

**CITY OF ALAMOGORDO, NEW MEXICO
CITY COMMISSION REGULAR MEETING MINUTES
6:30 P.M., COMMISSION CHAMBERS
December 18, 2018**

**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 Reverend Harp and the Pledge of Allegiance was led by Commissioner Payne.

Mayor Boss Spoke on the passing of former Mayor Don Carroll. A moment for silent prayer was taken.

APPROVAL OF AGENDA

City Clerk Hughs pulled Item 6 off the Agenda.

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 update for Otero County Economic Development Council. (*Laurie Anderson, Business Development Director*)

Ms. Anderson presented the quarterly update with Otero County Economic Development Council (OCEDC). She gave a brief background of OCEDC and talked about who makes up OCEDC and what they do. She presented some of the projects they have been working on: Project Rain is a water bottling production project, Project Rise is a metal manufacturing project, Project Shine is a jewelry cleaning production facility, and Project 575 is a brewery. She also said they have 5 different projects that are requesting grants right now, and they will be presenting those to the Commission soon. She discussed what they are working on for the future. (See Power Point in Blue Book)

Commissioner Sikes asked where Project 575 (the Brewery) is going to be. Commissioner Sikes also said only if you are at liberty to tell them and if she couldn't that was fine. Ms. Anderson said she would rather not at this time, but she will seek permission for the next time.

PUBLIC COMMENT

None.

CITY MANAGER'S REPORT

City Manager Paluch made the following remarks:

1. She thanked Assistant City Attorney Johnson for standing in for City Attorney Schreiber.
2. She announced that the livestreaming for tonight's meeting is not working due to hardware issues.

3. She mentioned that the transformer was installed at Kid's Zone for the lighting. She said lights will stay on until 10:30 p.m. and shut down with the exception of one light under each of canopy, which will stay on from dusk to dawn. These lights are LED, so consumption is very little.
4. She said the Recreation Center Pool is closed for the season. She thanked Recreation Coordinator Michaud, the lifeguards, Community Services Director Ortega, Facility Maintenance and staff that helped keep the pool open longer this season. The pool will re-open this spring at a date to be determined by our weather.
5. She said pumping at Bonito Lake has continued but material removal has slowed down a bit, which was to be expected due to the winter season.
6. The floor tile was completed at the Desal Plant and the scaffolding has been removed. The Grand Opening should be soon.
7. She said the floor purchases came back in good condition for the Water Tank in Upper Heights, but the roof on the tank will have to be replaced.
8. She said bids were opened on December 12, 2018 for the FY19 Crack Seal rebid, and General Hydronics Utilities was the apparent low bidder. The award of this project is tentatively scheduled for the January 8th, 2019 Commission meeting.
9. She said bids were opened by the Army Corps of Engineers for the final phase of the McKinley Channel Flood Control Phase 8. Those were opened on December 10th, 2018 and they intend to award the project to Pate Construction on or around December 21st, 2018 for the base bid and both alternate items.
10. She said annually the Housing Authority employees volunteer their own time to bake and deliver cookies for all the homebound and elderly tenants at the Housing Authority.
11. She said since implementing HIDTA, the Police Department has had numerous HIDTA investigations opened. She thanked Chief Peete.
12. She wished everyone a Merry Christmas and a Happy New Year.

REMARKS AND INQUIRIES BY THE CITY COMMISSION

Commissioner Hernandez made the following comments:

He said he had the opportunity to serve with Former Mayor Don Carroll from 1996 to 2000. He said in 1998, he was put in a predicament where he was the swing vote in selecting him as Mayor. He said he did that for many reasons and the main one was to continue to move the City forward. He appreciates everything that he has learned from Mayor Carroll and couple of other guys that have also passed on. He said everything he has learned from them, he has tried to carry on and tries to make sure that this City continues to move forward. He appreciates everything former Mayor Carroll did for him and the City.

Mayor Boss made the following comments:

He said when he became Mayor, one of the first persons to reach out to him to offer his support and his advice was former Mayor Don Carroll. Mayor Boss said he asked him questions about the operation of the Commission and about the public and there wasn't a question that he asked that former Mayor Carroll could not answer. Mayor Boss also said he spent some time with him out at Holloman Air Force Base. He was a fine man and he is really going to be missed. The City of Alamogordo will be putting out a Public Service Announcement with some of his accomplishments.

He said he has been working on the evaluation form for the City Manager. He said on December 28th he is hoping to email the form to the Commission, and on January 11th he would like the forms back. On January 14th to 28th, they will do tabulation and finalizing. He talked about how they were going to handle the process. He said they hope to have an Executive Session on January 29th, 2019, to go over the report, which will be a summary of all the responses from all the Commissioners and the scores average, also any comments they may have will be reported then.

CONSENT AGENDA

2. Approve the minutes for the December 4, 2018 Regular meeting. *(Rachel Hughs, City Clerk)*

3. Approve the City Commission Regular Meeting Schedule for Calendar Year 2019. (Rachel Hughs, City Clerk)

4. Consider, and act upon, Ordinance 1583 for final publication, amending Chapter 11 of the Code of Ordinances to add harassment to the Criminal Chapter. (Dustin Johnson, Assistant City Attorney) (Roll Call Vote Required)

5. Approve the State Grants-in-Aid award from the New Mexico State Library for local library support. (Sharon Rowe, Library Manager)

Mayor Pro-Tem Baldwin asked to remove Item # 4 from the Consent Calendar.

Commissioner Hernandez moved to approve item 2, 3, and 5 of the consent calendar.

Mayor Pro-Tem Baldwin seconded the motion.

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

ITEMS REMOVED FROM CONSENT AGENDA

4. Consider, and act upon, Ordinance 1583 for final publication, amending Chapter 11 of the Code of Ordinances to add harassment to the Criminal Chapter. (Dustin Johnson, Assistant City Attorney) (Roll Call Vote Required)

Rich Merrick commented on the following:

Mr. Merrick asked for this item to be tabled until specific exclusions are added to it to protect the public's right to free speech without the fear of intimidation. He said without specific language excluding certain things within this Ordinance, it leaves it open to those who would interpret the Ordinance. He asked the Commission before they pass this Ordinance without specific exclusions attached for them to think about what this could bring in the future in civil rights violations to the guaranteed First Amendment rights of each and every citizen of the City.

Mayor Pro-Tem Baldwin said he assumes that Sections A and B that is being added to this is regular wording or wording that has been copied from somewhere. He was concerned with the wording "annoyed" and thought it was pretty broad. Assistant City Attorney Johnson said this has been copied from State Statute. He said they talked about the whole Act in the first go around of it. They just literally wanted to capture Harassment. He said what is important when they look at this and they break it down through legal analysis, they are looking at a pattern of conduct. He said a one-off offense or even multiple offenses, of something transpiring online isn't going to be something that this current regime is going to move forward and prosecute because it doesn't fit, and it is not a pattern of the conduct. He said it does say "annoy, alarmed, terrorize another person serving no lawful purpose". He said "annoy" again they look at that reasonable person's standard. He said what is most important is this is in Magistrate Court, so they have not reinvented the wheel, they have not deviated from the law already in place, they are just asking to also bring it into Municipal Court or the Municipal level. The concerns of social media and limited first amendment rights, which this is no way shape or form intended to do, has always been there and is there currently there at the Magistrate level and they haven't changed that. He said what he would focus on legally is a pattern of conduct is the first and foremost thing that you need to establish, and he does not see that as sharing your opinions and views online, but that is him personally. He said to Mr. Merrick's point he cannot begin to comment on what a new regime would come in and do.

Mayor Pro-Tem Baldwin said annoy just came across very vague to him. He said it does say a pattern of, which is the repetitive nature of it, but he wouldn't mind seeing other wording in there other than pattern, maybe repeat occurrences or something like that.

Commissioner Payne said it says, "intended to annoy". She said why anybody would want to get on social media or online and intentionally annoy somebody. Mayor Pro-Tem Baldwin asked if she was joking and asked her if she has been online. Commissioner Payne said that is exactly her point.

Commissioner Payne asked Assistant City Attorney Johnson if it was the stalking portion that was left out. He said that is correct, it is an Act and they did not elect to adopt the entire Act. He said Harassment was somewhat of a minor gap that they were seeing that they might successfully bring into the Municipal Court. He said Stalking comes to a level where it belongs to Magistrate Court with more teeth. He said it was one of those things when you look at the State Statute and that they copied over, they felt that they could bring it here with less severity because there are situations warranting that. Commissioner Payne asked if this section of the State Statute reads exactly like we have it. Assistant City Attorney Johnson answered correct. She asked if that included the word "Annoy". He answered correct.

Commissioner Payne said she understands what Mayor Pro-Tem Baldwin is saying but that is the way she understood this. This doesn't say anything different than what the State Statute says, the only thing left out was a separate charge. Assistant City Attorney Johnson said correct. He said most importantly too, he cannot express enough that there is no law being changed here, they are just literally bringing it to Municipal Court. He said if they were going to look at certain language changes then they would be going away from the Statute in place. Commissioner Payne asked if the penalty is lessened because they are moving it to Municipal Court. He said that is correct. Commissioner Payne said if you are doing something that rises to the level of what the law says is Harassment, you probably want it prosecuted in Municipal Court as opposed to Magistrate Court, she would think.

Commissioner Hernandez asked Assistant City Attorney Johnson when the original law was written. Assistant City Attorney Johnson said he did not know. Commissioner Hernandez said one of his followers took offense to some videos he posted on Instagram. He said that could be construed as crossing that line. Assistant City Attorney Johnson said with that being said, he looks to that pattern. He said that is what he is talking about, that is a one-off thing. He said to address Mr. Merrick's concern, he looks at it as the City prosecutor handling this in the violations of our City Ordinance. He said for him he would really have to see some kind of shocking behavior online to have kind of terrorized the individual. He said you posting videos and one person taking offense to it, he would not feel comfortable prosecuting it, and he does not think they have a pattern there. He said if they are months or years out and he is seeing the same individual and whatever they are doing or saying so grossly deviates from what a reasonable person in your position would view it as, then he might assess whether or not it is something he could take in front of the Judge feeling confident that he could win. He said again with the law, there is so much room for interpretation. He said he is paid to argue in court and he can sit there and comment as to what he feels comfortable prosecuting.

Commissioner Rardin said he is against the City taking this on, staff is already overworked with this stuff they really don't need to be taking this stuff on, when the DA's Office should be doing it. He stated if they are going to pass this tonight, they should have definitions of "Annoy" or "Reasonable Person". He said like Commissioner Hernandez said last time, if someone goes through a bad breakup with somebody, are they being reasonable or emotional.

Assistant City Attorney Johnson said that is probably a good idea. He wanted to re-iterate that they are not seeing a large volume of this citation, there are two pending trials in January in Magistrate Court. He said that is two in the past year and the most they had in a year was probably six or seven. He said he does not see this having a tremendous impact either way the Commission decides to go. He does not think they will see an increase in citing and again it is also something that the Officers already have the capability to cite, it is just only to Magistrate Court, so he does not see their behavior is going to change as a result of the decision this evening.

Commissioner Rardin said he would like a definition of what exactly substantial emotional distress is.

Commissioner Hernandez asked if the Police Officer would write the citation. Assistant City Attorney Johnson answered yes. Commissioner Hernandez said not that he does not trust the Police Officers, but it is just the use and abuse of it that could be a problem. He said after speaking to different folks he is not going to support this tonight. Assistant City Attorney Johnson said he does not see this is an area or avenue of law as a citation that is going to impact anything very much either way you decide to vote.

Commissioner Payne said she is confused, if they leave it as it is and anything or all of those things occur, could you still not be prosecuted for Harassment. Assistant City Attorney Johnson said absolutely correct, it would just be at the Magistrate Court. Commissioner Payne said the City Commission cannot change State Law. Assistant City Attorney Johnson said correct.

Mayor Boss moved to approve.

Commissioner Payne seconded the motion.

Roll call vote was taken.

Motion failed with a vote of 3-4-0.

Commissioners Baldwin, Rardin, Hernandez and Wright voted nay.

Commissioner Sikes said Assistant City Attorney Johnson mentioned in his comments that the City Attorney was going to attempt to bring a couple of cases to court in January. She asked if this would preclude that. Assistant City Attorney Johnson answered no, those are set in Magistrate Court in January. He said it is not a significant volume that they are seeing, two Jury Trials in a month is probably not their preference but that is probably within the last twelve months.

NEW BUSINESS

6. Consider, and act upon, waiver of lien in the amount of \$537.65 for property located on 3rd and Maryland. (Fred Flores)

Item withdrawn prior to Commission meeting by Mr. Flores.

7. Consider, and act upon, 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)

Ms. Anderson thanked everyone involved in this process. She presented this project with Medlin Ramps. She said this project is to bring economic development coupled with 25 plus jobs to the community. She said tonight it is their client's request to utilize Local Economic Development Act (LEDA) funds of \$2.5 million with the purchase of property located at 1900 Highway 54 in Alamogordo. This building is known as the old Wal-Mart building. She said the current appraisal is \$2.8 million. She said OCEDC's due diligence committee, Board of Directors, recommend favorable approval of this project. She introduced Mr. Medlin to discuss the business expansion into Alamogordo.

Mr. Medlin said his company is 28 years old and is expanding, it has been very successful for years now. He said their particular product is large, so shipping is a big factor on how they do their items. He said it was naturally set in motion to find a centralized location in the U.S. to go ahead and open another manufacturing point. He said they looked at the Wal-Mart building to become their manufacturing plant. He described more on this family owned business. He said if the Commission does move forward with this project, Medlin Ramps will become the largest ramp manufacturer in the U.S.

City Manager Paluch asked Mr. Medlin if can give the Commission a brief detail on what the Company does and reproduce. He said they make metal ramps in lieu of having a concrete ramp. These ramps are used when a loading dock is either too high or low for a container to load or unload materials.

Mayor Boss said he noticed that Mr. Medlin has 17 welders for his stage 1. He asked Mr. Medlin if he thinks he will have any problems obtaining welders. He answered no, because right now their product pricing is national, it is not local. He said they are paying welders higher than that in California. He said with their particular product, it's not like they can go and hire somebody down the road, or from another competitor that is locally, and they know how to build his product. He said nobody knows how to build his product. He said they brought on welders that are qualified as far as high skill levels, but they have a lot of bad habits and so he's figured out a way to go around and get away with that. He said he teamed up with a local Technical School and they pay money, it is somewhat State funded, but they do pay money to become a welder and they do get qualified. He said they are coming in and they don't have experience and they are not as good as he wants them to be, but they are eager and willing to learn and adapt. He said it seems very fitting to what they would need here because it is his understanding that there are welders that could be going to the Air Force Base, but they just not qualified yet, so they can come into his facility and learn, mature, get some experience and move on and become a welder on that Base. He said for him to go ahead and pursue the idea of educating, teaching somebody to come in and become better and leaving, he is fine with that because that is part of what he does when he coaches.

Mayor Boss asked if he would be training people locally. Mr. Medlin answered 100 percent.

Commissioner Wright asked Mr. Medlin if this gets approved what is a brief timeline of being in production and actually manufacturing a product out here and shipping out. He said what they are looking at now is the original funds that he required as far as requesting on his business plans was \$3.5 million. He said that would be purchasing the building at \$2.5 million and putting a million dollars in it to get it up to par so they could make the occupancy and start producing. He said his point with what he wants to do at this building is once he starts to produce, he does not want to pull money out of this facility. He said they are financially doing well, so he wants to keep their recycling and bringing the money back in until he can develop that entire property. He said what he is going to end up doing is taking the majority of the "Wal-Mart building part" not the other sections, and he wants to break up in pieces and get that occupied, get whatever code they require and as they build, they are going to try and quickly build into it. He said what he has right now with Bank 34 he has a loan application that he has worked with their Vice-President. He said he is trying to get \$1.5 to \$2 million and all that to re-invest back into it.

Commissioner Wright asked about timewise. Mr. Medlin said he would think about June, they should be able to start fabricating. He said when they start doing it, ramps will start going out that week. He said in the meantime, he is going to look at doing is trying to create some employment. He said the building to the south of the old Wal-Mart building, he is going to create some employment in there such as: marketing, sales staff, people to help renovate the property and painting. He said in a short amount of time he is going to try and hire people before they start welding.

Commissioner Sikes asked Mr. Medlin what the raw materials are and where does he get them. He answered the come from the steel distributors, not the steel mills themselves. He said there are a very few amount of materials that he needs. He said he would try and find things locally but if not, there are places that he normally gets his materials.

Mayor Boss asked Assistant City Attorney Johnson if the Legal Department has reviewed all of the legal documents. He answered, that is correct.

Commissioner Rardin asked if Mr. Medlin gets the whole facility for the \$2.5 million that they are looking at and will the City will hold the lien against the facility. City Manager Paluch answered correct, the \$2.5 million is for the entire property and yes, the City would have a lien on the property.

Commissioner Rardin asked how many acres it is. Mr. Medlin said it is roughly about 25 acres with about 8,100 square feet of buildings. Commissioner Rardin said the survey says 23.4 acres, but then it has 21.2 net acres. Mr. Medlin said there is the big ditch which is part of the property, but he is unable

to build on it.

Mayor Boss said he noticed that Mr. Medlin has plans on part of the lot that he is not using, maybe he has plans for a truck stop go in there. He asked Mr. Medlin if he has been contacted by anyone. He answered in the past Loves Truck Stop contacted the former owner about a certain part of the property, but he did not want to sell anything but the entire property. He said they know that the location is an amazing property when it comes to trucking. He said in the proposal that he is putting together it is going to have, besides the trucking thing, a storage unit and a couple of fast food restaurants. He said he has an architect working on a coffee shop to be put there.

Commissioner Hernandez asked City Manager Paluch or Legal if the timeframe is written in any of the documents. Assistant City Attorney Johnson said to his knowledge, there is no performance date and if that is something the Commission would like to add, they are not precluded from doing so, but when they vote they would be voting to pass it as amended to put one in. Commissioner Hernandez stated he would like to see maybe 1, 2 or 3 years to hold them accountable to. Mr. Medlin said on the Project Participation Agreement (PPA) they focused on the employment factor more than the building aspect, but to be able to meet those employment numbers he is going to have to build outright to get the full unity. He said the \$2.5 million is for the name change of the building, but the building is in no different condition than it was this morning.

Ms. Hatfield came to the podium and stated as soon as they get the go and they start moving forward with the project, it is going to take no less than six months to make the building habitable according to the contractor's estimation. She said based on that, they tried to figure out how many years is it going to take for Mr. Medlin to be full up on his 45 jobs. She explained how they figured out the employment numbers. She said Mr. Medlin explained that he will be looking to hire five office jobs at the beginning and 19 in the final six months of 2019.

Commissioner Hernandez said this is the public's money and he wants to make sure it is secure. He said he does not see a problem, but he wants to make sure they have some timelines. He said they just need something to target for and hold them accountable. Ms. Hatfield said she had originally put in a yearly structure regarding job creation, they will have no problem putting that back into the Project Participation Agreement (PPA) with the estimated jobs per year. Commissioner Hernandez said he is not telling them it has to be but that it is something they can gauge and actually keep up with. He said if it is not working then how can the City help them to make it work.

Assistant City Attorney Johnson asked if they are more concerned if the building becomes operational or are they more focused on the incremental levels of the job creation, because he thinks they are talking about two separate things as far as performance. He said if they are talking about performance of the building, that is what he was referring to, because the jobs have been spelled out. Ms. Hatfield said right, they have. She said if they approve and move forward with the Ordinance in January then that's an approval year or operational year being date of actual operation as to when Mr. Medlin is able to open and start manufacturing the ramps. She said that is when that language comes into play. She said if the Commission wants to, they can amend it to what works for everyone.

Commissioner Hernandez asked if the building would be complete around the fifth year. Mr. Medlin said if he does well with bringing this other income it will be much faster than that. Commissioner Hernandez said with his plan and all the other things in there, that is going to generate its own revenue. Mr. Medlin said it's kind of a catch-22 because he can't get a restaurant that is going to want to go in there tomorrow. He said he is not going to hold anything back from it. He said he already has the money to facilitate the equipment. This is to get the renovations done so they can start manufacturing.

City Manager Paluch reminded the Commissioners that the PPA is not only with Medlin Ramps but it is also with Supply Corp USA. She said the job creation isn't just for the employees that are going to work for Medlin Ramps. She asked Mr. Medlin to mention his plans for Supply Corp USA. He explained his goal was to create Medlin Ramps. He said the population here has some needs. He said

one is employment and two has to do with needs that there are purchase orders from the Base that could be coming into this town, but they are not. He said if someone is wanting to buy something from here let's go ahead and produce that, let's not allow that to go somewhere else. He created the concept of Supply Corp USA which is a company that will be able to offer structural metal fabrication for the weapon testing facilities. He said the supply concept was if they want to buy paper towels from our town, don't let them buy from anywhere else, "let's supply them". Let's supply them with anything and everything that they are willing to buy from us. He said he knows Medlin Ramps and where it will be in five years, and Supply Corp USA is a new company. He said the opportunity is so big, and there are other Military Bases around here. He thinks they will be able to capture a lot from that.

Commissioner Rardin said typically when they set these PPAs up, they have a dollar amount on the jobs and the amount of jobs it is going to create. City Manager Paluch pointed out that information is available in section "d". He asked if it reads 45 jobs at \$10 an hour. Commissioner Payne said at least \$10 an hour. Mr. Medlin said his business plan calls out different varieties, from anywhere from \$10 an hour up to \$20 an hour according to the skill level.

Commissioner Rardin said they do not have a good track record with giving money upfront with some of these projects here in Alamogordo. He said they have to look at it very carefully so that they protect the taxpayer's money. Mr. Medlin shared his opinion. He said he has bought four commercial buildings which were super simple. He said Mr. Kronkey did not need to sell the property, so it made it a challenge. He said the money the Commission is looking at is \$2.5 million and that will cover the cost of the building, not including the closing cost. He said the building appraised at \$2.8 million. He said he is going ahead and getting a loan to put more money into the building. He said if was to walk away in two years, the City will at least acquire a building.

Commissioner Payne asked Mr. Medlin if he did not have family here, would he have ever looked at Alamogordo. Mr. Medlin said he would have never heard about it. She said she sees a major manufacturer in the Country is coming to Alamogordo and her hope would be that they may attract more. She said they need more manufacturing companies. In her opinion, Alamogordo needs more companies that are going to come in and create those possibly higher wage jobs. She thinks if they get enough of it, they may begin to be competitive with Las Cruces or Albuquerque wage wise.

Mr. Medlin said he invested with a lot of different people. He said he usually has to explain where Alamogordo is. He said this is usually putting it on the map for his network, but his network is pretty big. He said this is a good place to move to because there are major opportunities for hungry employment.

Commissioner Hernandez moved to approve.

Commissioner Rardin seconded the motion.

Roll call vote was taken.

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

8. Consider, and act upon, Change Order No. 1, Public Works Bid No. 2018-007, to D&R Tank Company related to the Rehab Upper Heights Ground Storage Tank project, in an amount not to exceed \$350,507.52, including NMGR. (Larry Garner, Public Works Director)

Public Works Director Garner said City staff is requesting a change order to complete and to change out the roof to the Upper Heights Ground Storage Tank. He said after purchases were made into the tank itself, they found that the structure on the roof is failing and is beyond repair, it needs to be replaced. He said they have the funding available due to some completed projects, so they are asking for approvals to move that money and then get that completed. He said the reason they are moving on that as quickly as they can is because they do not want to miss out on the opportunity to have this job completed before our big season starts in the summertime where water demand is high.

Mayor Boss commented that the tank needs repair.

Commissioner Hernandez said he has a couple of concerns. One is the amount of the change order compared to the original contract amount and he also does not see an Engineer record on any of the documents. He asked shouldn't the Engineer have caught that.

Public Works Director Garner said they had an inspection done quite a few years ago, the tank itself was rehabbed in the 90s, and they had an inspection done later. The problem was due to funding they were unable to act upon that study at that time. The study showed that the ceiling was still intact, and it wasn't needed. Once the tank was opened, they could have done another inspection before they did the tank, but it is relatively very expensive process. Once they opened up the tank that is when they were able, when the contractor was able to get the lifts in, go all the way to the ceiling and look at the damage and deterioration that they have on the roof which was the reason this came about this way.

Commissioner Hernandez said he understands that part of it. He said for a half of million dollars that is a pretty substantial amount, he is not seeing an engineer or anybody that they could go back to on this project. Public Works Director Garner said D&R Tank was the contractor that did the Green tank as well. He said he believes that they have engineers within their company, but that who is they go through to get the tanks refurbished. Commissioner Hernandez said again you can't send the same person to do the same thing. He said he has a problem with that because he does not see an engineer and they are looking at two-thirds of the amount on the change order of the original contract. Public Works Director Garner said to clarify, they took purchases out of the floor and they took purchases out of different places in the tank and send off for inspection. That is not something they do right then and there. He said that inspection comes back and lets them know what needs to be done and all these pieces on the roof are failing. He said that is where they got the information from was due to the inspection. Commissioner Hernandez asked why we don't have an Engineer on the project. Mayor Pro-Tem Baldwin said the question would be if we would have an Engineer to begin with. Commissioner Hernandez said an Engineer would have caught this. Mayor Pro-Tem Baldwin said would we regularly require this and was this required on the last tank rehab.

Assistant City Manager Cesar explained that this would not require an Engineer. He said what is being done with this tank, they are not altering the construction of the tank from the way it was originally constructed. He said what is happening now is more of the material has to come off the tank to be replaced. It is not a new tank or new construction, the company is replacing the roof, the material, the steel on top of the tank. Commissioner Hernandez said it is based on their design that they are refabricating an old design that if it fails, then who do we hold accountable. Assistant City Manager Cesar said that would be D&R Tank. Commissioner Hernandez said that is his concern that if you have an Engineer doing the actual contract work and it fails then who do you hold responsible. According to the contract it looks like we wrote the scope of work to them. They are doing what we asked them to do and so if it fails, they can hold the City responsible because we wrote the scope of work. Assistant City Manager Cesar said he understands what he is saying, but it would go back to D&R Tank, they are actually the company that originally installed this tank. Commissioner Hernandez said again there are some dollar concerns here and there are also the Engineering concerns.

Mayor Boss asked if they had an Engineer on the Green tank. Public Works Director Garner said it wasn't necessary because they were refurbishing it. He said they did do some modifications on the Green tank to make it a little bit better.

Commissioner Hernandez said he wants to make sure that they are covered under all circumstances.

Mayor Pro-Tem Baldwin asked Public Works Director Garner how much a brand-new tank is. He answered you are using a \$1.00 or a \$1.50 per gallon, so you are probably looking at \$3 million. Commissioner Hernandez said it is probably about \$4 million by the time you get done.

Mayor Pro-Tem Baldwin moved to approve.
Commissioner Rardin seconded the motion.
Motion carried with a vote of 7-0-0.

9. Consider, and act upon, Change Order No. 1, Public Works Bid No. 2017-010, EN1701, to General Hydronics Utilities, LLC, related to Street Maintenance Program FY 2017, in an amount not to exceed \$40,940.00, excludes NMGRT. (Edward Balderrama, Project Manager)

Project Manager Balderrama said there are four parts to this change order. He explained the four parts. He also said the contractor is only requesting 14 additional days, but the contractor is probably about three months ahead of schedule on this project.

Commissioner Hernandez asked Project Manager Balderrama about the lines and culverts. He explained the lines to be used and the design of the culverts. Commissioner Hernandez also asked if the 2-inch water line would be able to sustain what the 6-inch that he is taking out. Project Manager Balderrama said the 2-inch water line is just to loop the line. He said it is not a dead-end line, the concern with putting a clean out hydrant at the end is maintenance and then a place to flush it out.

Commissioner Hernandez asked Project Manager Balderrama what percentage they in the contract are because they only \$109,000 and they are using \$40,000 of that on this change order. He said for the water line he thinks they are about at 70 percent. Commissioner Hernandez asked if he does not foresee going over that \$109,000. Project Manager Balderrama said he did not know. He is close right now. He is pretty comfortable to say he should be under the overall cost. He said the problem is the project award was like \$6 million, but he has two funds in that for water and streets. He said when they awarded this project, if he is not mistaken, they had to kind of rob Peter to pay Paul to get this project awarded. Commissioner Hernandez said that is the reason he is asking because if they have to delay on any part of the water project and people are expecting to get their streets to get done. He said he is pretty comfortable not to exceed what was awarded.

Commissioner Hernandez moved to approve.

Commissioner Payne seconded the motion.

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

10. Consider, and act upon, Resolution 2018-46 requesting written approval from the Local Government Division of the Department of Finance and Administration, State of New Mexico for the revised budget numbers computed as of December 18, 2018 (Evelyn Huff, Interim Finance Director) (Roll Call Vote Required)

Interim Finance Director Huff said this is the Resolution that would normally be brought at this time. She said they had their amended one about two meetings ago, so this is just a regularly scheduled one. This revision has all the requests that have been put in by the departments since July 1, 2018. There is a total of 22 requested revisions that make up this Resolution.

Mayor Pro-Tem Baldwin moved to approve.

Commissioner Rardin seconded the motion.

Roll call vote was taken.

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

11. Appointments to Boards and Committees. (Richard Boss, Mayor)

Mayor Boss read the openings and appointed Colleen Lenart to the Housing Authority Advisory Board and Andrew Gomolak to the Planning and Zoning Commissioner. No one was opposed.

City Clerk Hughs brought attention to the Agenda Packet where it says to remove a member of the Library Board for the reason that she has not attended a meeting in over four months. She said that is for you and the Commission to remove her from the Board. Mayor Pro-Tem Baldwin asked if that was on the Mayor's addendum sheet of who it is. City Clerk Hughs answered yes, Jessica Hoidahl.

Commissioner Sikes commented that Jessica Hoidahl moved out of state and just neglected to let the Library Board know.

Mayor Pro-Tem Baldwin thanked City Staff, especially the ones sitting in the audience, for all their hard work. He said to his colleagues this has been one of his most enjoyable years, some because of the stride and some because of how they work together, mostly because of the education he continues to get sitting up there. He wished them a Merry Christmas and a Happy New Year. He also thanked the citizens that attend the meetings.

Mayor Boss also wished everyone a Merry Christmas and a Happy New Year.

EXECUTIVE SESSION (Roll Call Vote Required)

12. Adjourn into Executive Closed Session in compliance with 10151(h), NMSA 1978 (as amended) to discuss real property of Oregon Elementary Acquisition. (Roll Call Vote Required)

Mayor Pro-Tem Baldwin moved to adjourn at 8:28 p.m.
Commissioner Rardin seconded the motion.
Roll call vote was taken.
Motion carried with a vote of 7-0-0.



ATTEST:


City Clerk Rachel Hughes


Mayor Richard Boss

(Prepared by Eric Barraza, Deputy Clerk)
Approved at the Regular Meeting held on January 8, 2019.