project Manager gave me contact information to give to you, Margaret Doyle with Environmental and you said you had already spoke with her. I let you know I would email the contract to you in the morning along with the recap of our telephone conversations.

Sir, this completes your request for public records.

Have a Merry Christmas,

Rachel Hughs
City Clerk
Alamogordo, NM
(575) 439-4205

RECEIVED

JAN 2 5 2019

CITY CLERK

Date 1, 11, 19
From: Alan Theriault 704
704 Alaska AVE
Alamogordo, NM 88310
Phone: (575) 434-5995

RECEIVED

JAN 1 4 2019

OFFICE OF THE
CITY MANAGER

To: The City Manager

On 1,10,19 I contacted Rachel Hughes involving a letter I wrote the city on 1,2,19 asking for more information involving the dirt distribution center on Alaska Ave. This is because she had sent me an email saying that I would receive information by the 1,10,19 but the information I had received seemed to be no more than contact information for the county planning commission

During the phone conversation I explained to her that what I wanted to know was if the city or the county planning commission had given Gerald Champion a variance to put a dirt distribution center on this property. I said I was asking for this information because I was confused after she had sent me an email earlier saying that the city had no control over what the owner of the property put on this property because there was no dwellings on this property and the city only had control over property with dwellings on it. I explained that I was confused because the information I received said that this property had been rezoned in 2016 to R-4 and my understanding is that there can't be anything but a dwelling on this property, not a construction site. She then said she would check with the county and get back to me by the end of the day but she didn't.

Even if the county didn't get back to her she should have at least contacted me to let me know she was still working on it. I say this because I believe this is the 6th request letter I have sent over months and each time I was told they were working on my request but nothing happened or they sent me information that went nowhere. Clearly they have been stalling.

They act as if they do not understand what information I am requesting but I have written each letter in a different way all the way from vague to direct so there could be no misunderstanding or excuse by saying they didn't understand my requests. And this last request dated 1,2,19 was written for us by a professional with the intent of seeing that they clearly understood our request so they couldn't say they didn't but it still did no good.

And as I said in my phone conversation on 1,10, 19. I do not understand why it is so hard to get the information we are requesting from the city. We are just asking for information showing that this is a legal location for this construction site or if not that a variance was given and if it was given, was it given by the city or the county. I also said that if a variance was given by the county it seems the information would have been passed on to the city so again I don't understand why the city can't just give us this information.

As I have said time and time again in my request letters that I feel we the neighbors have a legal right to this information and that city employees required to give us this information have no right to refuse it. I have even sent some of these letters certified and notarized to show you just how serious I am about this and as a matter of record.

C: Brian C.

PG 2

So I am going to lay my cards on the table as a matter of record. It has been clear to me many letters back that I am wasting my time writing these letters to the city but it was necessary in order to show that I gave the city every chance to be fair but they do as they please legal or not. So I intend to once again contact our state attorneys general office but this time provide them with all my documentation I have collected since I last contacted them. And I intend on asking them to do a full investigation over city activities not just involving this situation but other situations that have gone on in city government for at least a decade, that doesn't seem right.

I also intend on contacting private attorneys in behalf of all us neighbors because many of us feel the city has aloud this construction site to endanger the health and safety of us residents and many are elderly residents living next to this site that already have illnesses such as Asama, COPD, Lung Cancer and more. We may attempt to file a class action lawsuit depending on what the attorneys chooses to do, this lawsuit may also involve any city employees that refused to provide us with any information we have a right to under law.

Sincerely,

Alan Theriault

Alan Theriault



My Commission Expires

OFFICIAL SEAL

S. Romero

NOTARY PUBLIC

STATE OF NEW MEXICO

3/9/21

State of New Mexico County of Otero
Subscribed and sworn before me on 1/11/19
Shawn
(Date)
Shawn
(Notary Signature)

RECEIVED

JAN 25 2019

Date: 1,17,19

To the City Attorney

CITY CLERK

I sent the city an email dated 1,16,19 but I am not sure it went through so I am sending another along with more information.

I requested any and all information between the city and General Hydronics involving the construction site located between Alaska Ave and Florida Street. This includes all written information to and from General Hydronics, Emails, Status Reports, Over Site Operations, and Management of the contract.

And I hope I don't see any gaps where information has been removed. I say this because in the past the city has gone out of there way to refuse me information I have requested that I believe I have a right to under the New Mexico Commission of Public Records. I have been told I would receive information I requested and then not receive this information or I would be given information I didn't request instead.

I am still waiting for the city to give me the information I requested in my last letter. I asked if the construction site on my street was a legal site and if not did the city or the county give a variance and if so was it the city or the county that gave the variance. I asked this because the city had sent me an email saying they could not do anything to help us effected by this construction site because there was no dwelling on this property and the city only had control over dwellings. Yet the information I have says that in 2016 the property was rezoned to R 4 and it is my understanding that there can be nothing but a dwelling on that property, not a construction site or dirt distribution site.

I received a call on 1,16,19 from the state attorneys generals office saying the city had sent them a copy of the letter I sent the city. And although I doubt you sent it in my behalf I am glad you sent it because it saved me from having to write them.

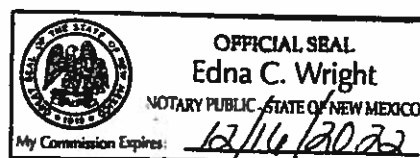
I am now in the process of filing a complaint with the state attorneys generals office because I believe the city has violated my rights to the information I have requested over and over again. And as I said before, this is information I believe I have a right to under the New Mexico Commission of Public Records.

And as I have also said in my emails and letters over and over again, I believe those in city government required by law to give me this information that have refused to could and should be held personally and legally responsible. I also feel that any city employee or city council member that has done anything unethical or illegal should be held personally and legally responsible as well. I do understand that governments and government employees have a certain legal protection but it is also my understanding they are not protected if they do anything illegal or anything outside of their job responsibilities that is unethical or illegal.

Sincerely,

Alan Theriault
Alan Theriault

State of New Mexico County of Otero
Subscribed and sworn before me on 01/17/2019
Edna C. Wright (Date)
(Notary Signature)





City of Alamogordo

1376 E. NINTH STREET • ALAMOGORDO, NEW MEXICO 88310-5838 • CITY ATTORNEY'S OFFICE
(575) 439-4210 FAX (575) 439-4396

January 22, 2019

Mr. Alan Theriault
405 Alaska Avenue
Alamogordo, NM 88310

RE: Letter dated January 17, 2019

Dear Mr. Theriault:

I received your letter dated January 17, 2019. I apologize as I did not receive any email from you as your letter references being sent on or about January 16, 2019.

I understand that you are very frustrated with the situation happening on the lot at 9th Street and Alaska, and that you have put in several public records requests regarding said lot. The City has provided you with every document within its control. Your question in your last letter – “is the construction site a legal site” is not covered under the New Mexico Inspection of Public Records Act (IPRA). IPRA provides that every person has a right to inspect public records (documents) in the State. If we had a record responsive to your request, we would certainly provide it to you – but there is no document that is responsive to your request. As far as any variances granted – we have no documents that are responsive to that request, which is why you did not receive anything other than our letter than no such documents exist.

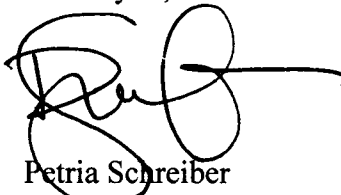
I apologize that you feel frustrated that the records do not exist, but we cannot create records, or give you legal advice through IPRA, as that is not its function. However, what I can, and did do, is call the hospital to ask if there is a contract between General Hydronics and Gerald Champion Regional Medical Center for the use of that lot. Although neither company is subject to the IPRA law, the hospital was gracious enough to tell me that there is no written contract, just an oral agreement.

Additionally, what the City, GCRMC and General Hydronics have done is heard your concerns and asked General Hydronics to keep the dirt wet so that it would not become airborne, and in neat piles, away from where your house is located if at all possible. In fact, in preparation for the wind storm that occurred in the afternoon of Friday, January 18, 2019 I personally witnessed General Hydronics wetting the dirt down to avoid any becoming airborne. I also checked with our water department who tells me that General Hydronics has used over 170,000 gallons of water to keep the dirt wet, at their own expense. I also visited the site and witnessed that almost no dirt was blowing from the lot itself, but instead was blowing from neighboring lots, including dirt pile on your own lot.

At this time Mr. Theriault, the City wishes to work with you and provide you all the records in which you would like to inspect, but the records must exist and be disclosable. As such, I have enclosed an IPRA guide from the Office of the Attorney General to help you with your next request.

Please let me know if you have any additional questions or concerns.

Thank you,

A handwritten signature in black ink, appearing to read 'Petria Schreiber', with a long horizontal flourish extending to the right.

Petria Schreiber
City Attorney
575-439-4338

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 01/29/2019

Report Date: 01/24/2019

Report No: 2.

Submitted By: Rachel Hughs

Subject: Approve the minutes for the January 8, 2019 Regular meeting. *(Rachel Hughs, City Clerk)*

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation: Approve the minutes.

Background: This is required by the Open Meetings Act.

**CITY OF ALAMOGORDO, NEW MEXICO
CITY COMMISSION REGULAR MEETING MINUTES
6:30 P.M., COMMISSION CHAMBERS
January 8, 2019**

**RICHARD BOSS, MAYOR
AL HERNANDEZ, COMMISSIONER
NADIA SIKES, COMMISSIONER
JOSH RARDIN, COMMISSIONER
SUSAN PAYNE, COMMISSIONER**

**JASON BALDWIN, MAYOR PRO-TEM
DUSTY WRIGHT, COMMISSIONER
MAGGIE PALUCH, CITY MANAGER
PETRIA SCHREIBER, CITY ATTORNEY
RACHEL HUGHS, CITY CLERK**

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

Mayor Boss called the meeting to order at 6:30 p.m. Roll Call was taken by the City Clerk. City Clerk Hughs announced there was a quorum present. Invocation was given by Pastor Vic Williford and the Pledge of Allegiance was led by Commissioner Rardin.

APPROVAL OF AGENDA

City Attorney Schreiber pulled Item #12 off the Agenda at the request of the Hospital.

Commissioner Hernandez moved to amend the agenda.

Mayor Pro-Tem Baldwin seconded the motion. Motion carried with a vote of 7-0-0.

PRESENTATIONS

1. Presentation from the U.S. Army Corps of Engineers related to the McKinley Channel Phase 8 project. *(Lt. Colonel Caswell)*

Lt. Colonel Caswell said they have conducted the public bid opening for the Phase 8 and they wanted to give the Commission an update on that and to bring their attention to a request for additional funding to complete the project. He introduced Project Manager for the U.S. Army Corps of Engineers Mr. Stevens.

Mr. Stevens explained the details of phase 8 of the project. He said the main part of this phase is the sedimentation basin. He discussed the base bid and two additional options for the phase. He showed the Commission slides which showed before and after project conditions and also a cost summary for the base bid and the two options. He said the apparent low bidder came in higher than the government estimate. He said to basically meet that cost demand, there is an additional \$3.7 million that is required in terms of contributed funds. He said to put in context, if they were to build the base bid it wouldn't require any additional funds, but just doing the base bid leaves the project vulnerable to erosion damages. He said in previous years they have seen the damages in the City of Alamogordo could reach as high as \$3 million. He said in essence what the base bid does is provides a detention facility for removing sediment from the channel system which would basically decrease the operation and maintenance of that system. Without the upper basin to catch the debris, the sediment from that upper water shed would come down through the basin and would be a long-term headache for maintenance over the years and would cost a lot in terms of the operation and maintenance of the system. He said because of this it justifies having options one and two included with the base bid. He said the reason why those were broken out was basically to give the city more flexibility. He said the base bid expires after 60 days, and then from that time they have an additional 90 days to award the options. He said that gives them time to basically look for contributed funds and also to go through the process to get approval to receive those funds because that would require an amendment to the Project Partnership Agreement that they currently have. Currently they are not allowed to receive contributed funds from the City of Alamogordo as a sponsor.

Mayor Pro-Tem Baldwin said that residents in that area never believed they would have a huge concrete structure right behind their houses. He asked Mr. Stevens if they are willing to take any discussion or if they have met with any of the public up in that area up to this point about their thoughts on that. Mr. Stevens said as far as he knows this is one of those things where the project has been in design for quite a while. He said he would have to go back to their records because there have been quite a few changes in Project Managers.

U.S. Army Corps of Engineers Project Manager Brian Sanchez said he is not positive of what type of public meetings were held prior to the design. They would have to go back and check their records. Mayor Pro-Tem Baldwin believed there was some public input, but it was more general input as opposed to actually meeting with some of the concerned homeowners up there. He said he would communicate their wishes through City staff, and staff will communicate that to the Corps. He said the City is excited, assuming everything goes well, that the project funding moves forward. He said this project has been going on for 20 plus years. Mr. Sanchez said they are excited to be at the tail end of this project and see it through completion. He said it is unfortunate that there is a shortfall at this point, but they think that completing the entire project, you get a complete project from the outfall all the way up to the basin. Mayor Pro-Tem Baldwin said it was about to be a pretty big disappointment for the City to have the pretty big shortfall, but due to the Corps' diligence coming up with solutions for that, the City does appreciate that. It definitely makes a large part of Alamogordo much safer after this.

2. Presentation on parking lot at the Otero County Fairgrounds and the pedestrian crossing over the arroyo. (Sheila Coca, Otero County Fairgrounds Secretary)

Ms. Coca showed a Power Point Presentation. She gave a brief history of the OCFA (Otero County Fair Association). She explained what the OCFA provides the community and explained how the OCFA manages the facility. She showed parking lot revenues for 2018 and also fees that have been waived for community events. She also showed an overhead view of the parking lot and how it is divided out by the City and County. She asked the Commission to consider all of this information when they go into discussions about the parking lot lease. She said the revenue that they make off of the parking goes to help pay for the maintenance, which was over \$14,000 for 2018. (See Power Point presentation in Blue Book)

Mayor Boss asked if the fees that they collect go directly to the Association and not to the County. Ms. Coca answered they go directly to the Association. She said they use those collected fees for maintenance, weed control, debris control and those kind of things.

Ms. Coca explained the need for a pedestrian crossing over an arroyo. And it would eliminate the need to shut Fairgrounds Road down during their events. She was informed by both the City and County Attorneys that she would need to get it engineered. She said OCFA does not really have a budget for that, so she has contacted the NMSU (New Mexico State University) Engineering Department, and they are willing to help them get it engineered and get the blueprints signed off by an Engineer. She asked the Commission would be willing to work with OCFA on that. Mayor Boss asked Ms. Coca if the County is working with them on this. Ms. Coca answered if she can get the blueprints, she can try to get some funding. Mayor Boss said that is on their property, they gave the City the easement. Ms. Coca said right. Mayor Boss asked if the County wants the City to build a crossing over their property. Ms. Coca said since the City has the easement, OCFA is asking if it is okay to pursue this before they get too far into the project. Mayor Boss clarified with Ms. Coca that they are not expecting the City to fund the project. She answered no.

Commissioner Rardin explained that Ms. Coca has to have the City's permission, since the City has the easement. He said they ran into the same issue with the other crossing downstream from this one. He said the City had to get permission to put a crossing over it even though the City doesn't own the property, they have rights to it.

Ms. Coca asked if the City has someone to contact when the NMSU Engineers come over. City Manager Paluch said after Executive Session, staff will reach out to her in the morning and let her know what is going on. Ms. Coca thanked the Commission for what they have done for the OCFA.

PUBLIC COMMENT

Scott Fredrick commented on the following:

He mentioned the effects of not having a pool cover for Senior citizens and for the high school swim team. He thanked the Commission for what they do and for not getting more involved in the Rocket City plan. He said the Commission should probably steer clear of the Code of Conduct item. He said none of the Commissioners gave up their first amendment right when they were elected, and when they start putting a limitation on people, they've probably walked down a road that they probably don't want to go down. He said a comment of "I am a public citizen" before the Commission says something doesn't change anything. He said if any member of the Commission states something on a formal government blog or something like that, then maybe they are speaking on record. He thanked Chief Peete and the Police Department for an unscheduled escort through the City. This was for a motorcycle ride to honor a fallen Vet.

Gene Downer commented on the following:

He said the City has a wonderful low maintenance desert park. He noticed an advertising bench there in the park and thought it looked awful. He suggested that when the City is doing some street repair, if they could put a little bit of tar in some of the ruts near the toilet. He said there is parking there and it's a mess. He said the Pavilion needs painting badly. He explained the need for signs in some of the major areas of the park, especially around Sunnyside and Abbott. He thanked the City for doing a good job on maintaining Foothills Park. He thought the parking lot is important.

CITY MANAGER'S REPORT

City Manager Paluch made the following remarks:

1. She congratulated City Clerk Hughs for becoming a Certified Municipal Clerk. She said this process has taken over two years of attending classes to obtain credits to get this certification. She said City Clerk Hughs will be moving forward on obtaining her International Master Certification. City Clerk Hughs thanked the City for allowing her to take trainings outside the City, she thanked God for the blessing of her certification, and thanked her husband for standing by her.
2. She said staff met this week to talk about potential Community Development Block Grant (CDBG) projects for 2019. The City is looking at holding a public meeting in the next 30 days for anyone to come and discuss potential projects. The awarded project must service individuals that have an income level of 51 percent of area medium income, and the city could receive up to \$500,000 for that award. Currently, what they are researching is the possibility of renovating the Recreation Center, specifically the Child Care programs section. She said that area is the most popular program and it sells out frequently every season. Additionally, that program does offer scholarships to low income children and families here in Alamogordo.
3. She said staff worked with the Zoo to create an Amazon wish list for much needed items at the Zoo. She said the Zoo has been receiving packages from donors. She gave a shout out and thanked all the people involved in creating the list and all of the donors. She announced if anyone would like to donate to the Zoo to stop by the City's Facebook page, there is also a link to the Amazon Wish list on the page.
4. She said on December 28, 2018 the Alamo Senior Center had the New Year's party where they hosted over a hundred Seniors and staff.
5. She said about 40 to 50 people attended the second coffee with a Cop at Patron's Hall today.
6. She thanked everyone involved with the emergency shelter that was provided at the Civic Center. She said a group of about 45 people were housed at the Civic Center when it became an emergency shelter for stranded motorists during the last snow storm. There were a large number of City employees that helped setup, purchase food and greet the guests. She thanked Vision Ford for donating food.

She said a special credit to Alamogordo dispatchers Dorothy Killer and Mary Miller for alerting City Management that there was an issue.

7. She announced Rick Fredricks as the new Recreation Facility Manager.

Mayor Boss thanked Pastor Anthony Torres from Mountain View Assembly of God. He said Pastor Torres was at the Civic Center all night long waiting to see if there was going to be any overflow, during the last snow storm.

REMARKS AND INQUIRIES BY THE CITY COMMISSION

Commissioner Sikes made the following comments:

She pointed out that City staff has done an incredible job on the Civic Center.

Commissioner Rardin made the following comments:

He spoke on the minimum wage Bill that will be introduced at this year's Legislative Session. He said the bill would raise the minimum wage to \$10 an hour statewide. He said his concern is that the City of Alamogordo has numerous employees under that wage and is worried about the fiscal impact this will have on the City's budget. He said in the past three or four years, the Legislature has introduced bills such as these and they have passed. He said it could be a very large fiscal impact for the City.

City Manager Paluch said HR Director Josselyn is already working on getting numbers together. She said when those numbers are available, there will be a discussion with the Commission before the budget is approved. If this Bill is passed, it will affect the budget significantly.

Commissioner Rardin asked if they will need to raise everybody up to \$10 an hour, or do they have to raise everybody accordingly. He said essentially the higher paid employees are going to take a pay cut and the lower paid will get a raise. City Manager Paluch said Commissioner Rardin is correct, it causes salary compression. She said if you just raise everyone to \$10 then you may have somebody that has been with the City for 20 or more years that's making \$11 an hour, it causes salary compression. She said that is something that they are looking at.

CONSENT AGENDA

3. Approve the minutes for the December 18, 2018 Regular meeting. *(Rachel Hughs, City Clerk)*

4. Approve the statements related to the Executive Session held on December 18, 2018. *(Rachel Hughs, City Clerk)*

5. Approve Resolution No. 2019-01 determining reasonable notice of meetings of the Alamogordo City Commission (Open Meetings Act). *(Rachel Hughs, City Clerk)* (Roll Call Vote Required)

6. Approve the Resident Parking Only, Mobility Disabled Resident Parking Only, and Commercial Mobility Disabled Parking Only sign locations for the purpose of determining continuance of each location. *(Eric Barraza, Deputy City Clerk)*

7. Approve the Annual Reports from City Boards, Commissions and Committees for Calendar Year 2018. *(Rachel Hughs, City Clerk)*

8. Consider, and act upon, final publication of Ordinance 1584, approving a Local Economic Development Project for secured assistance proposed by Medlin Ramps. *(Laurie Anderson, Otero County Economic Development Council)* (Roll Call Vote Required)

Commissioner Rardin asked to remove Item #8 from the Consent Calendar.

Commissioner Hernandez asked to remove Item #6 from the Consent Calendar.

City Clerk Hughs asked to remove Item #7 from the Consent Calendar.

Commissioner Hernandez moved to approve items 3, 4, 5 of the consent calendar.

Commissioner Wright seconded the motion.

Roll call vote was taken.

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

ITEMS REMOVED FROM CONSENT AGENDA

6. Approve the Resident Parking Only, Mobility Disabled Resident Parking Only, and Commercial Mobility Disabled Parking Only sign locations for the purpose of determining continuance of each location. (*Eric Barraza, Deputy City Clerk*)

Commissioner Hernandez asked to reconsider the removal of Mr. Donald Deck's sign for at least one year. He said Mr. Deck passed away late last year and his wife is currently in a nursing home.

Commissioner Hernandez moved to approve as amended.

Commissioner Wright seconded the motion.

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

7. Approve the Annual Reports from City Boards, Commissions and Committees for Calendar Year 2018. (*Rachel Hughs, City Clerk*)

City Clerk Hughs stated the staff liaison from the Parks and Recreation Board put the incorrect date of October 11, 2017 and it should have been October 10, 2018 of the minutes on the Agenda Book.

Mayor Boss thanked all the members of the Boards and Committees. They save the City a lot of time and money by volunteerism in the areas they work on the Commissions and Boards.

Commissioner Hernandez moved to approve as amended.

Mayor Pro-Tem Baldwin seconded the motion.

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

8. Consider, and act upon, final publication of Ordinance 1584, approving a Local Economic Development Project for secured assistance proposed by Medlin Ramps. (*Laurie Anderson, Otero County Economic Development Council*) (Roll Call Vote Required)

City Attorney Schreiber explained the corrections made to the Project Participation Agreement and the Promissory Note.

Commissioner Rardin said the reason he pulled this item is that it goes back to his earlier statements about the minimum wage. He said in the Project Participation Agreement (PPA) it states that they will create 45 \$10 an hour jobs. He said come next year, those could potentially be minimum wage jobs. He asked if they wanted to look at that.

Mayor Boss said he did not want to do that now, since that has just been proposed for the future.

Commission Rardin asked if they had any way of changing it, once they have signed it. He said he does not want to kill the deal, but he is just bringing it up. City Attorney Schreiber stated Mr. Medlin's intent is not to create \$10 an hour jobs. She believes they have set a minimum threshold for Mr. Medlin to meet.

Mayor Boss thought there was nothing close to \$10, according to the schedule included in the paperwork. Commissioner Payne pointed out where to find the table of wages for each job in the agreement. She said there are two painters, two helpers, maintenance, grounds keeper and security positions at \$10 an hour.

Commissioner Rardin said it is taxpayer's money and due to some circumstances, it can change beyond the Commission's control. He said with this agreement, Mr. Medlin is only obligated to provide 45 jobs at \$10 an hour. Granted he can get there a lot faster with those higher wages, but it doesn't make the deal sweeter for the Commission if that dollar amount goes up by \$2.50 an hour. Mayor Boss thought this wasn't the time to do anything.

Commissioner Hernandez said he thinks Mr. Medlin is going to have to be in the wage scale in order to hire these people. He said some of the jobs, people can go elsewhere and make more money. He thought Mr. Medlin is off on the scales.

Commissioner Rardin moved to approve.

Commissioner Hernandez seconded the motion.

Roll call vote was taken.

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

PUBLIC HEARINGS

9. Consider, and act upon, Application No. 1109025, a Small Brewer 1st Off-Site Location Liquor License, with on the Premises Consumption and Package Sales with Patio Service at 523 N. White Sands Blvd to Tall Pines Beer & Wine Garden LLC. (Rachel Hughs, City Clerk)

Mr. and Mrs. Stucky introduced themselves to the Commission.

Commissioner Hernandez said he has a small concern with the Dispensary across the street. He said it is a small concern, but he wanted it to be heard.

Mayor Pro-Tem Baldwin said on behalf of the City, they are excited that they will be opening up business. Ms. Stucky said their first location in Ruidoso has been in business for two years, and they have had a great track record.

Commissioner Sikes asked when they will be opening. Mrs. Stucky said they are waiting for the licensing to be done, but they are shooting by February 1, 2019.

Commissioner Hernandez moved to approve.

Commissioner Rardin seconded the motion.

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

NEW BUSINESS

10. Consider, and act upon, Resolution 2019-02 requesting written approval from the Local Government Division of the Department of Finance and Administration, State of NM for the revised budget numbers computed as of January 9, 2019. (Evelyn Huff, Budget Analyst) (Roll Call Vote Required)

Budget Analyst Huff said the large portion of this is to move funds from fund 109 to fund 56, to fund the McKinley Channel Project. She said they are requesting \$2.1 million dollars to be transferred. She said the other \$1.6 million needed for the project is already in fund 56. It will be moved from other projects or is already earmarked for the McKinley Channel project. She said the other items on the

revision are mostly things in which they are still trying to clean up the project role and get all the projects straightened out and everybody's budget where it needs to be.

Mayor Boss asked Budget Analyst Huff if they were still working on that. She answered that these are for things that are less than \$5,000. She said there are two items: one is for amount of expenses that did not get carried over correctly, and the other one is where some expenses got budgeted for the Library. She said that grant or bond has already been expended so it shouldn't be there, and they do not want them to spend money that they are not going to get reimbursed for.

Commissioner Rardin asked Budget Analyst Huff if she said they were going to move money from fund 109 into fund 56. She said that is correct. He asked if fund 109 is street money. She deferred the question to the Assistant City Manager Cesar.

Assistant City Manager Cesar answered that is correct. Commissioner Rardin asked what it will be used for in the McKinley Channel project. Assistant City Manager Cesar said if you remember back when the two items went to the public in 2004 and 2008, the street maintenance money was primarily used for pavement, ADA improvements, etc., but also for drainage improvements. He said this is a very large drainage project. There is some utility relocation that they have paid for out of fund 81, but there is the tie into fund 109 with the nature of this project. He said this does not impact the street maintenance project at all. He said they still have a considerable amount of money tied up in the Scenic extension. He said they are still waiting for word from Union Pacific on whether or not they will be able to move forward with that project. Those monies have already been set aside, so this doesn't impact the traditional street maintenance project at all. He said if you remember about two Resolutions ago, in fixing some of the issues that they had with the budget, one of the items that they had to delay was the Street Maintenance project for this year, and they will hopefully be back on track in the new fiscal year and get back into that cycle.

Commissioner Rardin said his concern was that it is Street Maintenance money and they have a lot of streets that need maintenance, but he understands that the flood control project needs to be funded as well. He just wanted to make sure that they are not spending money they shouldn't be spending.

Mayor Pro-Tem Baldwin moved to approve.

Commissioner Hernandez seconded the motion.

Roll call vote was taken.

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

11. Consider, and act upon, Award of Public Works Bid No. 2018-009, Street Maintenance Crack Sealing Re-bid project, to General Hydronics Utilities, LLC in the amount of \$228,636.00, including NMGR. (*Nancy Beshaler, Project Manager*)

Project Manager Beshaler said this will provide for crack sealing for five streets within the City. The project was advertised in November and bids were open in December. They had two bidders with the low bidder being General Hydronics Utilities.

Commissioner Hernandez asked if this is the first project, General Hydronics has done like this. Project Manager Beshaler answered it is her understanding that they do not have experience doing this. He asked about the warranty. She said it is the standard warranty one-year after it is complete.

Commissioner Hernandez moved to approve.

Commissioner Rardin seconded the motion.

Motion carried with a vote of 6-0-1. Commissioner Wright abstained.

12. Consider, and act upon, application for Gross Receipts Investment Program (GRIP) funds from Gerald Champion Regional Medical Center (GCRMC). (*Petria Schreiber, City Attorney*)

City Attorney Schreiber pulled this item off the Agenda.

13. Consider, and act upon, moving the Boards and Committees Annual Reports to the months of July of each year. (Rachel Hughs, City Clerk)

City Clerk Hughs stated some staff liaisons asked the City Manager if they could change the annual reports to July, instead of January, to coincide with the fiscal year.

Mayor Boss said it seems reasonable to move it because it agrees with the City's fiscal year

City Manager Paluch said several of the Boards have funding that are associated to them and it was difficult for those staff liaisons to do a report and gather their financial data over two fiscal years. She said the request came to her office because it would be easier for them to gather data over one fiscal year.

Commissioner Hernandez moved to approve.

Commissioner Sikes seconded the motion.

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

14. Consider, and act upon, a Code of Conduct violation filed against Commissioner Susan Payne by Richard Merrick. (Petria Schreiber, City Attorney)

City Attorney Schreiber explained how the process worked for a code of conduct complaint. She said the committee found no-cause on all the items except for one. She said the agenda report provides a road map of what action the Commission can take at this time. She explained the options the Commission could take for this complaint.

Commissioner Sikes made the motion to take no action.

Rich Merrick commented on the following:

He said the remarks made by Commissioner Payne were made within a couple of weeks after the State Auditor's letter, which was about the City and the things done wrong by the City. He agreed with Commissioner Payne in that she factually state his qualifications. He asked the Commission if someone was to question their qualifications and one of the things, they said was that "you only worked for your mommy". That is pretty insulting. He said in that same comment "he lost the Mayoral race and was awarded the Booby prize of the State Auditor's position". He said the definition of a booby prize is the lowest performing award for a game or competition. He said, does Commissioner Payne not say that this is an award for low performance and that the State Auditor's job is such a low office that we award it to a low performer. He said that is where he has a problem with this. He said the State Auditor issued the State Auditor's findings and it wasn't pretty. He said he thinks what the State Auditor was trying to put out there was, we just need to change what we are doing. He said this is his opinion. He stated that he did see Mayor Boss and Commissioner Payne at the Republican meeting and what he saw was a professional State Auditor act in a professional manner regardless how he felt over these posts. He said the comments puts the City in a bad light. He said KRQE News picked up on the story. That went out to the entire State, that a Commissioner in this City, made those kind of comments. He said that looks bad on our part. He agreed with Mr. Frederick's earlier comment 100 percent, in that no one should lose their first amendment right, but the City Commission put this Ordinance in. He said he is not trying to take anyone's first amendment rights away, he is just trying to make people obey and follow the Ordinances that are written.

Mayor Boss said they have a motion on the floor by Commissioner Sikes.

Commissioner Hernandez seconded the motion.

Commissioner Hernandez said he constantly finds himself wanting to make comments, like yesterday for instance when our top elected democrats were here badgering our Border Patrol and Hospital. He said he held comment because he does not want to end up like Commissioner Sikes and Payne have. He said the day he is elected, he is elected till the day he dies. He stated it was not an easy task for Commissioner Payne when this was filed, and it hasn't been an easy task for her during this. He said he is currently in a situation where he is going to hire an Attorney to shut somebody's mouth for what they are saying about him. He said if they want to file a complaint, that's fine, but that's bull. He said he has not spoken to Commissioner Payne about this, but he can tell you that she probably has a different understanding of social media and how this works, and the fact that you really can't really say what you really feel, just because you are an Elected Official. He said because they did not find "No Findings" doesn't mean that Commissioner Payne didn't feel the pain. He said he understands that because after Commissioner Sikes went through her complaint process, he and Commissioner Payne had a conversation about it. He said Commissioner Sikes went through a lot of turmoil within herself to get past that. He said just because they are elected officials, it doesn't take away their first amendment right. He said he does not believe the crap of "As a Private Citizen", because once you are elected you are elected, you are always representing. He said this is his opinion.

Mayor Boss said anytime he sees or hears the word "I", that is an indicator that they are speaking for themselves and not for the Commission. He said anytime he makes a statement, he will make it very clear that he is speaking for himself and not the Commission and feels that it is his right to do that. He said he feels that their rights have been taken away by this Code of Conduct. He personally thinks it is ridiculous.

Commissioner Sikes told Commissioner Hernandez she appreciates him saying about having to hold back yesterday. She said as the Chair of the Democrat Party and as a City Commissioner, she cannot stand grandstanding. She said she is a member of the Community Advisory Board with the hospital and she is very proud of the hospital and what they have done over the past few years. She said to see them disparaged over something totally out of their realm. She said this is a personal comment that she is making, but she had to hold back as well. She said as a person who has had the most complaints filed against her, she appreciates what her colleagues have said this evening. She also appreciates what Mr. Frederick said earlier. She said she tends to always want to express her first amendment rights and she knows it gets a little contentious occasionally. She said if she ever had to go through that situation again where she has to sit up there on the dais and have your words and thoughts torn apart. She stated if she had the option of running through this room naked, she would do that instead. She said it is so humiliating to have every word and thought under the microscope. She asked how the people of Alamogordo know who they are, if they aren't allowed to express their opinions about various topics or people. She said the people need to know who they are and what they stand for. She said she respectfully asks the City Manager and the City Attorney to look at this Ordinance and either clean it up a little, repeal it and make it where it isn't so punitive. She said that is, of course, with the consensus with her colleagues.

Commissioner Wright stated that everything that was submitted, was submitted as Susan Payne and not as Commissioner Payne. He said KRQE would only have known that she was a Commissioner, if somebody was going to run to the media and twist the story. He said he understands that it is a position, but nothing was stated as a City Commissioner, this was only her opinion. He said there was nothing that Commissioner Payne used in her official status to convey this message.

Mayor Boss said there was nothing Commissioner Payne used that was any of her opinion, everything was already been made news about the Acting State Auditor at that time. He said everything had already been on the news in pretty much the same words with maybe the exception of the mommy comment, but everything was already there. He said in his opinion, she was reporting more than giving an opinion.

Commissioner Payne said she needs to apologize to Commissioner Sikes. She said she mentioned to Commissioner Sikes that she understands passion. She understands humility and has no problem

apologizing to her because she deserves it, she may have went a little overboard and she did it because of a particular comment. She stated she is not ashamed or embarrassed by this because she did not do anything wrong. She is not going to admit to doing something wrong, when she did nothing wrong. She said she is a little disappointed and a little bit hurt because Mr. Merrick and she used to be, what she thought were friends. She said she must have said or done something and all of a sudden, she is Satan's spawn. She is still the same person she was in March of 2016 when she was elected. She said she is berated on social media. She does not have access to those anymore she took herself off those a long time ago. Her husband and children tell her what is happening on social media. She said she has screen shots of everything. She said according to social media she has lined her pockets, she answers to the Rabons, and she is part of the good ole boys. She said there are so many things said about her. She said it is confusing to her because apparently, she has done things that she did not know she did and said things that she did not know that she said and have been places that she didn't know she was at. She said Commissioner Hernandez is right, we are always public officials, but that Facebook page she has had since 2009. She said it says nothing on there about her being a City Commissioner and she would never in a million years discuss any legal issues that has to do with the City. She understands what her professional responsibility is, but she reposted two articles, and Commissioner Wright is correct that there is no way KRQE News would have known that she was a City Commissioner unless somebody told them. She said she is tired of playing the game, she just wants to do her job, that is all she wants. She said she works really hard for the City. She said this has got to stop, this is ridiculous. She said her non-profit has been brought into ugly conversations on Facebook.

Mayor Boss mentioned that his wife has been brought into conversations. Commissioner Payne asked why they would do that. Mayor Boss said because they are morons and it is bull.

Commissioner Payne asked why anyone would want to destroy an organization that works so hard for this community and helps so many people. She said her non-profit has been named in a State Auditor's report and she can't understand it. She said she got a little snarky, she is disappointed in the former State Auditor. She keeps hearing that she takes direction from these high rollers in town, but the only person that has asked her to consider something or do something is sitting in the audience. She said she has never had the Rabons call her and ask her to vote a certain way, she has never had that happen.

Commissioner Sikes moved to take no action.

Commissioner Hernandez seconded the motion.

Motion carried with a vote of 6-0-0. Commissioner Payne did not vote.

15. Notification of Vacancies for Boards and Committees. (*Richard Boss, Mayor*)

Mayor Boss read the vacancies for each Board and Committees. He also announced that if anyone is interested on being on a Board or Committee to visit the City's website or go into the City Clerk's Office and fill out a form.

Commissioner Hernandez mentioned the football display outside of the Chambers has been updated. He welcomed everyone to stop by and look at the display. He said he is very proud of it because his father was on that State Championship football team

EXECUTIVE SESSION

16. Adjourn into Executive Closed Session in compliance with 10151(h), NMSA 1978 (as amended) to discuss real property of the Fairgrounds Parking Lot. (Roll Call Vote Required)

City Manager Paluch reminded everyone that they will be adjourning into Executive Session.

Commissioner Hernandez moved to adjourn into executive session at 8:11 p.m.

**Mayor Pro-Tem Baldwin seconded the motion.
Roll call vote was taken.
Motion carried with a vote of 7-0-0.**

ADJOURNMENT

Mayor Richard Boss

ATTEST:

City Clerk Rachel Hughs

(Prepared by Eric Barraza, Deputy Clerk)
Approved at the Regular Meeting held on January 29, 2019.

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 01/29/2019

Report Date: 01/10/2019

Report No: 3.

Submitted By: Rachel Hughs

Subject: Approve the statements related to the Executive Closed Session held on January 8, 2019.
(*Rachel Hughs, City Clerk*)

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation: Approve the following statements authorizing them to be included in the minutes of January 29, 2019: "The Governing Body of the City of Alamogordo, New Mexico, hereby states that on January 8, 2019, a Closed Executive Session was held and matters discussed in the closed meeting were limited only to: Discuss real property of the Fairgrounds Parking Lot.

Background: The statement is required per the Open Meetings Act.

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 01/29/2019

Report Date: 01/16/2019

Report No: 4.

Submitted By: Rachel Hughs

Subject: Consider, and act upon, request waiver of weed lien in the amount of \$542.11 for property PC 01-12234. (*Fred Flores*)

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation:

Background: Mr. Flores is requesting the Commission waive the weed lien for property located on PC 01-12234 in the amount of \$542.11.



RECEIVED
JAN 14 2019
CITY CLERK

City of Alamogordo City Commission Meeting

AGENDA REQUEST FORM

Date: 1/11/2019

Request Date
of Meeting:

29 Jan 2019

Name:

Fred P. Flores

Address:

4959 Galina Dr.

Las Cruces, NM ZIP 884011

Phone Number:

303-881-3400

E-Mail Address:

fpflores84@yahoo.com

Item requested will be for: (Please check one)

☐ Information only

☒ Presentation

Brief description of topic to be discussed:

Please attach one original of any documents pertaining to the topic -

We do not allow handouts at the meeting

Request waiver of Weed Lien
on property pc#01-12234.

Signature: Fred P. Flores

Please return to:

Rachel Hughs, City Clerk
City of Alamogordo
1376 E. 9th Street
Alamogordo, NM 88310

Phone: (575) 439-4205

Fax: (575) 439-4396

E-mail: rhughs@ci.alamogordo.nm.us

Revised 10/13/2017

**CITY OF ALAMOGORDO
WEED LIEN PAYOFF**

Prepared by:	DMURPHY	Date:	1/9/2019
Address:	PC #01-12234	Lien filed:	4/16/2018
Lien No.		Name:	Kern Family Trust
Case No.	17-5015		
AR No.	3903-AA		

Interest:	8%	0.000219178	per day
4/16/2018	\$ 462.70	\$ 29.41	290
	\$ -		
	\$ 462.70	\$ -	

\$ 462.70	Lien amt
\$ 50.00	filing fees
\$ 29.41	interest
\$ 542.11	total due

PAYOFF GOOD THROUGH: 1/31/2019

Respectfully request that Alamogordo City Commission consider waving \$542.11 weed lien on property PC# 01-12234.

*Fred P. Flores
1/11/2019*

PLEASE MAKE CHECK PAYABLE TO "CITY OF ALAMOGORDO"

City Attorney's Office
CITY OF ALAMOGORDO
1376 E. Ninth Street
Alamogordo, NM 88310

1/9/2019

(1)

OTERO COUNTY ASSESSOR'S OFFICE

Property Profile

Account: R020782
 Mill Levy 33.745000
 Estimated Tax: \$32.64

Tax Year: 2019
 Version: 04/03/2018
 Parcel: 01N4055094147419

Active

Account Type: P
 Area ID: 01_NR
 Previous ID: 01-12234

Owners Name and Mailing Address

KERN FAMILY TRUST
 1532 ROOSEVELT AVE
 ALAMOGORDO, NM 88310

Property Location

Situs:
 City, State, Zip: No Location Information Available
 Neighborhood: A1

Legal Description

Subd: ALAMO BLOCKS Lot: 23, 24 E1/2 Block: 21

Assessment Information

2019 Tax Year	Full Value	Assessed Value	Gross Sq Ft	Acres	Taxable
Land:	2,902	967	3000.000		
Improvements:					
Exemptions:		0			
Total:	2,902	967			967
2018 Tax Year	Full Value	Assessed Value	Gross Sq Ft	Acres	Taxable
Land:	2,902	967	3000.000		
Improvements:	<i>Max</i>				
Exemptions:					
Total:	2,902	967			967

Public Remarks

Photograph



Building Sketch

Charles & Shirley Kern

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 01/29/2019

Report Date: 01/11/2019

Report No: 5.

Submitted By: Joshua Rardin

Subject: Consider, and act upon, an Ordinance 1587 for first publication, repealing Section 02-03-052 Code of Conduct of the Alamogordo Code of Ordinances. (*City Commissioners*)

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation:

Background: Several commissioners requested that a full repeal of the code of ordinances be placed on the agenda. This is for discussion to repeal the ordinance, or for direction to Staff as to how to modify the ordinance.

ORDINANCE NO 1587

AN ORDINANCE REPEALING SECTION 02-03-052 OF THE ALAMOGORDO CODE OF ORDINANCES

WHEREAS, the City Commission wishes to repeal the Code of Conduct,

BE IT ORDAINED by the City Commission of the City of Alamogordo New Mexico that Section 02-03-052 of the *Alamogordo Code of Ordinances* be amended as follows:

~~2-03-052.—Code of conduct.~~

~~(a)—Overview of roles and responsibilities of the governing body.~~

~~(1)—Mayor (City Charter, article VIII, § 2).~~

~~a.—Presides at all meetings of the commission.~~

~~b.—Perform such duties as are imposed by the commission.~~

~~c.—Has the same speaking and voting rights as any other commissioner.~~

~~d.—Is the official head of the city for all ceremonial and military purposes.~~

~~e.—With the advice and approval of the commission, appoints and removes members to boards, commissions and committees.~~

~~f.—Leads the commission and management in developing short and long range plans and goals relating to city growth and development.~~

~~g.—Required to present an annual state of the city message or report.~~

~~(2)—Mayor pro-tem (City Charter, article VIII, §§ 1 and 3).~~

~~a.—Elected by the commission.~~

~~b.—Performs the duties of the mayor if the mayor is absent.~~

~~(3)—Commission members.~~

~~a.—All members of the city commission, including the mayor and mayor pro-tem, have equal votes. No member has more power than any other member, and all should be treated with equal respect (City Charter, article VII, § 1).~~

~~b.—Responsible to pass ordinances and other measures conducive to the welfare of the city, and to do all acts required for the general welfare of the city, except as are delegated to the city manager or other city officials (Alamogordo Municipal Code § 2-02-040).~~

~~c.—Creates all necessary administrative offices (Alamogordo Municipal Code § 2-02-040).~~

~~(b)—Code of conduct.~~

(1) ~~*Application.* This code of conduct applies to all members of city commission (including the mayor).~~

(2) ~~*Definitions.* When used in section 2-03-051, the following words, terms and phrases shall have the following meanings, unless expressly stated otherwise or unless the context indicates otherwise:~~

~~*City commission* means the legislative and governing body of the city, consisting of the mayor and city commission members.~~

~~*City* shall mean the City of Alamogordo, Otero County, New Mexico.~~

~~*Confidential information* means any information to which an official has access in such person's official capacity which may not be disclosed to the public except pursuant to state and/ or federal law and which is not otherwise a matter of public record or public knowledge.~~

~~*Elected official* means the mayor and all other city commissioners.~~

~~*Employee* means any person employed by the city, including those individuals on a full-time, part-time or internship basis, but does not include independent contractors.~~

~~*Intentionally* means a person acts intentionally, or with intent, with respect to the nature of his conduct or to a result of his conduct when it is the person's conscious objective or desire to engage in the conduct or cause the result.~~

~~*Knowingly* means a person acts knowingly, or with knowledge, with respect to the nature of the person's conduct or to circumstances surrounding the conduct when the person is aware of the nature of the conduct or that the circumstances exist. A person acts knowingly, or with knowledge, with respect to a result of the person's conduct whether the person is aware that the conduct is reasonably certain to cause the result. Employee means any person employed by the city, including those individuals on a full-time, part-time or internship basis, but does not include independent contractors.~~

~~*Official action* means any vote, decision, recommendation, approval, disapproval or other action, including inaction, which includes use of discretionary authority of any city official.~~

~~*Public employee or city staff* means any non-appointed person holding any paid position of employment with the city.~~

(3) ~~*Code of conduct.* Each member of the city commission has a duty to:~~

a. ~~*Act in the public interest.* Recognizing that stewardship of the public interest must be their primary concern, the commissioners will work for the common good of the people of Alamogordo and not for any private or personal interest, and they will endeavor to treat all persons, claims and transactions in a fair and equitable manner.~~

b. ~~*Comply with the law.* Commissioners shall comply with the laws of the federal government, the state and the city in the performance of their public duties. These laws include, but are not limited to: the United States and New Mexico~~

constitutions; the New Mexico Governmental Conduct, Inspection of Public Records, and Open Meetings Acts; and the City of Alamogordo Charter, Municipal Code, resolutions and policies.

- e. ~~*Conduct of members.*~~ The professional and personal conduct of commissioners must be above reproach and avoid even the appearance of impropriety. Commissioners shall refrain from abusive conduct, personal charges or verbal attacks upon the character or motives of other members of the commission, city staff or the public.
- d. ~~*Respect for process.*~~ Commissioners shall perform their duties in accordance with the processes and rules of order established by the city commission governing the deliberation of public policy issues, the involvement of the public, and the implementation of policy decisions of the city commission by city staff.
- e. ~~*Conduct at public meetings.*~~ Members shall prepare themselves for public issues; listen courteously and attentively to all public discussions before the body; and focus on the business at hand. They shall refrain from interrupting other speakers; making personal comments not germane to the business of the body; or otherwise interfering with the orderly conduct of the meetings. Members shall commit to practice civility and decorum in discussions and debates. Members shall commit to honoring the role of the chair person in maintaining order, keeping discussion on track, and focusing discussion on agenda items at hand. Commissioners shall avoid debate and argument with the public. Commissioners shall not engage in personal attacks of any kind under any circumstance.
- f. ~~*Communication.*~~ Commissioners shall publicly share substantive information that is relevant to a matter under consideration by the commission which they have received from sources outside of the public decision-making process.
- g. ~~*Confidential information.*~~ Commissioners shall respect the confidentiality of information concerning the property, personnel or affairs of the city. They shall neither disclose confidential information without proper legal authorization, nor use such information to advance their personal, financial or other private interests.
- h. ~~*Representing an official city position.*~~ Commissioners may use their title only when conducting official city business, for information purposes, or as an indication of background and expertise, carefully considering whether they are exceeding or appearing to exceed their authority. Once the commission has taken a position on an issue, all official city correspondence regarding that issue will reflect the commission's adopted position. If a member of the commission appears before another governmental agency organization to give a statement on an issue affecting the city, the commissioner should indicate the majority position and opinion of the commission. Personal opinions and comments may be expressed only if the commissioner clarifies that these statements do not reflect the official position of the city commission. Personal opinions and comments may be expressed only if the commissioner clarifies that these statements do not reflect the official position of the city commission.

- i. ~~*Improper influence.* Commissioner shall not attempt to pressure or influence the decisions, recommendations or priorities of advisory boards absent the approval of the majority of the commission.~~
- j. ~~*Policy role of members.* Commissioners shall respect and adhere to the commission manager structure of city government as provided by state law, City Charter and City Code. In this structure, the commission determines the policies of the city with the advice, information and analysis provided by the public, advisory boards, and city staff. Commissioners therefore shall not interfere with the administrative functions of the city or the professional duties of city staff; nor shall they impair the ability of staff to implement commission policy decisions. Commissioners should never express concerns about the performance of a city employee in public, to the employee directly, or to the employee's director. Comments about staff performance should be made only to the city manager through private correspondence or conversation.~~
- k. ~~*Other public agencies.* If a commission member appears before another governmental agency or organization to give a statement on an issue, the commissioner must clearly state if his or her statement reflects personal opinion or is the official stance of the city. Even if the commissioner is representing his or her own personal opinions, remember that this still may reflect upon the city as an organization. If the commissioner is representing the city, the commissioner must support and advocate the official city position on an issue, not a personal viewpoint. If the commissioner is representing another organization whose position is different from the city, the commissioner should withdraw from voting on the issue if it significantly impacts or is detrimental to the city's interest. Commissioners should be clear about which organizations they represent and inform the mayor and commission of their involvement. City letterhead may be used only when the commissioner is representing the city and the city's official position. A copy of official correspondence should be given to the city clerk to be filed as part of the permanent public record.~~

(2) ~~*Violations.*~~

- a. For the purpose of this section, the following words shall be interpreted as follows:
 - 1. ~~*Warning.* This is the least severe form of action. Warning warns the commissioner that his or her conduct violated the code of conduct. The warning cautions the commissioner that further violations could lead to a more severe action.~~
 - 2. ~~*Sanction.* This is the next most severe form of action. Sanction should be directed to a particular member of the city commission based on a particular action (or set of actions) that is determined to be in violation of the code of conduct, but is considered by the commission to be not sufficiently serious to require censure. A sanction is distinguished from censure in that it is not a punishment.~~
 - 3. ~~*Censure.* Censure is the most severe form of action contemplated in this policy. Censure is a formal statement of the city commission officially~~

~~reprimanding one (1) of its members. It is a punitive action, which serves as a penalty imposed for wrongdoing. Censure should be used for cases in which the commission determines that the violation of the code of conduct is a serious offense. In order to protect the overriding principle of freedom of speech, the city commission shall not impose censure on any of its members for the exercise of his or her First Amendment rights, no matter how distasteful the expression was to the commission and the city. However, nothing herein shall be construed to prohibit the city commission from collectively condemning and expressing their strong disapprobation of such remarks.~~

- ~~4. — *Cause.* More than mere suspicion. There must be facts and circumstances within the preliminary review committee members' knowledge, and of which they have trustworthy information, sufficient to justify the belief of a reasonable person that a violation of the code of conduct has occurred.~~
- ~~5. — *Complainant.* Complainant means a person or entity that makes a complaint alleging a violation of the code of conduct.~~
- ~~b. — *Preliminary review committee established.* There is hereby created a city preliminary review committee consisting of the three (3) most senior members of the commission. Seniority will be determined using the length of a commissioner's continuous service as a commissioner. Length of service will be calculated from the date that the commissioner took the oath of office. In the event two (2) or more commissioner began their service at the same time, prior service on the commission shall be used to determined seniority. For commissioners who are elected or appointed to fill a vacancy, the commissioner's time in office commences after he/she is sworn into office. Any commissioner who is the subject of the complaint shall be disqualified from serving on the committee.~~
- ~~c. — *Complaints against commissioner.* Any person who believes a commissioner in her or his official capacity has violated the code of conduct may file a sworn written complaint with the city attorney identifying:~~
 - ~~1. — The complainant's name, address, and telephone number;~~
 - ~~2. — The name of the commissioner who is the subject of the complaint;~~
 - ~~3. — The nature of the alleged violation, including the specific provision of the code of conduct allegedly violated;~~
 - ~~4. — A statement of facts constituting the alleged violation and the dates on which or period of time in which the alleged violation occurred;~~
 - ~~5. — All documents or other material in the complainant's possession that are relevant to the allegation, a list of all documents or other material relevant to the allegation that are available to the complainant but not in the complainant's possession, and a list of all other documents or other material relevant to the allegations but unavailable to the complainant, including the location of the documents, if known;~~
 - ~~6. — A list of witnesses, what they may know, and their contact information, if known; and~~

7. ~~If the alleged violation occurred more than ninety (90) days before the sworn complaint is filed with the city attorney, then the complaint must identify the date the complainant learned of the alleged violation and provide a statement of the facts surrounding the discovery of the violation, a list of the persons with knowledge about the date the violation was discovered, and a summary of the information they possess about the discovery.~~

~~The complaint shall include an affidavit stating that the information contained in the complaint is true and correct, or that the complainant has good reason to believe and does believe that the facts alleged constitute a violation of the code of conduct. If the complaint is based on information and belief, the complaint shall identify the basis of the information and belief, including all sources, contact information for those sources, and how and when the information and/or belief was conveyed to the complainant by those sources. The complainant shall swear to the facts by oath before a notary public or other person authorized by law to administer oaths under penalty of perjury.~~

- d. ~~*Time for filing.* A complaint must be filed on or before the ninetieth day after the violation is alleged to have occurred. All complaints will be time barred after the lapse of ninety (90) days from the date of the alleged incident.~~
- e. ~~*Procedures.* The city attorney will develop written rules of procedure to govern the review process, including the right of a city commissioner against whom the complaint has been lodged to respond to the complaint, attend any hearing, and present witnesses and other evidence on her or his own behalf.~~
- f. ~~*Initial screening of complaints.* Upon receipt of a complaint, the city attorney shall notify in writing the city commissioner who is the subject of the complaint. The commissioner who is the subject of the complaint shall have the right to respond to the complaint. Any such response shall be provided to the city attorney in writing within fourteen (14) days of the commissioner being provided with notification and a copy of the complaint. The city attorney shall review each complaint filed alleging a violation of the code of conduct by a member of the city commission within twenty-one (21) days and either:~~
1. ~~Return it for being incomplete;~~
 2. ~~Dismiss it for being untimely;~~
 3. ~~Refer alleged violations of state or federal laws to an appropriate law enforcement agency if the complaint states on its face allegations that, if true, would constitute a violation of state or federal law; or~~
 4. ~~If the city attorney determines that the complaint complies with the requirements of subsection (4)c. above, forward a copy to the preliminary review committee along with any response submitted by the commissioner who is the subject of the complaint.~~

~~When the city attorney receives a vague complaint or one lacking in detail, the city attorney shall contact the complainant to request written clarification. If the~~

complainant fails to provide the city attorney with written clarification, a written report to that effect shall be submitted to the preliminary review committee.

~~g. *Committee review.* The members of the preliminary review committee shall individually review the complaint and all other documents or other material submitted including any response submitted by the commissioner who is alleged to have violated the code of conduct. Members of the committee shall not communicate or cause another to communicate with another member of the committee, the person who submitted the complaint, the commissioner who is the subject of the complaint, or any other member of the city commission during their period of review regarding the allegations contained in the complaint. Based on a review of the material provided to them, each individual member of the preliminary review committee shall determine whether there is cause to believe that the commissioner violated the code of conduct. Each committee member shall, within twenty-one (21) calendar days of receipt of the material, return their finding of cause or no cause to the city attorney.~~

~~h. *Commission consideration.*~~

~~1. *Review of committee's findings.* After receiving the finding of cause or no cause from the preliminary review committee, the city attorney shall place the matter on the next regularly scheduled city commission meeting for review by the full commission.~~

~~2. *Presumptions.* A finding of cause by two (2) or more members of the preliminary review committee does not mean that any of the complaint's allegations are true or that the commissioner has violated this code of conduct.~~

~~3. *No cause finding.* If two (2) or more members of the preliminary review committee make a finding of no cause, a vote of at least five (5) commissioners shall be required in order for the commissioner to take any further action on the complaint.~~

~~4. *Cause finding.* If two (2) or more members of the preliminary review committee make a finding of cause, the city commission shall consider the complaint.~~

~~(i) If the commission determines there is no cause to believe that the commissioner violated the code of conduct, then the commission shall take no further action in the matter.~~

~~(ii) If the commission determines there is cause to believe that the commissioner violated the code of conduct, but decides not to conduct a formal hearing on the matter, the commission shall take no further action in the matter, except that the commission may issue a warning to the commissioner. Notwithstanding a decision not to conduct a formal hearing, the affected commissioner shall have the right to request a full and complete hearing before the city commission if the commission issues a warning.~~

(iii) — ~~If the commission determines there is cause to believe that the commissioner violated the code of conduct, and also decides to pursue action more severe than a warning, the commission shall order that a formal hearing be conducted. If deemed necessary, the city commission may direct the city manager with the concurrence of the city attorney to appoint a special legal counsel to conduct a further investigation and to provide a written report to the commission. The commission shall make reasonable attempts to conduct a formal hearing into the allegations contained in the complaint within ninety (90) calendar days of the commission's decision to conduct a hearing. The city clerk shall give notice of the hearing at least fourteen (14) days prior to the date set for the hearing. The affected commissioner shall have the right to file a written answer to the charge and to appear at the hearing with or without legal counsel, submit testimony, be fully heard, and to examine and cross examine witnesses.~~

i. — ~~Commission action.~~

1. — ~~It is the intent of the city commission to educate, and where necessary, discipline commissioners who violate the code of conduct. Discipline shall be progressive, from the least punitive to the most punitive measures, unless the commission believes progressive discipline does not provide the appropriate sanction because of the gravity of the offense, or because the commission does not believe the sanction would deter future misconduct. In all instances, the totality of the circumstances shall be taken into consideration in resolving a matter, including the intent of the one accused of wrongdoing.~~

2. — ~~Based on a review of the evidence presented, the commission shall, by a concurring vote of at least four (4) members, determine whether there is cause to believe that the respondent violated the code of conduct; and, if so, whether to impose any sanctions against the commissioner. In making a determination, the commission should determine if taking all the facts and evidence into consideration, there are reasonable grounds to believe or not believe that the commissioner violated the code of conduct. Any commission member found in violation of the code of conduct may face the following:~~

(i) — ~~Warning;~~

(ii) — ~~Sanction;~~

(iii) — ~~Censure by the commission, which may include:~~

A. — ~~Loss of city-related travel privileges for a specified time period;~~

B. — ~~A civil fine;~~

C. — ~~A demand for non-monetary restitution (e.g., a public apology, the return of gifts); and/or~~

D. — ~~A demand for reimbursement of administrative, legal, and/or investigation costs and expenses incurred in investigating and prosecuting the violation of the code of conduct.~~

3. ~~The amount of any civil fine imposed by the commission for a violation of this code of conduct shall not exceed the fine which may be imposed for a municipal code violation.~~
4. ~~In determining whether to impose a civil fine and the amount of the civil fine, the commission shall consider the totality of the circumstances, including, but not limited to:~~
- ~~(i) — The nature and seriousness of the violation;~~
 - ~~(ii) — The duration of the violation;~~
 - ~~(iii) — The effort taken by the commissioner to correct the violation;~~
 - ~~(iv) — The presence or absence of any intention to conceal, deceive or mislead;~~
 - ~~(v) — Whether the violation was negligent or intentional;~~
 - ~~(vi) — Whether the commissioner demonstrated good faith by consulting staff or another government agency or an attorney;~~
 - ~~(vii) — Whether the commissioner had prior notice that his or her conduct was prohibited;~~
 - ~~(viii) — The amount, if any, of the financial or other loss to the city as a result of the violation;~~
 - ~~(ix) — The value of anything received or sought in the violation;~~
 - ~~(x) — Whether the officer was truthful and cooperative in the investigation; and~~
 - ~~(xi) — Any other relevant circumstance.~~
5. ~~Any civil fines imposed pursuant to this section may be set off against the expense reimbursement funds received by the commissioner.~~
- ~~All action or decisions with regard to the complaint shall be made during a regularly scheduled meeting which is open to the public.~~

(Ord. No. [1478](#), 12-16-14)

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 01/29/2019

Report Date: 01/23/2019

Report No: 6.

Submitted By: Bob Johnson

Subject: Consider, and act upon, Amendment No. 1 to R.A. Pratt LLC, related to construction observation, inspection, and coordination services for the 1-MGD Brackish Water Treatment Facility, in an amount not to exceed \$15,000.00, excluding NMGR. *(Bob Johnson, Engineering Manager)*

Fiscal Impact: \$15,000.00

Amount Budgeted: \$2,866,371.00

Fund: 054-0099-990.67-74 and 063-5005-419.57-57 PW1406

Additional Fiscal Impact: Available unencumbered funding is \$34,372.00

Recommendation: Approve the Change Order.

Background: This Amendment provides for additional funding of the on-site observation, inspection, and coordination services. Funding of the original Agreement for these services will be expended by the end of January 2019.

**AMENDMENT #1 TO
SERVICES AGREEMENT FOR
CONSTRUCTION OBSERVATION, INSPECTION, AND COORDINATION
AT 1-MGD BRACKISH WATER TREATMENT FACILITY**

THIS 1st AMENDMENT made on this 18th day of January, 2019 between the City of Alamogordo, a New Mexico municipal corporation (the "Owner"), and R.A. Pratt, LLC (the "Consultant").

The parties hereby agree that the Services Agreement, dated August 20, 2018 between the Owner and Consultant is hereby amended as follows:

C. COMPENSATION

Professional fees for this Amendment #1 will be in accordance with the rates and charges as stipulated in the Services Agreement dated August 20, 2018, with an additional amount not to exceed limit of **\$15,000.00, excluding NMGR.**

Except as set forth in this Amendment, the original Services Agreement, dated August 20, 2018 shall remain in full force and effect.

IN WITNESS WHEREOF, City and Consultant have executed this amendment on the date set opposite their signatures.

R.A. PRATT, LLC

Date: 1-21-2019

By: _____

Russell A. Pratt, Managing Director

OWNER

CITY OF ALAMOGORDO, NEW MEXICO
A New Mexico municipal corporation

Date: _____

By: _____

Maggie Paluch, City Manager

ATTEST:

APPROVED AS TO FORM:

Rachel Hughs, City Clerk

Petria Schreiber, City Attorney

Bob Johnson

From: russell pratt <raprattllc@gmail.com>
Sent: Monday, January 21, 2019 10:41 AM
To: Bob Johnson
Subject: Re: Amendment No. 1 to Services Contract - Desal
Attachments: 190121 COA Amendment No. 1.pdf

Hi Bob,

Thanks for the Amendment, much appreciated. Attached is Amendment No. 1 with my signature. Please forward the fully executed agreement when you can.

Thanks

Russ

On Fri, Jan 18, 2019 at 2:41 PM Bob Johnson <bjohnson@ci.alamogordo.nm.us> wrote:

Mr. Pratt,

Amendment no. 1 in the amount of \$15,000, excluding NMGR, is attached for your approval. If acceptable, please date and sign using BLUE ink, then return to me. In turn, I will request approval by City Commission on 1/29/19. This amendment extends your services to facilitate the City's need for continued inspection, observation, and coordination on the 1-MGD Brackish Water Treatment Facility project. In accordance with the City's Purchasing Ordinance, fees for these services may not exceed \$60,000 plus NMGR.

Bob Johnson

Engineering Manager

City of Alamogordo

575.439.4337

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 01/29/2019

Report Date: 01/22/2019

Report No: 7.

Submitted By: Debbie Osborne

Subject: Consider, and act upon, approval to apply for Doppelt Family Trail Development Fund grant in the amount of \$50,000, to repair and enhance the Washington Avenue walking trail. (*Veronica Ortega, Community Services Director and Debbie Osborne, Grant Coordinator*)

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation: Approve submission of grant application.

Background: Rails-to-Trails Conservancy is offering Doppelt Family Trail Development Fund grants ranging from \$15,000-\$50,000 for the purpose of completing a trail development or improvement project. If we receive the award we intend to use the funds to upgrade and repair the Washington Avenue trail that runs from 10th Street to Indian Wells. Plans include: repair/seal cracks in trail; add pet waste dispenser/trash disposal stations; add benches; add distance markers. Our goal is to enhance pedestrian safety and enjoyment of the trail.

2019 Doppelt Fund – Application

GRANT APPLICATION WORKSHEET

The following outline contains all of the information you will be asked to provide in the application. We suggest you prepare your responses in the worksheet below and copy/paste required information into the [online application form](#). (Note: You will need to complete the online application in one sitting; you will not be able to save the information on a partially completed application.)

*This worksheet is intended to assist you in filling out the online form. **Please note that we will not accept this worksheet as a completed application.***

All answers are required on the application. For those questions not applicable to your project or organization, write “N/A” in the text box.

Contact Information

First Name: Debbie
Last Name: Osborne
Title: Grant Coordinator
Email Address: dosborne@ci.alamogordo.nm.us
Telephone: (575) 439-4257

Organization Information

Organization Name: City of Alamogordo
Address: 1376 E. Ninth Street
City: Alamogordo
State: New Mexico
Zip Code: 88310
Organization Website: <https://ci.alamogordo.nm.us>
Organization Phone Number: (575) 439-4203
Facebook Page URL: <https://www.facebook.com/CityofAlamogordo/>
Organization Mission Statement: The City of Alamogordo is a Municipal Corporation that exists solely for the purpose of providing the best possible services to our customers, the citizens of Alamogordo. We are committed to providing these services with: Commitment to Excellence, Compassion, Fairness, Honesty, Integrity

Organization’s Relationship to Project (e.g. Project/Trail Manager = entity in charge of building and/or operations of project/trail; Friends Group = supporting organization that promotes/programs trail; Other – please describe).

Project/Trail Manager

Executive/Agency Director Name: Magaret Paluch

Executive/Agency Director Title: City Manager

Executive/Agency Director Email: mpaluch@ci.alamogordo.nm.us

Has your organization partnered with RTC in the past? If so, please briefly describe.

No.

Project Information

1. Project Name

Give your project a short name to easily identify it (e.g., Creekside Rail-Trail extension)

Washington Avenue Trail Improvements

2. Project Endpoints

Be as specific as possible (street intersections, city name, etc.) List the trail endpoints if the grant would support the entire trail.

In Alamogordo, Otero County: this section of trail runs north-south along a ditch bank, adjacent to Washington Ave. between 10th St - Indian Wells Blvd. Directions: from White Sands Blvd (US Hwy 54/70), turn east on Indian Wells Blvd. Washington Ave Trail intersects at the south side of Indian Wells at Coordinates: 32° 54' 54" N / 105° 56' 38" W.

3. County/Countries

Otero County

4. State

New Mexico

5. Name of Any Currently Open Trail(s) Affected

Washington Avenue Trail

6. TrailLink.com ID#(s)

If one or more of the affected trails are currently open for public use, please locate them on www.traillink.com and copy/paste the TrailLink IDs, 7-digit numbers located on the right side of the page listed with other trail facts under the photo box.

N/A

7. Are any portions of the trail project or affected trails considered a rail-trail or rail-with-trail?

Rail-trails are public paths on former railroad corridors. Rails-with-trails are public paths that run parallel to a still-active rail line, either within the railroad corridor or immediately adjacent to it.

No

8. What uses are or will be permitted on the trail? Check all that apply.

- a. ☐ ATV/OHV
- b. ☒ Bicycling
- c. ☐ Cross-country skiing
- d. ☒ Dogs on leash
- e. ☐ Fishing
- f. ☒ Geocaching
- g. ☐ Horseback riding
- h. ☒ Inline skating
- i. ☐ Mountain bikes recommended
- j. ☐ Snowmobiling
- k. ☒ Walking/hiking/jogging/running
- l. ☒ Wheelchair accessible
- m. ☐ Other: Click or tap here to enter text.

9. What organization or agency maintains or will maintain the trail?

City of Alamogordo

10. If one or more of the affected trails are part of a larger city/regional trail network, please name and briefly describe the associated trail network.

N/A

11. Project Summary (750 words maximum)

Write a brief description of the project that includes why the work is important and how it would help advance or strengthen trail network connections in your area.

The improvements of the Washington Avenue Trail is extremely important as this is a very popular trail that is used daily. The enhancements will allow the continuity of a safe non-motorized walking path for our citizen's. Providing the crack seal maintenance to the trail will ensure a level safe walking area. The addition of benches will invite those persons who are unable to walk the entire distance a place to rest. Adding the pet disposal dispensers will invite more of our furry friends to enjoy the trail with their owner's, and providing trash cans will allow for our citizen's to assist in keeping the trail litter free. Adding mileage markers allows for people utilizing the trail to gauge how far they have walked and feel a sense of accomplishment.

12. Total Project Cost

\$50,000

13. Grant Type Requested

Project Transformation

14. Grant Amount Requested

\$50,000

15. Minimum Grant Amount Acceptable

\$15,000

16. Budget Description

A detailed budget is not required, but rather a brief description of how you plan to use the funds. Please provide any additional information about funds leveraged or use of funds for other match requirements.

**Purchased services estimate is \$35,000 (anticipated engineering and contractor expenses);
Materials and supplies estimate is \$15,000 (i.e asphalt, mileage markers, benches, pet waste stations (bag dispensers and disposal receptacles)**

17. Organization's Total Operating Budget

Please provide total operating budget for your most recent fiscal year.

The City's total expense budget for fiscal year 2019 is \$109,143,346; the fiscal year 2019 total expense budget for the community services division is \$4,302,001.

18. Timeline

Please provide a brief description of the project timeline, including start and end date and any additional information about time sensitivities.

Based on the amount of funding awarded, we would start by hiring an engineering firm to draw up the design, go out to bid, award of bid, construction, and completion of project.

June, 2019 – July, 2019 Send out bid notices for crack seal repair

July, 2019 – Advertise for bids

August, 2019 – Bid Award

September, 2019 – Anticipate project construction

November, 2019 – Project completion

19. Maps and Attachments

Provide a map of your trail or project area. Google Maps is preferred –please provide a link below if applicable.

[https://www.google.com/maps/place/Washington+Ave,+Alamogordo,+NM+88310/@32.9076015,-](https://www.google.com/maps/place/Washington+Ave,+Alamogordo,+NM+88310/@32.9076015,-105.9437312,16z/data=!4m5!3m4!1s0x86e0505e7f14b197:0x28f677ae4526fc2c!8m2!3d32.9008843!4d-105.9434842)

[105.9437312,16z/data=!4m5!3m4!1s0x86e0505e7f14b197:0x28f677ae4526fc2c!8m2!3d32.9008843!4d-105.9434842](https://www.google.com/maps/place/Washington+Ave,+Alamogordo,+NM+88310/@32.9076015,-105.9437312,16z/data=!4m5!3m4!1s0x86e0505e7f14b197:0x28f677ae4526fc2c!8m2!3d32.9008843!4d-105.9434842)

If a Google Maps link is unavailable, please send a PDF copy, along with any other supporting documentation/images to grants@railstotrails.org. Please put your organization's name in the

subject line (as it appears on this form).

20. Additional Information

If necessary, provide any additional comments or links (videos, websites) that support your application.

Our community is very proud of the Washington Park Trail. These funds will assist us to enhance this very popular trail and hopefully invite others to walk on this upgraded diversified trail.

E-signature: Your Name and Title

Click or tap here to enter text.

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 01/29/2019

Report Date: 01/24/2019

Report No: 8.

Submitted By: Petria Schreiber, Brian Cesar

Subject: Consider, and act upon, the lease of 5 buses to Zia Therapy Center for use by Z-Trans. (*Petria Schreiber, City Attorney and Brian Cesar, Assistant City Manager*)

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation:

Background: The City, through the 2019 ICIP legislative funding, is attempting to procure monies in order to finance the 20% local match needed to purchase vehicles to be used by ZIA. This ICIP request is independent from the 5 requests that the City submits annually. The monies would be awarded to the City who would then procure the vehicles for use by ZIA in accordance with State and Local Procurement laws. ZIA has applied for a Section 5311 grant for the 80% federal match needed to purchase the vehicles. For a period of time, the City would own the vehicles, and lease them to ZIA in exchange for advertising on the buses. Once the agreement is complete in five years, ownership would transfer fully to ZIA with the NMDOT holding the liens on the buses.

**AGREEMENT BETWEEN THE CITY OF ALAMOGORDO AND
ZIA THERAPY CENTER, INC.**

THIS AGREEMENT is made and entered into this _____ day of _____, 20__, by and between the **CITY OF ALAMOGORDO**, a political subdivision of the State of New Mexico, acting by and through its duly elected Board of Commissioners, hereinafter referred to as "CITY" and **ZIA THERAPY CENTER, INC.**, a non-profit corporation acting by and through its duly appointed Board of Directors, hereinafter referred to as "ZIA."

WHEREAS ZIA has provided and continues to provide services to the citizens of Alamogordo and Otero County, regardless of race, color, creed, ethnic background or gender, and ZIA desires to continue to provide these services to the citizens of Alamogordo and Otero county, and

WHEREAS CITY has been awarded 2019 Legislative funding for the 20% Local Match needed to purchase vehicles to be used by ZIA. These monies are forwarded to the CITY and the CITY procures the vehicles for use by ZIA, in accordance with the New Mexico Procurement Code, Section 13-1-28 through 13-1-199 NMSA, 1978, and

WHEREAS ZIA (Subrecipient) has applied for a Section 5311 grant to obtain the 80% Federal Match needed to purchase the vehicles. The FTA required Federal Clauses and assurances are referenced in Zia's MOA with New Mexico Department of Transportation Transit/Rail Division, as well as in Exhibit C, and

WHEREAS The CITY desires to lease vehicles and equipment to ZIA in order for ZIA to continue to provide public transportation services to the residents of Alamogordo and Otero County.

NOW THEREFORE for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in further consideration of the covenants and agreements set forth herein, the parties do hereby agree as follows:

1. SCOPE. The CITY does hereby agree to lease to ZIA the vehicles and equipment described in "Exhibit A" attached hereto and incorporated into this Agreement.
2. IN-KIND SERVICES. The fair market lease for each bus is one Ninety-five dollars (\$95.00) per day at two hundred and fifty (250) days per year, for a total value of twenty-three thousand, seven hundred and fifty dollars (\$23,750) per bus. In exchange for the use of the vehicles, ZIA will reserve dedicated advertising space on each vehicle covered in this Agreement, for the term of the Agreement. Located in Exhibit B.
3. TERM. The term of this Agreement will be for a period of five years commencing _____ and terminating _____. Either party may terminate this Agreement with or without cause, by giving the other party sixty (60) days written notice of their intention to terminate. Upon the completion or termination of this Agreement, CITY shall

transfer titles to ZIA while the New Mexico Department of Transportation (NMDOT) continues to hold the liens. Final disposition of the vehicles will be done in accordance with NMDOT requirements.

4. MAINTENANCE AND REPAIRS. During the term of this Agreement, ZIA shall make, at its own expense, all repairs needed to maintain the vehicles and equipment in good working condition.

5. INSURANCE. At all times during the term of this Agreement, ZIA shall, at its sole cost and expense, maintain a comprehensive automobile insurance policy which provides full coverage for the vehicles described in Exhibit A. The policy shall be in the amount of \$1 million per vehicle, with an additional umbrella coverage of \$4 million per vehicle with no limiting modifications and shall include the CITY as an additional insured party. ZIA shall provide the CITY with evidence of such insurance.

6. INDEMNIFICATION AND HOLD HARMLESS. ZIA agrees to defend, indemnify, and hold CITY harmless from and against any and all claims, losses, damages or expenses of litigation arising out of the use of the vehicles by ZIA, its agents, employees or invitees, or out of any accident or other incident or occurrence arising out of the use of the vehicles, causing injury or death to any person whomsoever, or damage to property whatsoever due directly or indirectly to the use of the vehicles by ZIA, its agents, employees, invitees or patrons.

The CITY shall not be liable to ZIA or any other person for any damage or injury arising out of the use of the vehicles or equipment by ZIA to any person or property occasioned by ZIA's use. ZIA agrees and covenants to defend, indemnify and hold harmless the CITY from all such liability and expense in connection with ZIA's use of the vehicles or property.

7. CONTRACTOR STATUS. ZIA and its employees and agents are independent contractors and are not employees of the CITY. As such, ZIA has no authority to contract for nor obligate the CITY in any manner.

8. ASSIGNMENTS, LEASES AND SUBLEASES. ZIA shall not assign any interest under the terms of this Agreement or sublease the vehicles without the prior written consent of the CITY.

9. NOTICES. Any notice provided for herein shall be sufficiently given if served personally or if deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to the party to whom the notice is to be served. If either the CITY or ZIA shall at any time change its name, or if there be an assignment or other disposition of lease rights by either party, or if either party changes the place of address to which such notice or communication shall be sent, written notice of such communication shall be given the other party. Until further notice in writing is served, any notice or communication with reference to this Agreement addressed to CITY may be addressed to 1376 E Ninth Street / Alamogordo, New Mexico 88310, and any such notices or communication addressed to ZIA may be addressed to 900 First Street / Alamogordo, New Mexico, 88310. Notices given as provided herein shall be deemed effectively given

as of the date of personal delivery or as of the third business day following the date of deposit of same for mailing in the United States Post Office.

10. ENTIRE AGREEMENT. The parties hereto agree that this Agreement incorporates all of the agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and that all covenants, agreements and understandings have been merged into this Agreement. No prior agreements or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable.

11. AMENDMENTS. The parties hereto agree that this Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto.

12. FEDERAL CLAUSES. Federal Clauses attached to this Agreement are located in Exhibit C.

IN WITNESS WHEREFORE, the parties hereto have executed this Agreement as of the date first written above.

CITY OF ALAMOGORDO, NEW MEXICO
a New Mexico municipal Corporation

By: _____
Richard Boss, Mayor

ZIA THERAPY CENTER, INC.

Margaret S. (Peggy) O'Neill, CEO

ATTEST:

APPROVED AS TO FORM:

Rachel Hughs, Alamogordo City Clerk

Petria Schreiber, City Attorney

Exhibit A

Agreement _____

The following vehicle(s) are included in this Lease Agreement:

Five (5) each Sixteen-passenger, ADA compliant passenger busses.

Description of vehicle	VIN NUMBER
1.	
2.	
3.	
4.	
5.	

Exhibit B

IN-KIND SERVICES

The fair market lease for each bus is ninety-five dollars (\$95.00) per day at two hundred and fifty (250) days per year, for a total value of twenty-three thousand, seven hundred and fifty dollars (\$23,750) per bus, per year.

For the full term of this Agreement, the advertising spaces available on the busses listed in Exhibit A will be reserved for CITY advertising.

- Each bus has advertising spaces with a market earning potential of \$22,800 per year.
- In addition, ZIA will pay for the *initial* production costs to fully wrap each vehicle (full sides with back ad) with City ads, at the cost of \$6,030 for each bus.

These in-kind services exceed the value of the fair market lease for each vehicle contained in Exhibit A.

Exhibit B continued...



575-527-5488 | cell - 505.321.0469 | Don or Suzanne Templeton
www.templetonmktg.com dont20@aol.com

NOW AVAILABLE!

Alamagordo 'in town' fixed routes

Also routes to: Holloman AFB – Tularosa – Mesalero – Las Cruces

Impactful Advertising High Frequency (Mon-Sat; 6am – 7:30pm)
3 month minimum



Side wraps (larger units)

Full Load side; 198' x 67" @\$550/mo
Production @\$2320

Half Load side; 120' x 67" @\$350/
mo Production @\$1450

Full Driver side; 259' x 67" @
\$350/mo Production @\$ 2,610

Half Driver side; 130' x 67" @
\$400/mo Production @\$1600



Smaller Units:

Load side; 83' x 67" @\$350/
mo Production @\$1,160

Driver side; 117' x 72" @\$400/
mo Production @\$1450



**Backwrap (larger) 71' x 83' @\$400/mo
Production @\$750**

**Backwrap @\$400/mo
Production @\$1100**



*Other wrap options
also available
-subject to quote*

2018

Exhibit C

FEDERAL CLAUSES

1. Officials Not to Benefit. Drug and Alcohol Testing.

The Subrecipient will implement a drug and alcohol testing program that complies with 49 C.F.R. Parts 40 and 655; produce documentation necessary to establish its compliance; permit authorized representatives of the U.S. DOT or the Department to inspect the facilities and records associated with the drug and alcohol testing program; and review the testing process.

The Subrecipient agrees to submit drug and alcohol testing data for the previous calendar year using the Management Information System (MIS) Data Collection Form to the Department before March 1, 2019. The Subrecipient agrees further to submit for review and approval a copy of its Policy Statement developed to implement its drug and alcohol testing program. In addition, the Subrecipient agrees to participate in the Department's consortium.

2. Labor Warranty.

The Subrecipient agrees that it will comply with the terms and conditions of the Special 49 U.S.C. Section 5333(B) Warranty for Application to the Small Urban and Rural Program. The Subrecipient will assume all legal and financial responsibility relative to compliance with the terms and conditions of the Warranty.

3. Transit Employee Protection Guidelines.

The Subrecipient agrees to protect transit employees pursuant to Section 5333(b) of Title 49 U.S. Code (formerly Section 13(c) of the Federal Transit Act). The Subrecipient shall provide for the preservation of rights and benefits of employees under existing collective bargaining agreements, continuation of collective bargaining rights, protection of individual employees against a worsening of their positions in relation to their employment, assurances of employment to employees of acquired transit systems, priority of reemployment, and paid training or retraining programs.

4. Civil Rights Laws and Regulations Compliance.

The Subrecipient shall comply with all federal, state and local laws and ordinances applicable to the work called for under this Agreement.

- A. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, 42 U.S.C. Section 2000d, Section 303 of the Age Discrimination Act of 1975, 42 U.S.C. Section 6102, Section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. Section 12132, and Federal transit law at 49 U.S.C. Section 5332, the Subrecipient shall not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, age, or disability. The Subrecipient shall comply with applicable Federal implementing regulations and such other implementing requirements FTA may issue. The Nondiscrimination assurance is attached as Assurance-3.
- B. Equal Employment Opportunity - The following equal employment opportunity requirements apply to this Agreement:
 - 1. Race, Color, Religion, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, 42 U.S.C. Section 2000e, and Federal transit laws at 49 U.S.C. Section 5332, the Subrecipient agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Part 60 *et seq.*, (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. Section 2000e note), and with any applicable federal statutes, executive orders, regulations, and federal policies that may in the future affect construction activities undertaken in the course of the project. The Subrecipient agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including gender identity and sexual orientation). Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the awarded contractor shall comply with any implementing requirements FTA may issue.
 - 2. Age - In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, 29 U.S.C. Section 623 and Federal transit law at 49 U.S.C. Section 5332, the Subrecipient agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Subrecipient shall comply with any implementing requirements FTA may issue.
 - 3. Disabilities - In accordance with Section 102 of the Americans with Disabilities Act, 42 U.S.C. Section 12112, the Subrecipient agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to

employment of persons with disabilities. In addition, the awarded contractor shall comply with any implementing requirements FTA may issue.

- C. The Subrecipient shall include these requirements in each subcontract financed in whole or in part with federal assistance provided by FTA, modified only if necessary to identify the affected parties.
- D. For assistance with a contract clause incorporating the requirements of the new DBE rule in 49 CFR Part 26, contact the FTA at: <https://www.transit.dot.gov/funding/procurement/third-party-procurement/contract-clauses/>
- E. The Subrecipient also agrees to include these requirements in each contract financed in whole or in part with federal assistance provided by FTA, modified only if necessary to identify the affected parties.

5. Disadvantaged Business Enterprise (DBE) Policy.

- A. This Agreement is subject to the requirements of 49 CFR Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The Department's proposed overall goal for FTA participation for the 2019 fiscal year is 1.47%, through race-neutral means.
- B. The Subrecipient shall not discriminate on the basis of race, color, national origin, or sex in the performance of the Agreement. The Subrecipient shall carry out applicable requirements of 49 CFR Part 26 in the administration of the Program. Failure by the Subrecipient to carry out these requirements is a material breach of the Agreement, which may result in the termination or other such remedy as the Department deems appropriate. Each contract the Subrecipient signs with a contractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
- C. The Subrecipient agrees to ensure that Disadvantaged Business Enterprises as defined in 49 CFR Part 26 have the maximum opportunity to participate in the performance of Contracts and subcontracts financed in whole or in part with Federal funds. In this regard, all recipients or contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that Disadvantaged Business Enterprises have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of U.S. DOT assisted contracts. The Subrecipient will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.
- D. The Subrecipient is required to pay its contractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the awarded contractor's receipt of payment for that work from the Department.

- E. The Subrecipient must promptly notify the Department, whenever a DBE contractor is terminated or fails to complete its work, and must make good faith efforts to engage another DBE contractor to perform at least the same amount of work. The Subrecipient may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the Department.

A Subrecipient of FTA funds must meet applicable DBE requirements when funds are used in whole or in part to finance procurements of and contracts for applicable products and services. A Subrecipient with contracting opportunities must sign and submit a *Disadvantaged Business Enterprise Race-Neutral Implementation Agreement for Federal Transit Administration Subrecipients*, which is attached as Certification 1.

6. ADA Access.

The Subrecipient shall comply with 49 U.S.C. Section 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The Subrecipient also agrees to comply with all applicable provisions of section 504 of the Rehabilitation Act of 1973, with 29 U.S.C. Section 794, which prohibits discrimination on the basis of disability; with the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. Sections 12101 *et seq.*, which requires that accessible facilities and services be made available to individuals with disabilities; and with the Architectural Barriers Act of 1968, 42 U.S.C. Sections 4151 *et seq.*, which requires that buildings and public accommodations be accessible to individuals with disabilities.

7. Program Fraud and False or Fraudulent Statements or Related Acts.

- A. The Subrecipient acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. Sections 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this program. The Subrecipient certifies or affirms the truthfulness and accuracy of any statement it makes pertaining to the resultant contract or the FTA assisted program for which this work is being performed. The Subrecipient further acknowledges that if it makes, or causes to be made, a false, fictitious or fraudulent claim, statement, submission or certification, the federal government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on Subrecipient to the extent the federal government deems appropriate.
- B. The Subrecipient also acknowledges that if it makes, or causes to be made, a false, fictitious or fraudulent claim, statement, submission or certification to the federal government under a contract connected with a program that is financed in whole or in part with federal assistance originally awarded by FTA under the authority of 49 U.S.C. Section 5307, the federal government reserves the right to impose the penalties of 18 U.S.C. Section 1001 and 49 U.S.C. Section 5307(n)(1) on the Subrecipient, to the extent the federal government deems appropriate.

- C. The Subrecipient certifies to abide by these clauses and include the clauses in each subcontract financed in whole or in part with Federal Transit Administration funds. Subrecipient further agrees that these clauses shall not be modified, except to identify the subcontractor subject to its provisions.
- D. All claims for compensation reimbursement and payment of any amounts due pursuant to this Agreement are governed by the Fraud Against Taxpayers Act, Sections 44-9-1 through 44-9-14 NMSA 1978.

8. Lobbying.

A Subrecipient receiving \$100,000 or more of 49 U.S.C. Section 5311 funds shall file the Lobbying Certification required by 49 C.F.R. Part 20, "New Restrictions on Lobbying." The Lobbying Certification is attached as Certification 2. The Subrecipient must certify that it has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. Section 1352.

If the Subrecipient hires a contractor, the contractor must provide the Lobbying Certification to the Subrecipient. Each tier below the contractor shall also provide a Lobbying Certification. Such disclosures are forwarded from tier to tier up to the Subrecipient.

9.

Neither any member of the New Mexico Legislature nor any member of or delegate to Congress shall be admitted to any share or part of this Agreement or to any benefit that may arise therefrom. The provisions of this clause shall be extended to all public employees, officers, or tribal council members.

10. Energy Conservation.

The Subrecipient agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

11. Clean Water and Air Requirements.

- A. The Subrecipient agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, 33U.S.C. Sections 1251 *et seq.*, and the Clean

Air Act, 42 U.S.C. Sections 7401 *et seq.* The Subrecipient agrees to report each violation to the Department and understands and agrees that the Department will, in turn, report each violation as required to assure notification to FTA and the appropriate United States Environmental Protection Agency Regional Office.

- B. The Subrecipient agrees to include these requirements in each subcontract exceeding \$100,000.00 and financed in whole or in part with federal assistance provided by the FTA.

12. Debarment and Suspension.

Executive Order No. 12549, "Debarment and Suspension of Participants in Federal Programs," February 18, 1986, 31 U.S.C. Section 6101 note, as amended by Executive Order No. 12689, "Debarment and Suspension," August 16, 1989 31 U.S.C. Section 6101 note, as implemented by 2 C.F.R. Part 180, subpart C, as adopted and supplemented by U.S. DOT regulations at 2 C.F.R. Part 1200 prohibits FTA Subrecipients from contracting for goods and services from organizations that have been suspended or debarred from receiving federally-assisted contracts. Subrecipients shall include the certification and instruction language contained at 2 C.F.R. Part 1200 in all Invitations for Bids and Requests for Proposals (for inclusion by contractors in their bids or proposals) for all contracts expected to equal or exceed \$25,000.00, regardless of the type of contract to be awarded.

The Subrecipient is required to verify that none of the Subrecipient's principals or affiliates are excluded or disqualified as defined, as defined by 2 C.F.R. Part 1200. By signing and submitting this Agreement, the Subrecipient certifies as follows:

The certification in this clause is a material representation of fact relied upon by the Department. If it is later determined that the bidder/Subrecipient or proposer/Subrecipient knowingly rendered an erroneous certification, in addition to remedies available to the Department, the federal government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder/Subrecipient or proposer/Subrecipient agrees to comply with the requirements of 2 C.F.R. Part 1200 while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder/Subrecipient or proposer/Subrecipient further agrees to include a provision requiring such compliance in its lower tier covered transactions.

13. Charter Bus Requirements.

The Subrecipient agrees to comply with 49 U.S.C. Section 5323(d) and 49 C.F.R. Part 604, which provides that recipients and sub recipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 C.F.R. Part 604.9. Any charter service provided under one of the exceptions must be "incidental." (For example, it must not interfere with or detract from the provision of mass transportation).

14. School Bus Requirements.

Pursuant to 49 U.S.C. Section 5323(f) and 49 C.F.R. Part 605, recipients and sub recipients of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and sub recipients may not use federally funded equipment, vehicles, or facilities.

15. Operations Reporting Requirements.

- A. Daily Pre/Post Trip Inspection Records — The Subrecipient shall keep daily Pre/Post Trip Inspection Records on the use of each transit vehicle and shall submit to the Department, upon request, such information.
- B. Monthly Reporting — A monthly invoice/report shall be submitted electronically using the Electronic Grants Management Performance System (BlackCat) by the Subrecipient to include financial expenditures and ridership, as described in *Section 3. Method of Payment*. This monthly invoice shall be submitted to the Department by the 25th of the following month.
- C. Quarterly Reporting - The Program Vehicle/Facilities Inventory shall be reported and updated within the Electronic Grants Management Performance System (BlackCat) on a Quarterly schedule, and, as changes to the vehicle/facilities inventory occur.
- D. Transit Asset Management (TAM) Reporting – the Subrecipient will participate in a group TAM Plan sponsored by The Department (49 U.S.C. 625). The group plan is implemented over a four-year time horizon requiring participants to maintain updated asset inventories and condition assessments.
- E. National Transit Database (NTD) Rural Report — the Subrecipient will provide an annual NTD report as required by 49 U.S.C. Section 5335. New and updated regulations require transit agencies reporting to the NTD to include condition information on assets reported to the database.

- F. Semi-annual DBE Reporting — the Subrecipient will submit to the Department a semi-annual DBE Report due May 15 (for the period October 1 to March 31) and due November 15 (for the period April 1 to September 30).

16. Privacy Act.

The Subrecipient agrees to comply with, and to assure the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. Section 552a. Among other things, the Subrecipient agrees to obtain the express consent of the federal government before the Subrecipient or its employees operate a system of records on behalf of the federal government. The Subrecipient understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract. The Subrecipient agrees to include these requirements in each subcontract to administer any system of records on behalf of the federal government financed in whole or in part with federal assistance provided by FTA.

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 01/29/2019

Report Date: 01/25/2019

Report No: 9.

Submitted By: Rachel Hughs

Subject: Appointments to Boards and Committees. (*Richard Boss, Mayor*)

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation: Appoint to the Alamogordo Promotions Board, Alamogordo Public Library Board, Housing Authority Advisory Board, and White Sands Beautification Board.

Background:

Airport Zoning Board. One (1) city vacancy. Staff Liaison - Cheryl Otero-Baker
No applications received.

Alamogordo Promotions Board One (1) vacancy Staff Liaison - Michelle Brideaux
The following individual is interested in being appointed to the board:
Marianne Schweers - if appointed this will be her first term.

Alamogordo Public Library Board Two (2) current city vacancies, One (1) expiring city term and Two (2) county vacancies. Staff Liaison - Melissa Garcia
Joel Hamilton's term will expire on February 2, 2019.
The following individuals are interested in being appointed to the board:
Michael Eshleman - if appointed this will be his first term.
Audrey Hukari - if appointed this will be her first term.

Housing Authority Advisory Board. One (1) vacancy due to Anna Blanch Rabe's expiring term and One (1) expiring term. Staff Liaison - Marissa Ruiz
Rhonda Devine's term will expire on March 17, 2019.
The following individual is interested in being appointed to the board:
Anna Blanch Rabe - if appointed this will be her second term.

Mayor's Committee on Aging. One city (1) vacancy. Staff Liaison - Britney Courtier.
No applications received.

Senior Volunteer Programs Advisory Council. Two to Five (2-5) city vacancies. Staff Liaison - Neil McFarland.

No applications received.

White Sands Beautification Committee. One (1) vacancy. Staff Liaison - Stella Real.

The following individual is interested in being appointed to the board:

Lissett Mendoza - if appointed this will be her first term.

If anyone is interested in applying to serve on a board or committee, you may do so with the City Clerk's office.

Print

RECEIVED

JAN 11 2019

CITY CLERK

Application to serve on a Board/Committee - Submission #193

Date Submitted: 1/11/2019



First Name*

Michael

Last Name*

Eshleman

Address*

PO Box 1963

*Lives at
2200 E. First Street*

City*

Alamogordo

State*

NM

Zip Code*

88311

Phone Number*

575-437-7427

Email Address*

meshleman@co.otero.nm.us

Is the above address within City Limits?*

☒ Yes☐ No

Present Employer:*

Otero County

Board/Committee you would like to serve on (1st choice):*

Public Library Board ▼

Board/Committee you would like to serve on (2nd choice):

-- Select One -- ▼

Are you related to anyone who is presently employed by the City of Alamogordo?

☐ Yes☒ No

If so, what is their relation to you?

Are you related to an Elected Official of the City of Alamogordo?*

☐ Yes☒ No

Is so, what is their relation to you?

Experience and education relating to the Board/Committee:

Master of Library Science degree, Indiana University Bloomington. Published six journal articles. Very familiar with library materials and research. J.D., University of Dayton School of Law. B.A., Political Science, University of Cincinnati. In library school, was graduate assistant to the copyright librarian at the Herman Wells Library, IUB.

Please indicate your interest in serving on a City Board/Committee:

I think my education and experience with libraries make me ideal to serve. I have knowledge of library science and a great deal of practical experience using libraries. My legal background, especially with copyright issues, would be helpful.

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JAN 15 2019

CITY CLERK

City of Alamogordo
APPLICATION TO SERVE ON A
CITY BOARD/COMMITTEE

Name: Audrey Hukari
Home Phone: Work Phone: 575-821-5081
Cell Phone: 325-245-5304 Fax No:
e-mail address: audrey.hukari@gmail.com
Physical Address: 322 Sunrise Ave, Alamogordo 88310
Is the above address within City limits? Yes ☒ No ☐
Mailing Address: 322 Sunrise Ave, 88310
Present Employer: 12th Judicial District Court Job Title: Chief Financial Officer

Board/Committee you wish to serve on:

First choice: Library
Second choice: Community development advisory committee

Are you related to anyone who is presently employed by the City of Alamogordo:

Yes ☐ No ☒ If so, what is their relation to you?

Are you related to any Elected Official of the City of Alamogordo?

Yes ☐ No ☒ If so, what is their relation to you?

Experience and education relating to the Board/Committee: Masters degrees
in Business Administration and Education
(Curriculum and Instruction specialty) Certified
Project Management Professional, library patron
13 years experience with grant management and budget
Please indicate your interest in serving on a City Board/ Committee: Looking to
get involved in the local community and support
the library

Please return completed application to:

City Clerk's Office
1376 E. Ninth Street
Alamogordo, NM 88310
PHONE: (575)439-4205
FAX: (575)439-4396

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JAN 16 2019

CITY CLERK

City of Alamogordo
APPLICATION TO SERVE ON A
CITY BOARD/COMMITTEE

Name: Anna Blanch Rabe

Home Phone: — Work Phone: —

Cell Phone: 575 446 3545 Fax No: —

E-mail address: anna.blanchrabe.com

Physical Address: 3052 White Sands Court, Holloman

Is the above address within City limits? Yes — No X

Mailing Address: Po Box 525 Holloman AFB

Present Employer: Anna Blanch Rabe & Associates Job Title: CEO

Board/Committee you wish to serve on:

First choice: Housing Authority Board

Second choice: —

Are you related to anyone who is presently employed by the City of Alamogordo?

Yes — No X If so, what is their relation to you? —

Are you related to any Elected Official of the City of Alamogordo?

Yes — No X If so, what is their relation to you? —

Experience and education relating to the Board/Committee: —

2017-2019 Housing Authority Board.

2017-2018 Thrive Inc. board (Formerly United Way of Care)

Not practicing attorney.

Please indicate your interest in serving on a City Board/ Committee: —

to serve our community. I am seeking reappointment to
continue to serve on Housing Authority Board.

Please return completed application to:

City Clerk's Office
1376 E. Ninth Street
Alamogordo, NM 88310
PHONE: (575)439-4205
FAX: (575)439-4396

RECEIVED

JAN 08 2019

CITY CLERK

Print

Application to serve on a Board/Committee - Submission #181

Date Submitted: 1/7/2019



First Name*

Marianne

Last Name*

Schweers

Address*

7288 Hwy 54 - 70

City*

Alamogordo

State*

NM

Zip Code*

88310

Phone Number*

5754373792

Email Address*

mschweers@heartofthedesert.com

Is the above address within City Limits?*

☐ Yes☒ No

Present Employer:*

Self employed

Board/Committee you would like to serve on (1st choice):*

Alamogordo Promotion Board

Board/Committee you would like to serve on (2nd choice):

-- Select One --

Are you related to anyone who is presently employed by the City of Alamogordo?*

☐ Yes☒ No

If so, what is their relation to you?

Are you related to an Elected Official of the City of Alamogordo?*

☐ Yes

☒ No

Is so, what is their relation to you?

Experience and education relating to the Board/Committee:

My husband and I own Heart of the Desert Pistachios & Wines, an attraction in our community. We give tours and actively promote visiting our area.

Please indicate your interest in serving on a City Board/Committee:

I believe I can contribute positively to decisions that impact tourism and marketing our community.

RECEIVED

JAN 10 2019

CITY CLERK

Print

Application to serve on a Board/Committee - Submission #188

Date Submitted: 1/9/2019



First Name*

Lissett

Last Name*

Mendoza

Address*

347 Camino Real

City*

Alamogordo

State*

NM

Zip Code*

88310

Phone Number*

5754159443

Email Address*

Lissett.mendoza@ymail.com

Is the above address within City Limits?*

☒ Yes☐ No

Present Employer:*

Carr Riggs & Ingram

Board/Committee you would like to serve on (1st choice):*

White Sands Beautification Committee

Board/Committee you would like to serve on (2nd choice):

Parks & Recreation Board

Are you related to anyone who is presently employed by the City of Alamogordo?*

☒ Yes☐ No

If so, what is their relation to you?

Are you related to an Elected Official of the City of Alamogordo?*

☒ Yes

☐ No

Is so, what is their relation to you?

Experience and education relating to the Board/Committee:

Experience volunteering in community events; overseas and stateside. Degreed in business mgmt. Diverse customer relations experience with positive outcomes.

Please indicate your interest in serving on a City Board/Committee:

Highly interested in serving the city of Alamogordo and it's efforts to make the community a more attractive and appealing place to live and visit. This city is a place of friendly people, outdoor fun and historic memories; the exterior of Alamogordo should reflect this vibe/energy.

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 01/29/2019

Report Date: 01/11/2019

Report No: 10.

Submitted By:

Subject: Adjourn into Executive Closed Session in compliance with 10-15-1(H), NMSA 1978 (as amended) to discuss City Manager's evaluation.

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation:

Background: