



Alamogordo City Commission

NOTICE OF MEETING

Regular Meeting Agenda

April 23, 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

Brian Cesar Interim 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. Presentation of FY 2018 Audit Summary. (Farley Vener, CPA, CFE, CGMA)

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 April 9, 2019 Regular meeting. *(Eric Barraza, Deputy Clerk)*
3. Approve the statements related to the Executive Closed Session held on April 9, 2019. *(Eric Barraza, Deputy Clerk)*
4. Approve the statements related to the Executive Closed Session held on March 26, 2019. *(Eric Barraza, Deputy Clerk)*
5. Consider, and act upon, Ordinance 1590 for final publication, Amending Sections of Chapter 7 of the Alamogordo Code of Ordinances. *(Petria Schreiber, City Attorney, Dwain Martinez, Animal Control Manager and Walter Oppie, Animal Control Officer)* **(Roll Call Vote Required)**
6. Consider, and act upon, Ordinance 1591 for final publication to approve a Local Economic Development Project for Secured Assistance Proposed by Moran & Wright Jewelry and Metal Care Products. *(Laurie Anderson, Business Development Director)* **(Roll Call Vote Required)**
7. Consider, and act upon, the amended contract (Amendment #1) with the New Mexico Economic Development District, Non-Metro Area Agency on Aging (NMAAA) for the Direct Purchase of Services *(Magdalena Morales, ASC Manager)*.
8. Consider, and act upon, the amended contract (Amendment #2) with the New Mexico Economic Development District, Non-Metro Area Agency on Aging (NMAAA) for the Direct Purchase of Services *(Magdalena Morales, ASC Manager)*.
9. Consider, and act upon, Resolution 2019-13 for the acceptance and approval of the FY18 Audit. *(Stephanie Hernandez, Finance Director)* **(Roll Call Vote Required)**

ITEMS REMOVED FROM CONSENT AGENDA**NEW BUSINESS**

10. Consider, and act upon, Resolution No. 2019-16 authorizing execution of a Gross Receipts Investment Program Agreement between the City of Alamogordo and LBP Alamo, LLC. *(Petria Schreiber, City Attorney)* **(Roll Call Vote Required)**
11. Appointments to Boards and Committees. *(Richard Boss, Mayor)*

EXECUTIVE SESSION (Roll Call Vote Required)

12. Adjourn into Executive Closed Session in compliance with 10-15-1(H)(8), NMSA 1978 (as amended) to discuss real property as it relates to the Fairgrounds Parking Lot. **(Roll Call Vote Required)**

ADJOURNMENT

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 4/23/2019

Report Date: 4/15/2019

Report No: 1.

Submitted By: Sue Ashe

Subject: Presentation of FY 2018 Audit Summary. (*Farley Vener, CPA, CFE, CGMA*)

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation:

Background: Presentation of FY 2018 Audit Summary



2018 AUDIT SUMMARY PRESENTATION

Presented by:

Farley Vener, CPA, CFE, CGMA
President & Managing Shareholder

TODAY'S AGENDA

- ✓ Auditor's Communications – AU-C 260
- ✓ Significant Audit Results / Opinion
- ✓ Findings/Recommendations
- ✓ Review Financial Statement Trends



Engagement Team

Partner In-Charge

Farley H. Vener, CPA, CFE, CGMA

Audit Team

Maclen Enriquez, CPA, Senior Audit Manager

Jacob Conner, Audit Manager

Rosetta Lee, Staff Auditor



Scope of Our Audit Procedures

Financial Statements

Procedures are designed to provide reasonable assurance to detect:

- Material inaccuracies in financial statements
- Internal control material weaknesses and significant deficiencies
- Procedures are not designed to find fraud although any discovered would be reported.

Federal Compliance

Procedures designed to express an opinion on compliance for each major federal program under Uniform Guidance.

Who Do We Serve?

Responsibility to provide objective fiduciary information to:

- The City Commission (provide objective fiduciary information)
- Management
- Public Interest





Auditor's Communication With Those Charged With Governance (AU-C 260)

RESPONSIBILITIES	Management	Auditor
Accounting Policies	X	
Internal Controls	X	
Significant Estimates	X	
Management Representation Letter	X	
Opinion on Financial Statements		X
Reasonable Assurance		X
Understanding of Internal Controls Sufficient to Plan the Audit		X



**Auditor's
Communication
With Those
Charged With
Governance
(AU-C 260)
Required
Communications**

COMMUNICATIONS	CONCLUSION
Accounting Practices	Consistent
Proposed Audit Adjustments	49
Adjustments Made by Client	25
Adjustments for Presentation Purposes Only	33
Passed Adjustments – Because of Immateriality	None
Disagreements with Management	None
Management's Consultations with Other Accountants	Aware of None
Discussing of Accounting Issues Prior to Retention	None
Significant Difficulties in Performing the Audit	Staff Turnover



Summary of Audit Results

Financial Statements

- | | | |
|----|---|------------|
| 1. | Type of auditor's report issued | Unmodified |
| 2. | Internal control over financial reporting: | |
| | • Material weakness(es) identified? | Yes |
| | • Significant deficiency(ies) identified not considered to be material weakness(es)? | Yes |
| | • Noncompliance material to the financial statements noted? | None |
| | • Noncompliance with State Audit Rule, NM State Statutes, NMAC or other entity compliance | Yes |



Summary of Audit Results

Federal Awards

1. Internal control over major programs:
 - Material weakness(es) identified? Yes
 - Significant deficiency(ies) identified not considered to be material weakness(es)? Yes
2. Type of auditor's report issued on compliance for major programs Unmodified
3. Any audit findings disclosed that are required to be reported in accordance with section 2 CFR § 200.516(a) Yes



Summary of Audit Results

Federal Awards (continued)

4. Identification of major programs

<u>CFDA Number</u>	<u>Name of Federal Programs</u>	<u>Funding Source</u>
97.036	Disaster Grants – Public Assistance	U.S. Department of Homeland Security

5. Dollar threshold used to distinguish between type A and type B programs: \$750,000

6. Auditee qualified as low-risk auditee? Yes



Reference # Finding		Findings	Finding*
Prior Year Findings			
2017-001	TRAVEL AND PER DIEM	Modified	G
2017-002	PROCUREMENT - OTHER NON-COMPLIANCE	Resolved	G
Current Year Findings			
2018-001	FINANCIAL CLOSE AND MATERIAL ADJUSTMENTS	Current	A
2018-002	CERTIFICATION OF CAPITAL ASSETS ANNUAL INVENTORY	Current	G
2018-003	CAPITAL ASSETS	Current	A
2018-004	RECORDING OF STATE AND FEDERAL GRANTS AND PREPARATION OF THE SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS	Current	A, D
2018-005	FEDERAL REPORTING	Current	E, F
2018-006	INTERNAL CONTROLS AND LIEN POLICY ON DELINQUENT UTILITY ACCOUNTS	Current	C
2018-007	INTERNAL CONTROLS - VENDOR MASTER FILE	Current	B

* Legend for Type of Findings

- A. Material Weakness in Internal Control Over Financial Reporting
- B. Significant Deficiency in Internal Control Over Financial Reporting
- C. Other Matters Involving Internal Control Over Financial Reporting
- D. Material Weakness in Internal Control Over Compliance of Federal Awards
- E. Significant Deficiency in Internal Control Over Compliance of Federal Awards
- F. Instance of Noncompliance related to Federal Awards
- G. Non-compliance with State Audit Rule, NM State Statutes, NMAC, or other entity compliance

Findings

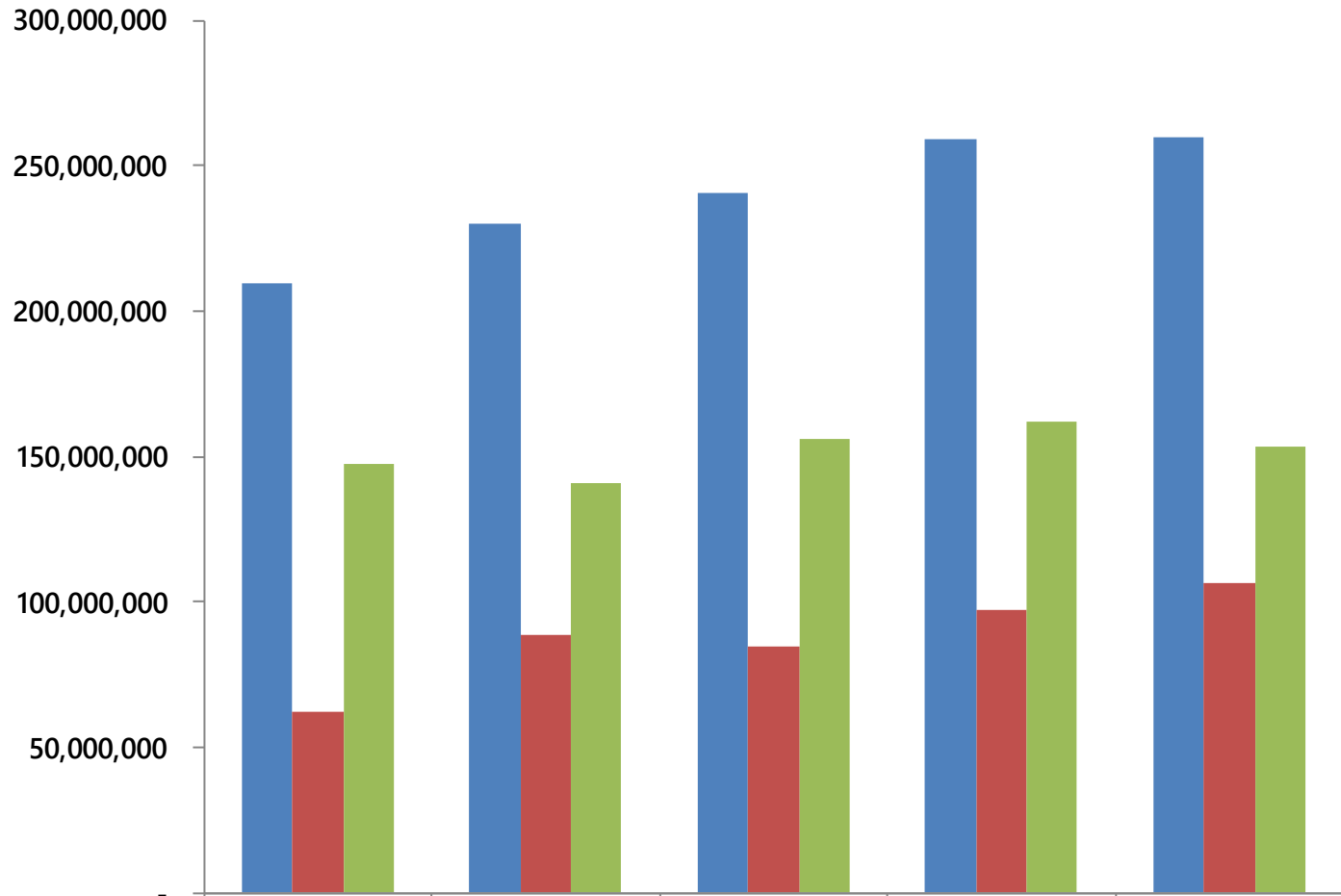


Develop	A uniform cash receipt collection policy confirming balances at individual cash collection sites.
Create	A structured policy and procedure that requires cash over/short form when discrepancies in cash counts are found
Evaluate	Deficit fund balances

Recommendations



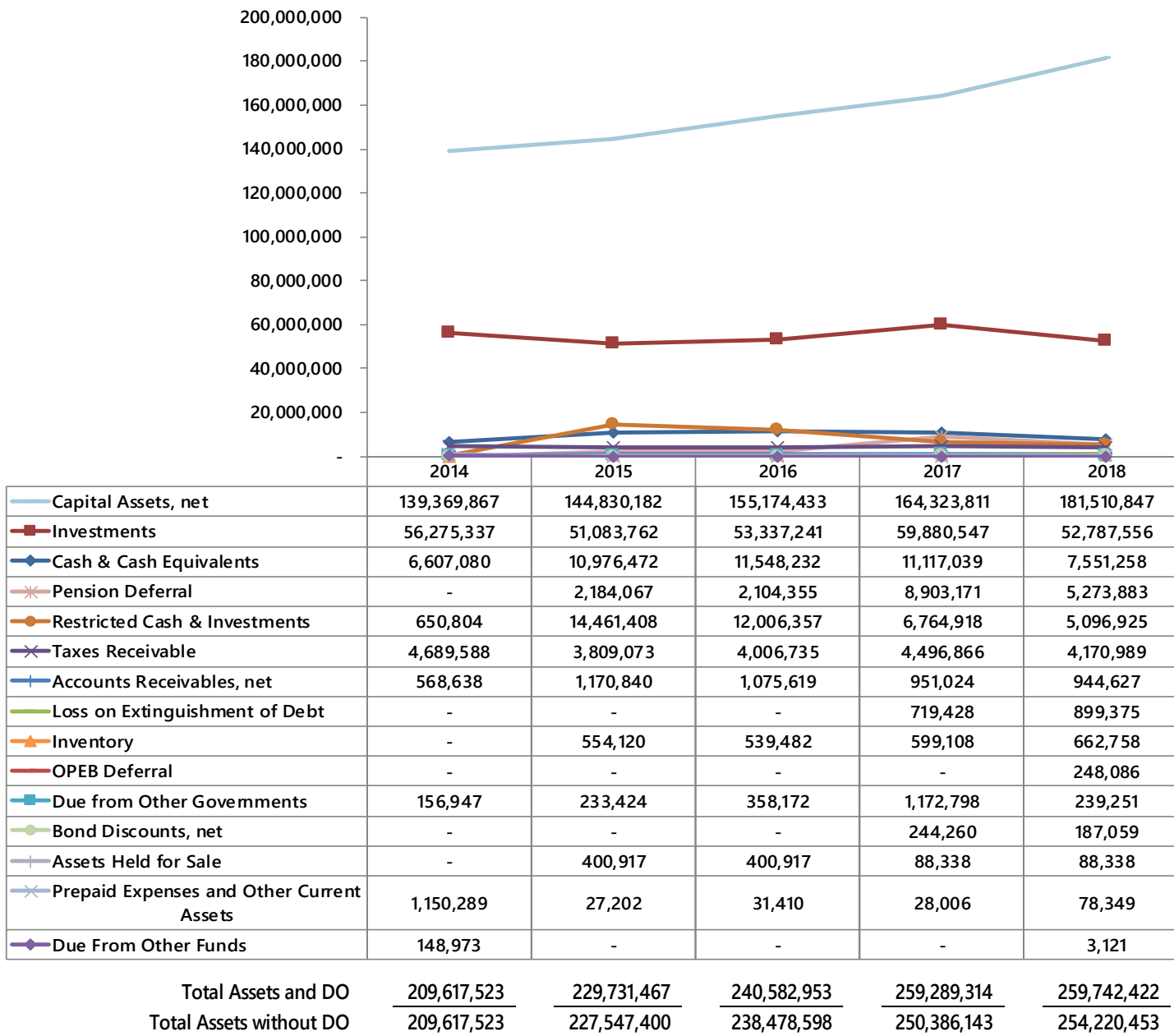
Balance Sheet Analysis



	2014	2015	2016	2017	2018
■ Assets and Deferred Outflows	209,617,523	229,731,467	240,582,953	259,289,314	259,742,422
■ Liabilities and Deferred Inflows	61,912,350	88,626,965	84,583,837	97,493,178	106,284,991
■ Net Position	147,705,173	141,104,502	155,999,116	161,796,136	153,457,431

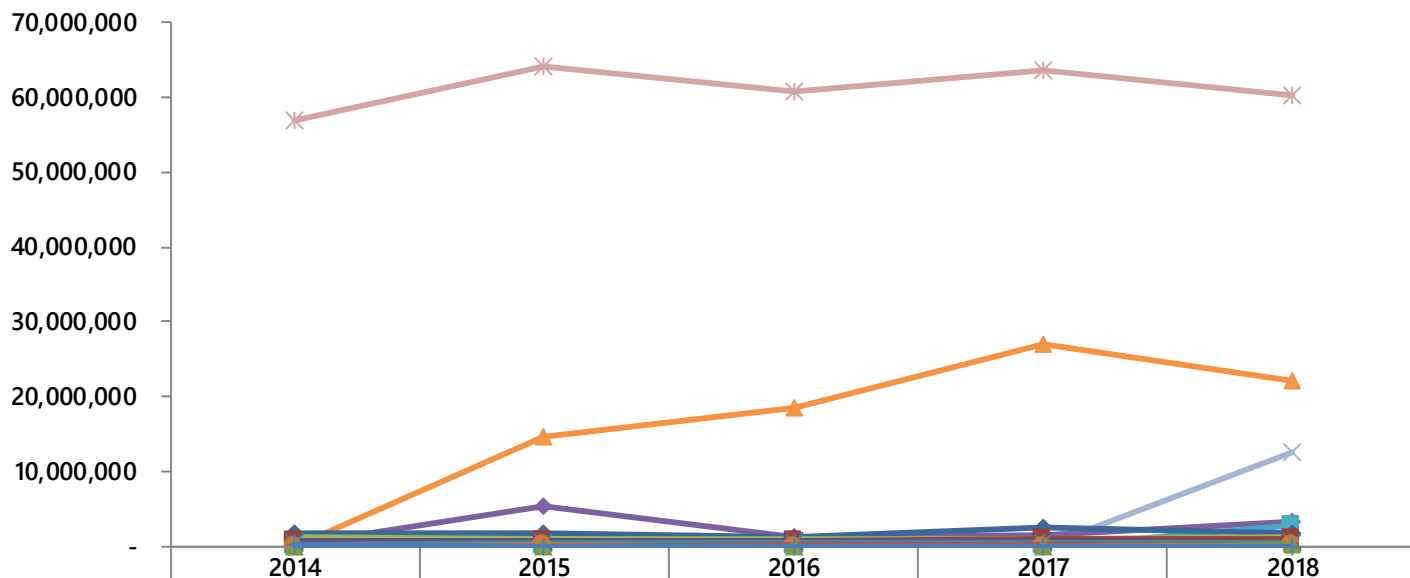


Assets and Deferred Outflows Over Time





Liabilities and Deferred Inflows Over Time



Long Term Debt	56,888,357	64,240,560	60,893,039	63,619,879	60,313,458
Net Pension Liability	-	14,486,349	18,558,534	26,926,596	22,213,058
Net OPEB Liability	-	-	-	-	12,542,302
Pension Deferral	146,489	5,368,702	1,166,863	1,416,869	3,288,349
OPEB Deferral	-	-	-	-	2,854,599
Accounts Payable	1,597,685	1,672,330	1,235,034	2,561,347	1,686,163
Compensated Absences	1,309,323	966,468	860,750	1,041,893	1,234,935
Accrued Payroll Expenses	639,731	647,104	708,107	804,560	900,403
Deposits Held in Trust for Others	790,790	745,851	679,329	673,373	659,069
Accrued Interest Payable	343,918	466,643	410,536	368,679	358,306
Other Accrued Liabilities	-	26,182	2,446	1,430	101,853
Unearned Revenue	47,084	6,776	69,199	78,552	74,741
GRT Payable	-	-	-	-	54,634
Due to Other Funds	148,973	-	-	-	3,121

Total Liabilities and DI

61,912,350

88,626,965

84,583,837

97,493,178

106,284,991

Total Liabilities w/out NPL, NOPEBL, DI

61,765,861

68,771,914

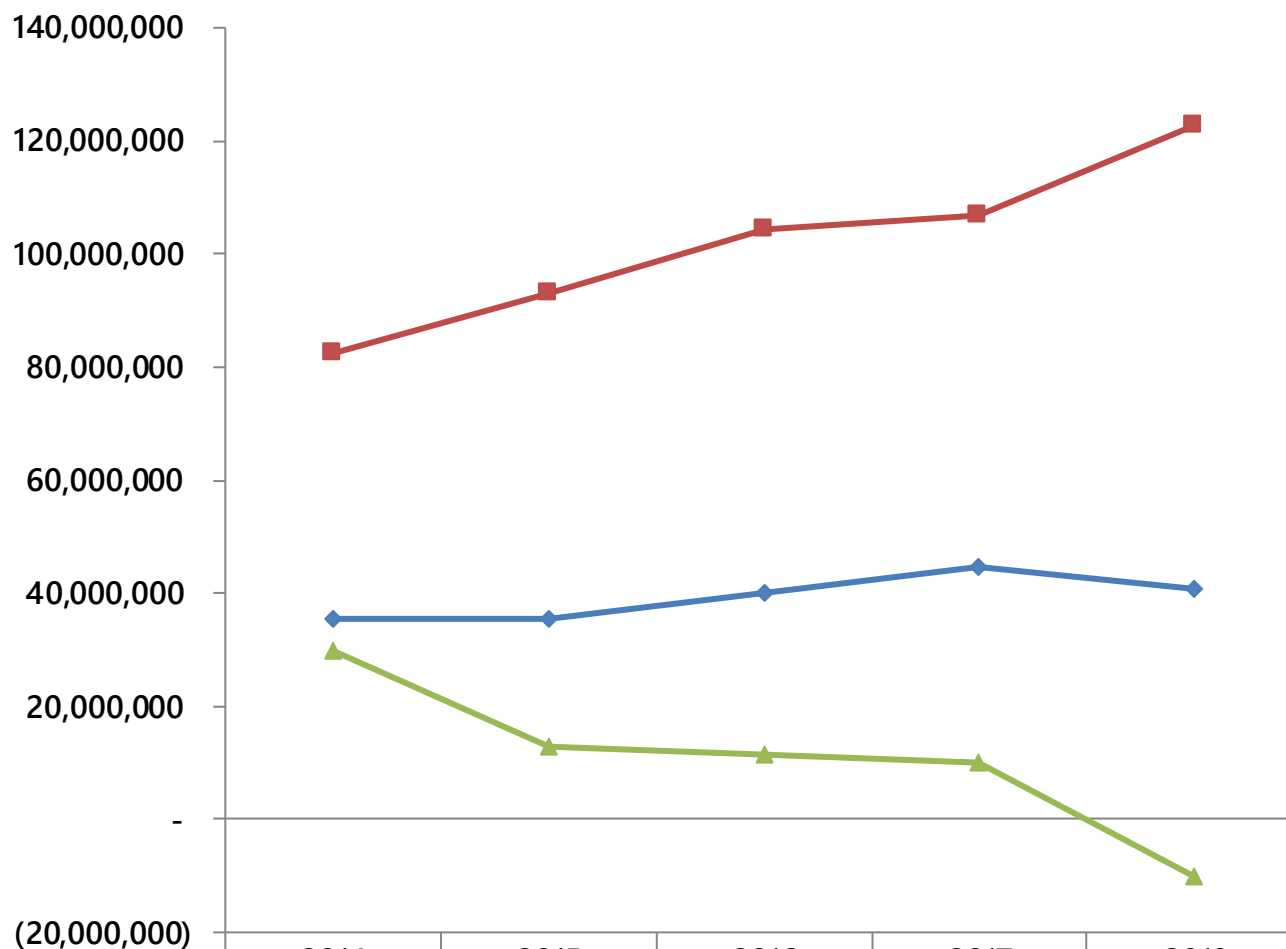
64,858,440

69,149,713

65,386,683



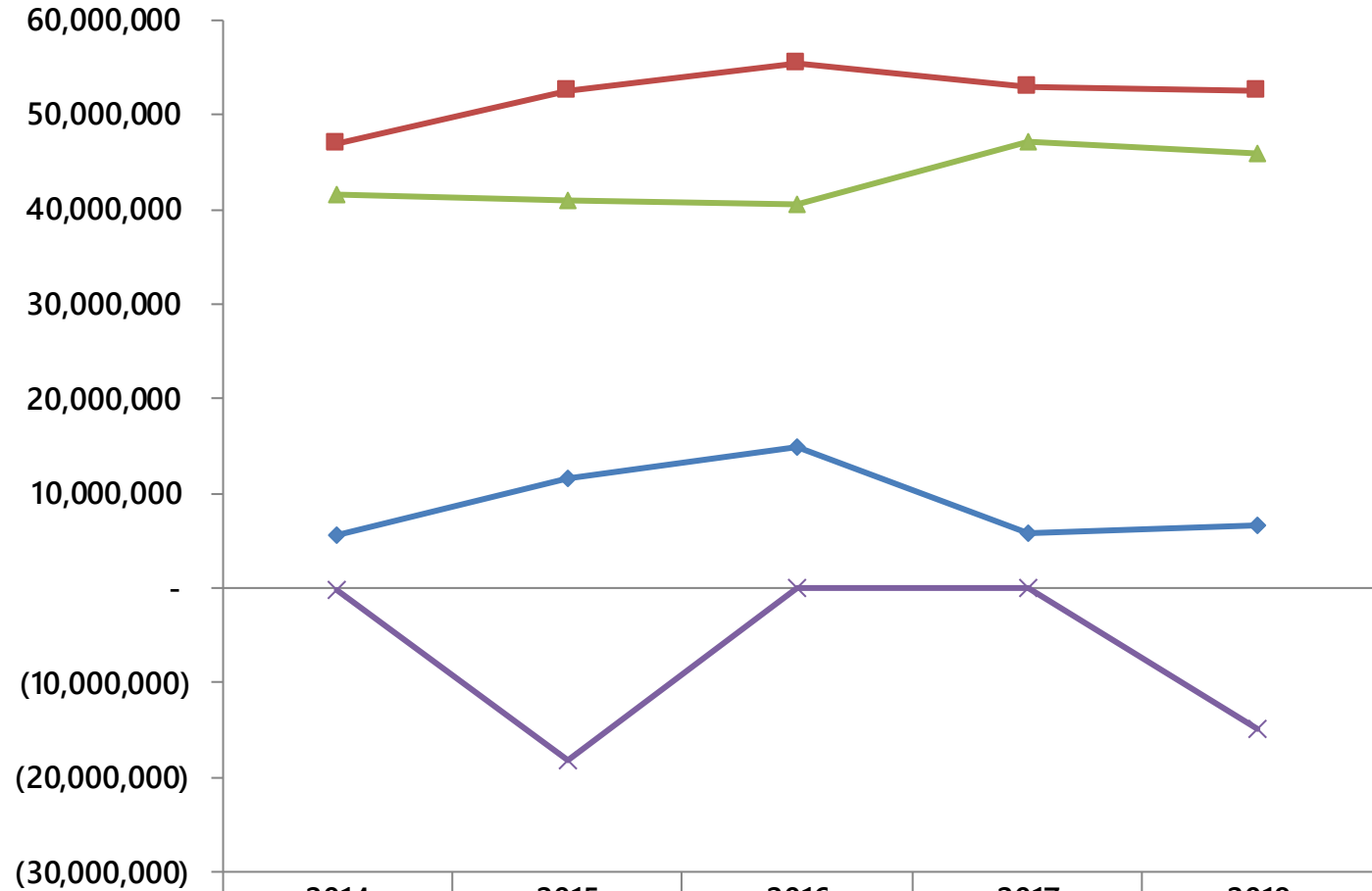
Net Position Over Time



	2014	2015	2016	2017	2018
Net Investment in Capital Assets	82,481,510	92,859,412	104,342,490	106,934,501	122,688,571
Restricted	35,330,888	35,527,568	40,027,734	44,783,349	40,746,955
Unrestricted	29,892,775	12,717,522	11,628,892	10,078,286	(9,978,095)
Total Net Position	147,705,173	141,104,502	155,999,116	161,796,136	153,457,431
Unrestricted w/out NPL, NOPEBL, DI, DO	30,039,264	30,388,506	29,249,934	29,518,580	25,398,244



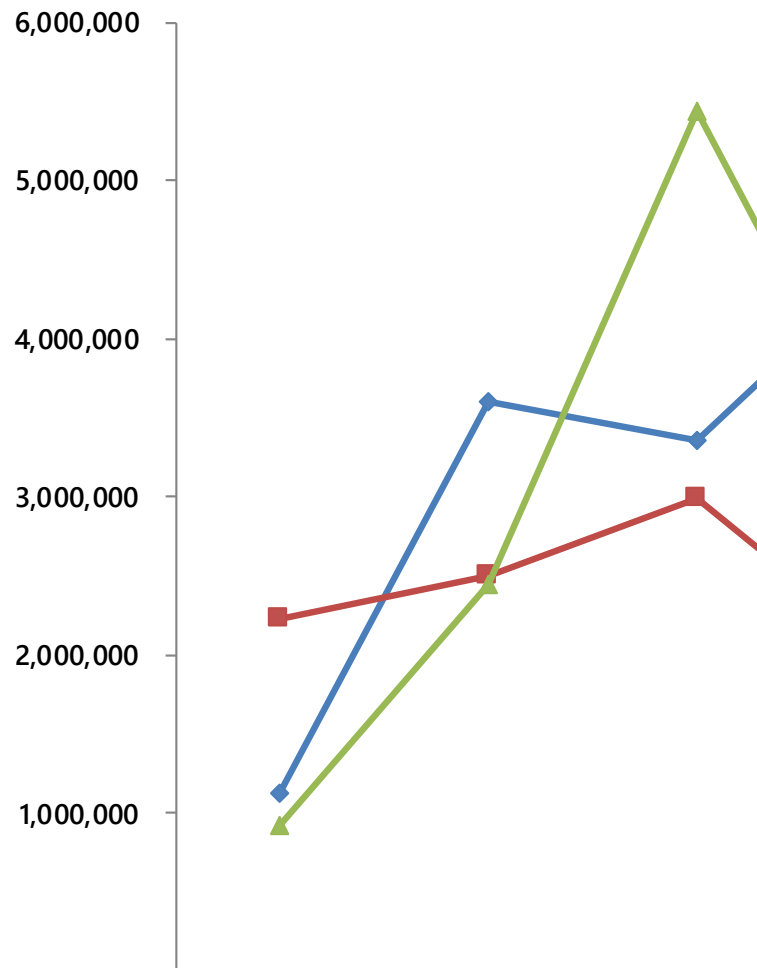
Change in Net Position



	2014	2015	2016	2017	2018
Total Revenue	46,977,579	52,473,136	55,350,070	53,028,641	52,511,083
Total Expenses	41,487,699	40,837,761	40,455,456	47,231,621	45,853,064
Change in Net Position	5,489,880	11,635,375	14,894,614	5,797,020	6,658,019
Restatements	(233,630)	(18,236,046)	-	-	(14,996,724)



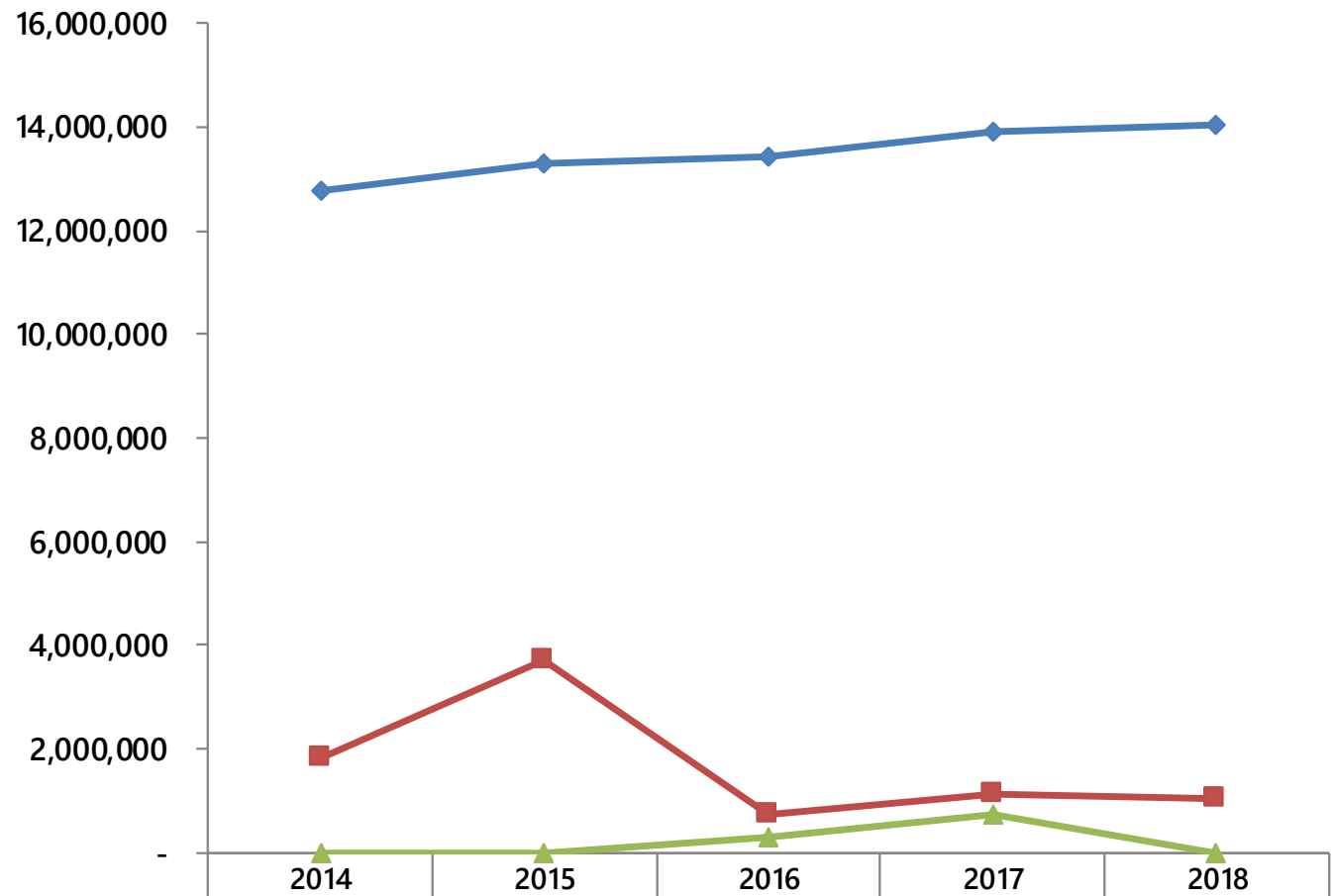
Program Revenue - Governmental Activities



	2014	2015	2016	2017	2018
Charges for Services-GA	1,133,764	3,609,636	3,356,051	4,594,106	3,945,358
Operating Grants & Contributions-GA	2,230,300	2,503,511	2,995,482	1,913,394	2,126,903
Capital Grants & Contributions-GA	925,396	2,440,854	5,445,247	2,934,258	3,002,975
Total Governmental Activity Revenue	4,289,460	8,554,001	11,796,780	9,441,758	9,075,236



Program Revenue - Business-Type Activities

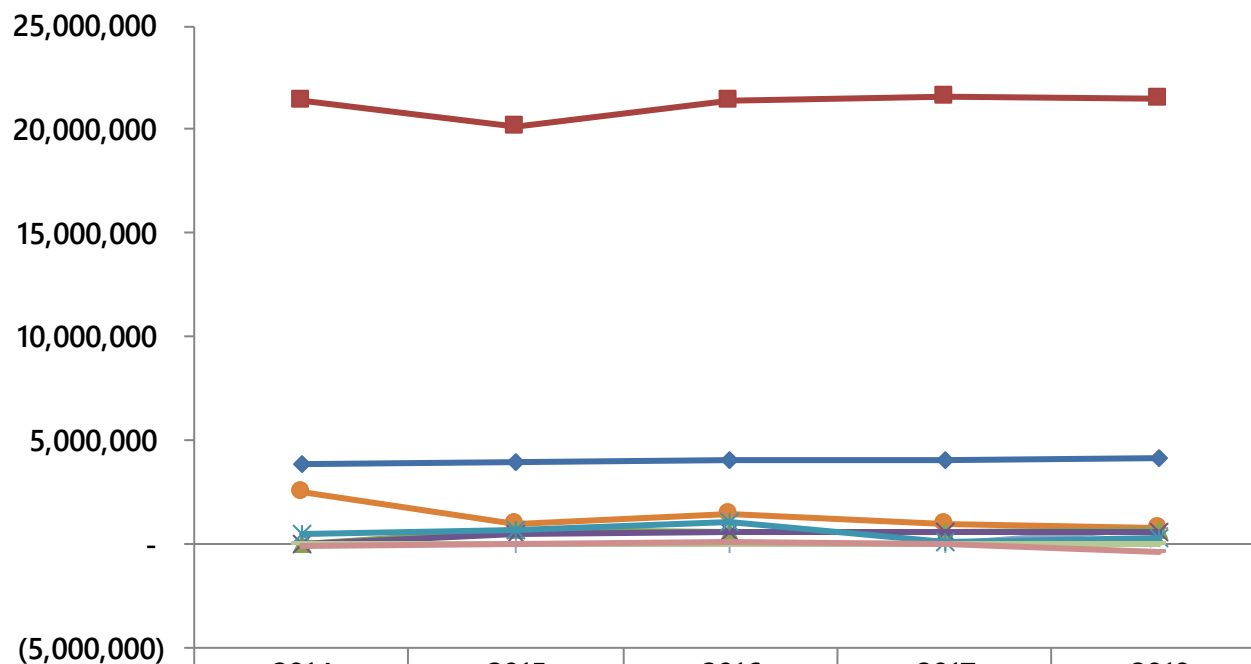


Charges for Services-BT	12,756,317	13,314,229	13,446,558	13,897,651	14,042,501
Operating Grants & Contributions-BT	1,823,274	3,704,920	716,843	1,138,149	1,020,839
Capital Grants & Contributions-BT	-	-	302,021	746,681	-

Total Business-Type Activities Revenue	14,579,591	17,019,149	14,465,422	15,782,481	15,063,340
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Program Revenue - All Other



	2014	2015	2016	2017	2018
■ Gross Receipt Taxes	21,429,277	20,152,287	21,347,747	21,583,502	21,521,753
◆ Property Taxes Levied for General Purposes	3,803,952	3,909,211	4,011,022	4,022,781	4,182,583
+ Donation of Fixed Assets	-	-	-	-	774,816
○ Miscellaneous Income	2,478,720	1,005,397	1,453,288	946,456	763,177
▲ Gas Taxes	-	667,012	611,542	607,489	639,869
✕ Lodger's Tax	-	500,800	530,113	551,102	598,010
* Investment Income	468,022	643,971	1,035,300	65,552	261,996
— Transfers	1,720	1,720	1,720	1,720	1,720
— Gain/(Loss) on Sale of Assets	(73,163)	19,588	97,136	25,800	(371,417)
Total General Revenue	28,108,528	26,899,986	29,087,868	27,804,402	28,372,507



Expenses By Type

35,000,000

30,000,000

25,000,000

20,000,000

15,000,000

10,000,000

5,000,000

-

	2014	2015	2016	2017	2018
Governmental Activity Expenses	27,336,924	26,792,750	26,784,173	30,953,242	30,110,294
Business-Type Expenses	14,150,775	14,045,011	13,671,283	16,278,379	15,742,770
Total Expenses	41,487,699	40,837,761	40,455,456	47,231,621	45,853,064



Where did the Money go in 2018?

Public Safety, 29%

General Government, 26%

Culture & Recreation, 21%

Public Works, 19%

Interest, 4%



Where did the Money go in 2017?

Public Safety, 29%

General Government, 29%

Culture & Recreation, 16%

Public Works, 21%

Health & Welfare, 1%

Interest, 5%



Wrap Up

Ensure You Receive the
Adjusting Journal Entries
and Final Trial Balance

Number of Hard Copies
(20) Requested of Audit
Report



On Call Throughout The Year

Farley H. Vener
President & Managing Shareholder

(505) 883-8788 (o)

(505) 385-4899 (c)

FVener@HL-cpas.com

Hinkle + Landers, PC

404 Brunn School Rd.

Bldg. B

Santa Fe

NM 87505

2500 9th Street NW
Albuquerque NM 87102



We appreciate all the
support we received
from Finance and
Management!

THANK YOU

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 4/23/2019

Report Date: 4/19/2019

Report No: 2.

Submitted By: Eric Barraza

Subject: Approve the minutes for the April 9, 2019 Regular meeting. *(Eric Barraza, Deputy 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
April 9, 2019**

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

**JASON BALDWIN, MAYOR PRO-TEM
DUSTY WRIGHT, COMMISSIONER
BRIAN CESAR, INTERIM 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 Deputy Clerk. Deputy Clerk Barraza announced there was a quorum present. Invocation was given by Pastor Gilloth and the Pledge of Allegiance was led by Commissioner Rardin.

APPROVAL OF AGENDA

City Attorney Schreiber asked to pull Items 3 and 5.

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 of Purple Up Day for Military Kids Day Proclamation. (*Richard Boss, Mayor*)

Mayor Boss read and presented the Purple Up Day for Military Kids Day Proclamation to Ms. Goodier.

2. Demonstration of the city's new Customer Service Portal for Water. (*Mark Threadgill, Customer Service Manager*)

Customer Service Manager Threadgill demonstrated the new Customer Service Portal for water on a projector. The system was designed for the customer to see water usage, billing and other options. He explained the process, what will be seen on the customer's screen and what everything means. The system will be able to tell a customer what the estimated or projected amount for the upcoming bills.

Commissioner Payne asked if this is separate from the billing system. He answered yes; this is a standalone, cloud-based Software service, but it does take information from their billing system. She said it is too bad that they could not have an all in one system. He explained that there was an option of a single sign on, but there are a lot of problems with that. Commissioner Payne said she received a call from a friend asking why she got an email from the City that said she may have a leak somewhere. He explained that on the Administration side of this, they receive flags. He said in this case they probably got a caution flag that said customer used so many gallons per hour for the last seven hours. He said he could click two buttons and send an email to the customer that says that we have noticed that they are using this much water. He said it is just another way of letting the customer know that they may have a leak.

Commissioner Hernandez asked Customer Service Manager Threadgill to explain the rest of the project, the larger meters and when those will be in place. He said during the implementation of the AMR they purposely skipped doing anything above one and a half inch to eight inch. He said those have not been done yet, they are in the process of doing them. There is a line item in the FY 20 budget request that the Commission will see soon for the additional funding to finish that. He said if you have a manual read meter now, the data will not show up here for obvious reasons, they don't have the radio

reads to populate the data. As they change those out, they immediately make sure that it is AMR compatible. He said once they program it, customers will be able to look it up on this system. He said it will not be absolute real time, but not less than 24-hour data.

3. Present 2018 Audit Summary Presentation. (Farley Vener, CPA, CFE, CGMA)

Item removed.

PUBLIC COMMENT

Eugene Downer commented on the following:

He said the City needs to do something about Alamotero Rd. He also spoke on the growth of medical facilities in the City.

CITY MANAGER'S REPORT

Interim City Manager Cesar made the following remarks:

1. He said the Park's staff has completed the installation of pavers at the Alamogordo Family Rec Center in the pool area.
2. He said Keep Alamogordo Beautiful (KAB) volunteers performed much need painting on the dugouts, the press box and the railing at the Griggs Sports complex.
3. He said the City has been in discussions with the County to do some joint City/County projects. He said they are at the point where Public Works Director Garner will be bringing items to the next couple of meetings. He discussed an MOU between the City and County to not only take care of Alamotero, but Canal, Eddy and a number of other streets that were chipped sealed. He said the City does not have the ability to chip seal, that is contracted out.
4. He said the Civic Center will have their new electronic marquee installed beginning April 16, 2019. That was a Capital Project that the Commission approved for this fiscal year.
5. He said the County held a Special meeting on the African Rue, an invasive, noxious weed. The County Commission did pass a Resolution declaring a State of Emergency regarding African Rue and ordering action taken to counter it. He said the City has 1,400 acres around the Airport property, and by FFA regulations, the city needs to maintain, keep the weeds cut down along the runways, taxiways to keep that safe for aircraft coming in and out. He said for the rest of the property it is natural growth. He said in the past the City has made attempts to try and control the weeds, the African rue, and they have not had really great success. He said he spoke with Ms. Milne, a representative from the Soil and Water Conservation District. She said she has funding and asked for permission to have a contractor come onto the City Airport property and treat as much as they could, which he did give that permission today. He said in the proposed budget for next fiscal year, he asked the Finance Director to add in a project in the amount of \$20,000 to address the noxious weeds on City property, they would also be going onto private property and that would be for the Commission to decide during the budget hearings, if they would wish to have that in the budget or not.

Commissioner Hernandez left the meeting at 7:03 p.m.

Commissioner Hernandez returned at 7:05 p.m.

Commissioner Sikes asked Interim City Manager Cesar what they treat with. He explained that they use a different chemical for each weed. He said for the African rue it is a form of Round-up and then a product called thresher or thrasher. He said they have people to apply it, and they must be licensed. It is not something that you could pick up at Home Depot, Lowes or Walmart. Commissioner Sikes said with all the lawsuits for Round-up, she is concerned that any area that might be accessed by the public, that they are using toxic chemicals that could put them in a position at some point. Interim City Manager Cesar said that is the reason that you have to have someone that is properly licensed to use those herbicides and they are not looking at applying at Alameda Park. He explained that they are looking at public properties that are not accessed by the public.

REMARKS AND INQUIRIES BY THE CITY COMMISSION

Commissioner Rardin made the following comments:

He asked when the last time was, they did a traffic study at First and the bypass and looked at potentially putting a light in. He said that intersection is getting very dangerous and thought there have been two fatal accidents at that intersection the past few years. Interim City Manager Cesar said the Regional Representative from NMDOT was here about 3 months ago to discuss a project. He said at that time they did ask that they relook at the First and the bypass, but he has not heard anything back about that. He said Public Works Director Garner will follow up on that in the morning.

Mayor Boss made the following comments:

He announced it was "Be Kind to a Lawyer Day".

Commissioner Sikes made the following comments:

Commissioner Sikes gave a report from a Municipal League meeting in Ruidoso. She said after the Legislative session they typically do a legislative round-up and tell them about the bills that were important for municipalities. She said the Commission wants to make sure that they get that information to the City's Finance Director because a lot of the bills have a lot to do with some of the things that they are doing here in the City. She said particularly Senate Bill 117. It is part of the Clean Water State revolving fund, they talked about monies available to municipalities. She said they talked a lot about where our businesses locally report Gross Receipts Tax (GRT), but the City never gets a really accurate number because of the software that they use. She said they really don't know, how much is reported and how much they should be getting back, but they've apparently done something that the City is going to know that now.

Commissioner Payne made the following comments:

Commissioner Payne also gave a report on the same meeting Commissioner Sikes attended. She mentioned legislation for getting a new license plate every 7 years and a fee to be included. She said each year the City gets dividend returns from the Self Insurer's fund and this year it looks like Alamogordo is going to receive a little over \$99,000 back. She said they talked about the elections and how they have changed the election cycle. She said they were the only municipality that day that actually voted to scale back 9 weeks rather than add a year and a half. She said they were very concerned about those municipalities that added that year and half on. Mayor Boss said they are predicting lawsuits against all of those communities, but we will avoid that by the way they have done it. Commissioner Payne said they were impressed that the City of Alamogordo came up with the idea to pay the Commissioners the nine weeks that they would miss. She said they cannot take credit for that idea; it was the City Attorney's idea. She said the City of Alamogordo will probably be the model for that, with the rest of their presentations.

Commissioner Rardin made the following comments:

He talked about the minimum wage and asked Interim City Manager Cesar to give them an update about what kind of fiscal impact they will be looking at next year. Interim City Manager Cesar said that will part of the budget presentation. He explained that it will dependent upon what the Commission passes. He said the staff recommendation going forward to Commission is included in the numbers, so it is not a number that you have to add to the budget. He explained some of the options. Commissioner Rardin asked if they will have projections for the future. Interim City Manager said both Human Resources Director Josselyn and Finance Director Hernandez are both nodding their heads, yes.

CONSENT AGENDA

4. Approve the minutes for the March 26, 2019 Regular meeting. (Rachel Hughs, City Clerk)

5. Consider, and act upon, Resolution 2019-13 for the acceptance and approval of the FY18 Audit. (Stephanie Hernandez, Finance Director) Roll call vote required.

Commissioner Hernandez moved to approve item 4 of the consent calendar.

Commissioner Rardin seconded the motion.

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

NEW BUSINESS

6. Consider, and act on, request for leak abatement for 1016 Paradise Avenue in the amount of \$4,090.59. (Mark Threadgill, Customer Service Manager)

Customer Service Manager Threadgill said this a request for a leak abatement. He said they do meet the requirements for the leak abatement. He said it is two consecutive billing cycles. The first billing cycle was under \$2,500 so staff could approve that. The second billing period exceeds the \$2,500 limit for staff to approve and that is why the issue is before you today.

Mayor Boss asked if staff recommended that they approve the request. Customer Service Manager Threadgill said that would be staff's recommendation.

Mayor Pro-Tem Baldwin moved to approve.

Commissioner Rardin seconded the motion.

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

Commissioner Sikes asked if the system, that was demonstrated, would have completely absorbed this situation much earlier. Customer Service Manager Threadgill said that is the intent. He said there are two pieces to that. One is that they have to sign up, and two is they have to respond to whatever is sent. He said right now it is a full manual process. Commissioner Sikes said the situation that Commissioner Payne talked about the person emailing her, would they have been flagged with that much water usage. Customer Service Manager Threadgill answered yes, they would have definitely got multiple flags even if they wouldn't have had a threshold set, but because theirs would have been a severe level, they would have received emails from the City that day. He talked about the importance of keeping the customer's contact information updated in making the most of the new system. Commissioner Sikes said assuming that everything is working well, there is a chance that the Commission will not be presented with these kinds of abatements in the future and they will be saving a lot of water. Customer Service Manager Threadgill answered that is their goal.

Commissioner Payne asked if this is only going to work for account holders. She said if you have a rental house, but the water is in the tenant's name, then as the owner of the house you are not going to be able to see water consumption. Customer Service Manager Threadgill answered right, it's the account holder that can register to see their account.

7. Consider, and act upon, an MOU with Otero County Economic Development Council to provide funds for branding and marketing. (Brian Cesar, Interim City Manager)

Interim City Manager Cesar said this somewhat ties to Commissioner Rardin's question about the minimum wage and the budget. He said at the beginning of this fiscal year, through the budgetary process, the Commission approved \$450,000 to go the Branding Alliance, formerly the PR Task Force. He said at the time, the City did not have a contract with Otero County Economic Development Council (OCEDC), and at that time a Memorandum of Understanding (MOU) was generated where the monies would pass through the Chamber to the Branding Alliance and invoices would flow back. He said the Branding Alliance wanted to know if they could have the MOU directly through OCEDC, since they are now ready to start spending these funds. In reviewing the MOU with the Chamber, there were a number of issues such as they are no longer the PR Task Force. He said the \$450,000, was budgeted this fiscal year and ended this fiscal year. He said in Mr. French's presentation, last commission meeting, they were using other monies up until now. He said

if the current MOU ends this fiscal year, they would have to expend all the funds within a very short time frame. He said there were a few other items that they cleaned up. He said the MOU specified one company, and in Mr. French's presentation, they don't just use Sunny 505, formerly HK Advertising, they use other vendors. He said he let Mr. French know that the City still has issues to work out with the proposed FY 20's budget to incorporate the new minimum wage. Even before minimum wage was considered, the City had a deficit, in the General Fund, of just over a \$1 million. He let Mr. French know that with this going forward, staff's recommendation was going to be no, they need to terminate this agreement or MOU and pull the money back in, but ultimately it is the Commission's decision. He said they continued to discuss what the Branding Alliance has done, where they are going and contracts that they already have in place. He said through that negotiation, the new MOU being brought forward for the Commission's approval would reduce the contribution to \$240,000, and \$210,000 would not be expended and it would go right back into the general fund and help bridge that gap.

Mr. French talked about the meeting. He said he and Interim City Manager Cesar are in a little bit of disagreement, however at the end of the day the Branding Alliance wants to be a team player. He said the Branding Alliance knows that the City is going to have a very difficult challenge ahead of them when the budget season rolls around. He thinks that they cleared up some technical difficulties with the old MOU, primarily it exhausted and they were not going to be able to use it. He said he explained the last time he was before the Commission, that the Branding Alliance has been very frugal with that money and they hadn't started spending it, and now they have contracts against it that they need to start spending it. He said when he heard that City staff's recommendation would be to claw back all of it, they negotiated. He said they came up with \$240,000 instead of the \$450,000. He does not agree with that. What he would like to see is for the City to leave the \$450,000 in the budget. He said the City had budgeted for it; it was a wind fall back of a rebate from the landfill. He said there is also a paragraph that gives the Commission the authority to end this agreement if the City has a budget crisis. He said the Commission has that authority to modify this. He said City staff would have recommended zero, he is recommending \$450,000 and they came to \$240,000 as a middle ground. He said he would like the Commission to fund the name plate of it at \$450,000 and then when you get through the budget cycle, if they can't get it at \$450,000, he'll understand. He said it is the Commission's decision. He then talked about the values of marketing Alamogordo. He told the Commission as they consider what to do on this, he would encourage them to think about our future and what the Branding Alliance is trying to accomplish for all the citizens of Alamogordo. He said they are volunteering their time to try and benefit everyone.

Mayor Boss said he thinks when the Commission passed the original MOU and when they agreed to the original \$450,000, everybody there voted for it. Mr. French said seven votes. Mayor Boss said yes, seven people supporting it, and you still have seven people supporting it, he believes. He said it is really no different if they go ahead and take the \$240,000 now. He told Mr. French you know that if the City does have the funds in the future that they can expend, they will provide that. He said the City is in a tight situation this year. They got hit by the minimum wage bill. He said he supports what they are doing. He has supported them from the get-go, but he also feels like the Commission has a fiduciary responsibility to balance the budget. He said he would personally feel better putting the \$240,000 in and if they have revenue to do it later, the Commission approves the difference. He said that is just his thoughts on this.

Mayor Pro-Tem Baldwin asked Mr. Merrick to speak before he asked his questions.

Rich Merrick commented on the following:

He said he thinks branding the City is an excellent idea. He asked Mr. French if \$210,000 was clawed back from the \$450,000 that was first approved. He said even at \$240,000, we talk about rebranding the City, and we have a pool that has no cover. He asked how they can bring in retirees that want to use a pool year-round, that we can't afford a cover for them. He said almost daily he can find water running down our streets because of the infrastructure that has not been maintained over the years. He talked about the conditions of some of the roads in the City. He said if he was a business man, he would wonder if he would really want to put his business here. He said we have to look at the base needs of what people are going to need coming into the City to also attract those people. He said we have a lot of great things here, but people that are going to want to move here are going to look at the infrastructure and if it is reliable. He said it is not all about painting a pretty picture. He said if he wanted to sell his store, he could put all the pretty stuff up front but when you walk through the doors of his store and the floors are dirty and he does not have the product, you are not coming back.

Mayor Pro-Tem Baldwin said changing this process right now prior to our budget hearings, he doesn't necessarily agree with. He would prefer to go through the budget hearings and see where they sit. He said as Mr. French said, the Commission is going to have a lot of decisions on what to provide and what not to provide the City. He said he is for changing the MOU to meet the wording requirements so that they can pay the organization, but he is also for keeping it the original contracted amount. He said in reference to the money that they haven't spent, the majority is coming out of the general fund, so it is not like that money goes away. He said if they don't spend it, it rolls over on to next year. He said they all know that they will come back next year and ask for more money, so technically it could reduce the amount of money they ask for next year. He said they can still fulfill the contract with the portion of the general fund this year and a portion from next year. He said in reference to what Mr. Merrick said, they've always been providing the infrastructure, they've always been making the decisions on what it is they are supposed to do. This is the first time the City stepped outside the box in reference to the way a lot of municipalities think and are asking for some advertising dollars to push our community. This is not something that is done in every municipality, it is something that this Commission has talked about several times. He said in his seven years here there are a lot of things that he has been proud of, but this is one of the first things they have done as a municipality that's really different and could positively affect our community. He said yes, those businesses will come into town and look at the water, yes, they'll look at the condition of the roads, but they need to know about the City first. He said they can approve all they want, but if they are not coming, if they don't know about us, if they don't know how great our Golf Course is, how great our attractions are, our parks are, how great our citizens are, how great our schools are and are going to be. He said it is building a City that no one will come to unless you tell them that you are here. He said he is not opposed to making the tough decision and clawing it back if they have to, but they do not have all the information in front of them right now. He said his recommendation is to continue to change the MOU so that the wording is proper, keep the contracted amount the same and then they'll make that decision a little bit later. He said you cannot understate the importance of advertising for your community. He said like he said, not a lot of communities do it, they are ahead of the curve in that respect, and he would really hate to lose the momentum that they are getting from it at this point.

Mayor Boss said he agrees with everything Mayor Pro-Tem Baldwin said. Mayor Boss said he is probably not going to be very popular for this, but he still and maybe it's because he is an Accountant, that he still feels like the Commission ought to balance the budget, and they ought to go with the \$240,000 at this point. He said with the understanding if they have the revenue six, eight or twelve months from now and you come back to the Commission requesting the other \$210,000 plus, that they are going to vote yes and give it to them. He said he feels very confident.

Commissioner Hernandez said he agrees with Mayor Pro-Tem Baldwin. He spoke about how he handles his personal finances and about his spending habits. He said we use money, we put money in different areas. He said he does not see it as a problem putting in there. This is something that is selling the City. He said you can't go out there and market yourself if you don't tell people what you have. You can't make money without spending money. These folks are going out there and putting their necks out there for the City of Alamogordo to promote us. He said one of the things that he thought of today, he was reading on some social media stuff, is all the negativity from that, and how do they overshadow that. He said we overshadow that with promoting what we have to offer here. He said there is so much to offer that people don't see it because they are seeing all this other stuff. He said let's overshadow it, and that's going to take a lot of effort and a lot of folks getting involved with it. He thinks it is worth that plus more.

Commissioner Wright said he agrees with both you guys. He asked if they have time to table this for now and leave it as is and revisit it after budget hearings. Interim City Manager Cesar said they are under contract now and he believes that there are some invoices are ready to come in. He said when they had their meeting, the contracts the Branding Alliance are under right now, they have \$120,000 committed for the next six months. He said you can approve it with the way it is right now. He said when they close out the year end, they have that first resolution of the new year that adjusts all the ending cash balances, at that point the Commission is going to know exactly where we are. He said what is going to be presented to the Commission is a balanced budget with all the reserves put in. The Commission can make the decision to fund the full \$450,000 tonight, during the budget hearings, or you can do it the second meeting in July when that Resolution comes forward and they can adjust the MOU at that point, it is really up to Commission. Commissioner Wright said he was bringing it up because if they adjust it now and put the \$450,000 back in

and correct the wording and span it out over the next three years, will they have to do it again come budget season and they need to cut that back to another amount. Interim City Manager Cesar answered yes. Commissioner Wright asked if they should do one now and then have to do it again a month or a month and half or should they leave it as is the \$450,000 granted the wording is not right, but they can fix that before the end of the fiscal year.

Mr. French said his recommendation is to either fund the \$450,000 with the new MOU or fund whatever number the Commission agrees on tonight, but the new MOU as it is written today is the language they need to continue to function. He said they actually can't submit their invoices to the City under the old MOU. There were too many technical mistakes.

Commissioner Rardin asked why they don't approve the MOU as written and have staff claw back the \$210,000 but earmark it for the Branding Alliance for the next budget cycle. In the event that they have the money, they will give it to the Branding Alliance but if the City needs it for other expenditures that they have to fund. He said it could be a line item that is earmarked for the branding alliance in this next fiscal budget, but in the event that they find that they absolutely have it because they cannot balance without it. Mayor Boss said that is exactly what he said.

Commissioner Payne said they are in a financial crunch. She said the City Commission made a commitment for \$450,000. She understands that they were supposed to use it by a certain date, but she feels like they are penalizing them for being fiscally responsible. She said financially this is the most stressful time, her time, on the Commission because she knows what is coming and she know they are going to have to make some hard choices. She said she heard what Mr. Merrick said, and she does not disagree. She said she thinks Mr. Merrick knows that they can't use this money for roads or infrastructure, that is not what it was there for. She would add that the City has had some major infrastructure and road improvements in our City. She said there is a street maintenance plan and they are implementing that and following through. She said her concern is that they made a commitment and she feels your word is worth something and they need to honor their commitment.

Mayor Boss said as a governmental entity, it's like the State of New Mexico when they were short on that budget, they were grabbing, clawing back every place they could. He said that is what a Municipality, State Agency or any Governmental Agency has to do. He said you are not really committing yourself, like you and I shaking hands.

Commissioner Payne said she understands that, and she does not disagree. She said what she is saying is that they are already predicting something that hasn't happened yet, and they gave their word. She said there has been a lot of talk on Social Media about how they have spent \$450,000 and we have got nothing for it. She said they haven't spent a dime of it yet. She thinks that in the grand scheme of things, she agrees with leaving it the way it is, and if they have to claw it back then they will, but she thinks they need to have that opportunity.

Mayor Boss asked the Commission if they would like to allow public comment. Mayor Pro-Tem Baldwin asked Mr. Martinez to speak as part of the committee.

Mr. Martinez said he understands what they are saying, but he thinks they are putting the cart ahead of the horse right now. He said they have been really frugal with this money, to the point they have been approved for months and they haven't spent a dime of it yet. He said they are not going to go out there and spend \$450,000 on a TV campaign, just to spend the money. He said the other thing that they probably haven't taken into consideration is a lot of other things are going up including; if you want to buy a car, buy it before June 30th because on July 1st your taxes are going up 33 percent. He said that is going to come back to Cities and to fund different government entities. He said they don't know exactly what the projection is for Fiscal Year 2019 and 2020 as far as the City goes because they are getting a lot more money from a lot of different sources after this legislative session. Mayor Boss said unfortunately, sometimes the City does not see that money. Mr. Martinez said they'll see some of it. Mayor Boss said they can't answer why, but some of it they don't see. Mr. Martinez said the car deal alone is going to raise an unknown million of dollars. Mayor Boss said it is like Amazon, they are paying tax now. The State is collecting money now from Amazon on taxes, but none of it is distributed to the municipalities. Mr. Martinez said that should come back

at some point. He said they have been very careful because it is the public's money not theirs and they will continue to do that.

Mayor Pro-Tem Baldwin made a motion to adjust the MOU with the correct wording so that they can conduct business with the original contracted amount. Commissioner Hernandez seconded.

City Attorney Schreiber said that is very confusing for the record. She asked for clarification, if Mayor Pro-Tem Baldwin is asking that staff adjust the wording on the original MOU in order to pay their invoices. He asked if that is not the wording they have in the current MOU. **He said so the motion should be for the wording in the new MOU and changing the amount to the original contracted amount.** City Attorney Schreiber said that was going to be her suggestion, if they would want to make the amount in the new MOU of the \$450,000.

Commissioner Rardin clarified the motion, it is going to be to approve this MOU with the \$450,000. Mayor Pro-Tem Baldwin said with the original contract amount, correct.

Mayor Pro-Tem Baldwin moved to approve as amended.

Commissioner Hernandez seconded the motion.

Motion carried with a vote of 6-1-0. Mayor Boss voted nay.

8. Consider, and act upon, award of Public Works Bid No. 2019-003 to Southwest Liner Systems, Inc. related to the Replace Trough Area - Lavelle Pump Station East Pond Cover project in an amount not to exceed \$64,258.92, including NMGR. (Bob Johnson, Engineering Manager)

Engineering Manager Johnson explained the project and what the work would consist of. He said the existing materials were installed in the early 1990s and has deteriorated to a point that it needs to be replaced.

Mayor Pro-Tem Baldwin asked if the City has used Southwest Liners before. He answered yes; the City has used them on a multitude of projects. The City has had zero issues with Southwest Liner Systems.

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, award of Public Works Bid No. 2019-001 to General Hydronics Utilities LLC related to the Canyon Road Water Line Extension project in an amount not to exceed \$189,350.19, including NMGR. (Nancy Beshaler, Project Manager)

Project Manager Beshaler explained the project. She said this is kind of an add-on project to the utility relocation work that is being done for the McKinley Channel. She said they have a section of about 700 feet of pipe that is currently 12 inches, and on each side, it ties into an 18-inch line. This project will accomplish upgrading and upsizing that pipe to the 18 inch so that it will be continuous 18-inch pipe. She said staff recommendation is to award the project to General Hydronics.

Commissioner Rardin moved to approve.

Commissioner Hernandez seconded the motion.

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

10. Consider, and act upon, first publication of Ordinance No. 1589, An ordinance amending City of Alamogordo Code of Ordinance Appendix B, Employee Manual. (Katie Josselyn, Human Resources Director) (Roll Call Vote Required)

Human Resources Director Josselyn presented the Ordinance amending the employee manual. She said staff has been tracking information over the past year, as the City has been using the new policies

and the new manual, and they have recognized some essential clarifications in the updates necessary for more effective operations with regard to effectiveness, interpretation, expectations and continuity. She said staff will continue to review the manual, once annually and they will present any recommended changes to the Commission for consideration. She said staff is recommending at this time several amendments to several sections of the manual. She said she provided these changes to the Commission several weeks ago and to both of the Unions.

Mayor Boss moved to approve.

Mayor Pro-Tem Baldwin 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 Barbara Jo Telles to the Mayor's Committee on Aging, Lori Adam and Moyra (Rita) Robuck to the Parks and Recreation Board and Dr. John Ely and Xochitl Valenzuela to the Senior Volunteer Programs Advisory Council. No one was opposed.

EXECUTIVE SESSION

12. Adjourn into Executive Closed Session in compliance with 10-15-1(H), NMSA 1978 (as amended) to discuss the Fairgrounds Parking Lot Lease. (Roll Call Vote Required).

Commissioner Wright moved to adjourn into Executive Closed Session at 8:11 p.m.

Mayor Pro-Tem Baldwin seconded the motion.

Roll Call Vote required.

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 April 23, 2019.

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 4/23/2019

Report Date: 4/17/2019

Report No: 3.

Submitted By: Eric Barraza

Subject: Approve the statements related to the Executive Closed Session held on April 9, 2019. *(Eric Barraza, Deputy Clerk)*

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation: Approve the following statements authorizing them to be included in the minutes of April 23, 2019: "The Governing Body of the City of Alamogordo, New Mexico, hereby states that on April 9, 2019, a Closed Executive Session was held and matters discussed in the closed meeting were limited only to: to discuss the Fairgrounds Parking Lot Lease.

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

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 4/23/2019

Report Date: 4/19/2019

Report No: 4.

Submitted By: Eric Barraza

Subject: Approve the statements related to the Executive Closed Session held on March 26, 2019. *(Eric Barraza, Deputy Clerk)*

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation: Approve the following statements authorizing them to be included in the minutes of April 23, 2019: "The Governing Body of the City of Alamogordo, New Mexico, hereby states that on March 26, 2019, a Closed Executive Session was held and matters discussed in the closed meeting were limited only to: discuss purchase of real property located at 209 10th Street.

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

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 4/23/2019

Report Date: 3/27/2019

Report No: 5.

Submitted By: Petria Schreiber

Subject: Consider, and act upon, Ordinance 1590 for final publication, Amending Sections of Chapter 7 of the Alamogordo Code of Ordinances. (*Petria Schreiber, City Attorney, Dwain Martinez, Animal Control Manager and Walter Oppie, Animal Control Officer*) **(Roll Call Vote Required)**

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation: Approve the ordinance.

Background: This chapter, written and revised by Animal Control officers, looked at and commented on by the public, adds additional protections in for animals and strengthens and makes more clear current ordinances.

ORDINANCE 1590 AMENDING CHAPTER 7 OF THE ALAMOGORDO CODE OF ORDINANCES REGARDING ANIMAL CONTROL

WHEREAS, the City of Alamogordo, New Mexico and its commissioners recognize that the ordinances regarding Animal Control have not been updated in many years;

WHEREAS, the City Commission wishes to strengthen and update its ordinances to be more in line with the needs of animal control today; and

WHEREAS, the City Commission recognizes animals as important and in need of protection;

BE IT ORDAINED by the City Commission of the City of Alamogordo, New Mexico that Chapter 7 of the *Code of Ordinances* be amended as follows:

Chapter 7 - ANIMAL CONTROL

ARTICLE 7-01. - IN GENERAL

7-01-010. - Definitions.

Adjoining lot or parcel of land means any lot or parcel of land which in any way and at any point abuts, adjoins or otherwise meets the property line of another lot or parcel of land and includes a lot or parcel of land which is divided by a dedicated street, alley or other public right-of-way, and which but for the street, alley or public-right-of-way would be abutting, adjoining or otherwise meeting the property line of another lot or parcel of land.

Adequate food means access to and the provision of food that is appropriate to the species and sufficient quantity to maintain each animal in good health; is easily accessible to each animal; is provided in a clean and sanitary manner.

Adequate living area means adequate space for exercise suitable to the age, size, species, and breed of the animal and includes adequate shelter and water.

Adequate shelter means provision of and access to shelter that is suitable for species, age, condition, size, and type of each animal.

(1) Shelter for animals shall consist of one of the following:

- a. Inside the residence of the animal's owner.
- b. A shelter that is an enclosed structure of appropriate dimensions for the breed and size of the animal, consisting of 3 solid walls, a solid roof, a floor that is raised off of the ground, and suitable insulation protecting the animal from the elements. The shelter shall be structurally sound and of solid construction with no cracks, open seams, or holes and the entire structure shall be leak proof. The shelter shall be maintained in good repair to protect the animal from injury. The shelter shall be free of standing water or mud, unless such standing water or mud is appropriate to maintain good health. The shelter shall contain suitable bedding as appropriate to species and/or insulation suitable for the breed when the outdoor temperature is below 45 degrees unless the shelter is heated. The shelter shall have adequate

ventilation. The shelter shall be sufficient in size to allow each animal to stand up, turn around, lie down, and stretch comfortably. Areas beneath a car, truck, mobile home, or machinery do not qualify as shelter.

Adequate water means constant access to a supply of unfrozen, potable water provided in a sanitary manner suitable for the species, in sufficient amounts to maintain good health.

Africanized honey bee means any hybrid bee that is a cross between *Apis mellifera* and *Apis mellifera* scutellata.

Animal is any living nonhuman mammal, bird, reptile, or amphibian.

Apiary means the assembly of one (1) or more colonies of bees at a single location.

At large means any animal free from physical restraint beyond the boundaries of the owner's fenced in premises.

Beekeeper means a person who owns or has charge of one (1) or more colonies of bees.

Beekeeping equipment means anything used in the operation of an apiary, such as hive bodies, supers, frames, top and bottom boards and extractors.

Bite means an actual puncture or tear of the skin inflicted by the teeth of an animal.

Colony or hive means an aggregate of bees consisting principally of workers, but having, when perfect, one (1) queen and at times many drones, including brood, combs, honey and the receptacle inhabited by the bees.

Exotic animal is any:

- (1) Carnivore weighing over fifteen (15) pounds other than a domestic dog or domestic cat;
- (2) Venomous reptile;
- (3) Hoofed mammal not defined as livestock; or
- (4) Other animal, the keeping of which may pose a danger to the animal, other animals, or humans.

Feral Animal means an individual animal of a domesticated species that is not behaviorally compatible with humans, and is therefore not suitable to serve as a pet, companion animal, or work animal. Feral cats include all cats that by physical aspect and behavior are deemed to be un-owned and have been trapped for purposes of improving public health and limiting reproduction.

Harbor means to allow, wither intentionally or unintentionally, any stray animal to linger on one's premises by feeding such animal without making all effective provisions for such animal as required by this chapter. Persons harboring an animal shall be subject to the provisions of this chapter applicable to a person owning or having custody, the care, or control of the animal.

Honeybee means all life stages of the common domestic honey bee, *Apis mellifera* species.

Household is one (1) or more persons occupying the premises and living as a single housekeeping unit as distinguished from a group occupying a boarding house, lodging house or hotel.

Keeper is a person in charge of or having control of an animal, regardless of ownership.

Kennel, commercial is any commercial establishment or commercial premises where five (5) or more animals, over four (4) months of age are boarded, kept or maintained for any purpose whatsoever, with the exception of state inspected veterinary hospitals, seeing eye dog sites, pet shops, grooming parlors, or the city animal control shelter.

Licensed veterinarian means an individual with a doctor of veterinary medicine degree who is licensed to practice in the state.

Livestock is any horse, donkey, cow, sheep, goat, pig (except for Vietnamese miniature potbelly pigs or pygmy goats weighing fifty (50) pounds or less) or any similar animal.

Nonresidential district means any zoning district in which residences cannot be established by right, except for accommodations for bona fide shift workers in conjunction with a legally established industrial use.

Owner is any person who acknowledges ownership of an animal or who harbors, keeps, or knowingly causes or knowingly permits any animal to be harbored, kept, or has care of an animal or who permits an animal to remain on or about that person's premises for five (5) or more consecutive days.

Owner impound means the owner of an animal in which he or she relinquishes all rights and title of the animal to the animal control facility.

Pet means any dog, cat, rabbit, amphibian, reptile, caged bird, aquarium fish, and caged rodent or caged ferret.

Pet shop is any person, partnership or corporation engaged in the business of breeding, buying, selling or exchanging animals of any species.

Poultry is any chicken, duck, goose, turkey or similar bird.

Quarantine means the strict isolation of a potential rabies suspect animal for a ten-day observation period at a place and in a manner designated by the animal control officer and approved by a field health office.

Residential district means any zoning district in which residences can be established by right.

Restraint means any of the following

- (1) To be under the immediate control of a capable person.
- (2) To be secured by a tether confining the animal within the owner's premises.
- (3) To be secured within an escape-proof enclosure within the owner's premises.

Service animal means any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition. The work or tasks performed by a service animal must be directly related to the individual's disability. Examples of work or tasks include, but are not limited to, assisting individuals who are blind or have low vision with navigation and other tasks. Alerting individuals who are deaf or hard of hearing to the presence of people or sounds. Providing non-violent protection or rescue work, pulling a wheelchair, assisting an individual during a seizure, alerting individuals to the presence of allergens. Retrieving items such as medicine or the telephone, providing physical support and assistance with balance and stability to individuals with mobility disabilities.

Helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors. The crime deterrent effects of an animal's presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition.

Sexual abuse of animals means intentionally engaging in sexual intercourse, cunnilingus, fellatio, or anal intercourse with an animal or the causing of penetration, to any extent and with any object, to the genital or anal openings of an animal, whether or not there is any emission.

Sterilized means to be rendered permanently incapable of reproduction.

Tract means a contiguous parcel of land under common ownership.

Vicious animal is any animal that attacks, bites or physically injures human beings or domestic animals without adequate provocation, or which, because of temperament or training, has a known propensity to attack, bite, or physically injure human beings or domestic animals. Any animal that without provocation has bitten or attacked a human being or other animal shall be prima facie presumed vicious.

Wildlife is any non-domesticated animal that is indigenous to region.

(Ord. No. 682, § 2, 8-14-84; Ord. No. 933, § 2, 12-12-94; Ord. No. 1180, § 1, 12-9-03; Ord. No. 1447, § 1, 10-22-13; Ord. No. 1493, art. 1, 4-14-15)

7-01-020. - Keeping restrictions.

(a) Except as otherwise provided in this section, it is unlawful to keep any livestock, poultry, exotic, or wild animals in the city.

(b) Subsection (a) shall not apply to:

(1) The keeping of 3 Vietnamese miniature potbelly pigs or 3 pygmy goats weighing no more than fifty (50) pounds or a mix of no more than 3 total, 4 female chickens or 4 ducks or a mix of no more than 4 total, or the operation of pet stores, veterinary offices or hospitals, commercial kennels, or livestock in zoning districts where the use or keeping is specifically permitted.

(2) Public zoos, or carnivals and circuses licensed as such.

(3) Fairs, petting zoos or other special events lasting less than two (2) weeks.

(4) The keeping of any animal at an approved research institution.

(c) Vicious animals. It is unlawful for any person to keep or harbor any vicious animal. Any person attacked by a vicious animal may use reasonable force to repel the attack. After a judicial determination that an animal is vicious, the owner or keeper of such vicious animal shall destroy it humanely or release such animal to the animal control center for destruction.

(d) Restrictions on the keeping of bees. Except as otherwise provided in this article, it is hereby declared to be a nuisance and it shall be unlawful for any person to keep bees on any lot or parcel of land keep within the city. The authorized keeping of bees, and associated beehives, shall be governed by the following regulations.

(1) General regulations.

a. Apiary registration. No person may own or maintain an apiary within the city without first registering all apiaries with the city. Registration shall be made in writing and upon such form or in such format as established by the city, and shall be accompanied by the prescribed registration fee in the amount established from time to time by resolution of the city commission. Non-property owners that wish to own or maintain an apiary on property that the non-property owner is renting, or otherwise occupying with the permission of the property owner, must include written permission from the property owner or landlord that explicitly indicates that the non-property owner has permission to own or maintain an apiary on the subject property. Such written permission shall be supplied to the city as part of the apiary registration.

b. Hive type. No beekeeper shall keep or maintain bees in any hive other than a modern movable frame hive which permits thorough examination of every comb.

c. Fencing of flyways. In each instance in which any colony is situated within twenty-five (25) feet of a public or private property line of the tract upon which the apiary is situated, as measured from the nearest point on the hive to the property line, the beekeeper shall establish and maintain a flyway barrier at least six (6) feet in height consisting of a solid wall, fence, dense vegetation or combination thereof that is parallel to the property line and extends ten (10) feet beyond the colony in each direction so that all bees are forced to fly at an elevation of at least six (6) feet above ground level over the property lines in the vicinity of the apiary.

d. Water. Each beekeeper shall ensure that a convenient source of water is available to the bees at all times during the year so that the bees will not congregate at swimming pools, bibcocks, pet watering bowls, bird baths or other water sources where they may cause human, bird or domestic pet contact.

e. General maintenance. Each beekeeper shall ensure that no bee comb or other materials that might encourage robbing are left upon the grounds of the apiary site. Upon their removal from the hive, all such materials shall promptly be disposed of in a sealed container or placed within a building or other bee-proof enclosure.

f. Queens. All colonies shall be maintained with marked queens. In any instance in which a colony exhibits unusual aggressive characteristics by stinging or attempting to sting without due provocation or exhibits an unusual disposition toward swarming, it shall be the duty of the beekeeper to promptly re-queen the colony with another marked queen. Queens shall be selected from European stock bred for gentleness and non-swarming characteristics.

g. Prohibitions. No Africanized bees may be kept on a property under the regulations of this section unless kept for the purpose of propagating beneficial bees.

h. Marking hives. The beekeeper shall conspicuously post a sign setting forth his name and telephone number.

i. Application to code enforcement. Anyone proposing to keep bees on a property in the city or to expand such use shall apply for approval from the code enforcement department, which shall determine if the application is in compliance with regulations regarding permitted placement of beehives, flyway barriers, and other structures used in the keeping of bees and whether the property is occupied by a condemned building.

(2) In residential districts. In residential districts, the following regulations shall apply.

a. Notification required. Any person proposing to keep an apiary on any property located in the city, or to expand any such use, shall first provide, by mail or personal delivery, written notice to the owner of all adjoining lots or parcels of land prior to registering the apiary as required by section 7-01-020(c)(1)A of this article and shall certify the same to the city at the time of registration.

b. Colony densities. It shall be unlawful to keep more than the following number of colonies on any tract within the city, based upon the size or configuration of the tract on which the apiary is situated:

1. Less than two thousand four hundred (2,400) square feet in area—no colonies.
2. One-quarter ($\frac{1}{4}$) acre or less tract size—two (2) colonies.
3. More than one-quarter ($\frac{1}{4}$) acre but less than one-half ($\frac{1}{2}$) acre tract size—four (4) colonies.
4. More than one-half ($\frac{1}{2}$) acre but less than one (1) acre tract size—six (6) colonies.
5. One (1) acre or larger tract size—eight (8) colonies.
6. Regardless of tract size, where all hives are situated at least two hundred (200) feet in any direction from all property lines of the tract on which the apiary is situated, there shall be no limit to the number of colonies.

For each two (2) colonies authorized under this section, colony densities there may be maintained upon the same tract one (1) nucleus colony in a hive structure not exceeding one (1) ten-frame hive body with no supers attached as required from time to time for management of swarms. Each such nucleus colony shall be disposed of or combined with an authorized colony within thirty (30) days after the date is acquired.

a. Location and setbacks. No beehive shall be kept closer than five (5) feet to any lot line and ten (10) feet to a dwelling or the permitted placement of a dwelling on another parcel, and no beehive shall be kept in a required front yard or side street yard. The front of any beehive shall face away from the property line of the residential property closest to the beehive.

b. Lots without a primary residence. Notwithstanding the provisions of chapter 29 of the Alamogordo Code of Ordinances regarding accessory uses, bee keeping is a permitted accessory use and may be kept on a lot that is vacant or has no occupied residence.

c. Written permission; revocation.

1. Written permission required by section 7-01-020(c)(1)a is revoked under any of the following circumstances: i. The occupant who has given written permission gives up legal possession of the residence or property.

2. The owner of property who has given written permission transfers or is otherwise divested of all interest in the property.

3. The owner or occupant of property who has given written permission files a signed revocation of written permission with the code enforcement department.

4. In non-residential districts. In zoning districts other than residential districts, all regulations applicable in residential districts shall apply except that the number of beehives shall be limited to one (1) for each one thousand (1,000) square feet of lot area unless the nonresidential zoned lot is located within two hundred (200) feet from any residentially zoned lot in which case the density restrictions for residential districts shall apply.

5. Variances. The board of appeals may vary the regulations of this section as they apply to a particular property if it determines that such variance will be consistent with the stated purpose of this section.

(Ord. No. 682, § 2, 8-14-84; Ord. No. 933, § 3, 12-12-94; Ord. No. 1180, § 2, 12-9-03; Ord. No. 1447, § 2, 10-22-13; Ord. No. 1493, art. 2, 4-14-15)

7-01-030. - Animals at large.

A. No owner or person having control of any animal shall permit it to run at large in the city unless the animal is contained within a park specifically designated for the animal's species.

B. Any animal outside the fenced yard of the owner or keeper must be under control of a leash or other device by which it may be led except during the time the animal is confined within a park specifically designated for the animal's species.

C. No owner or keeper of any animal shall permit it to be chained, staked, grazed or herded on any unenclosed premises so that any part of the animal extends onto or over a sidewalk, street, alley, or other public property or beyond the owner or keeper's property or in a common area accessible to the public. Any chained animal must have a chain of at least sufficient length to allow the animal access to food, water, shelter and shade, but not so long as to enable the animal to harm itself.

(Ord. No. 682, § 2, 8-14-84; Ord. No. 933, § 4, 12-12-94; Ord. No. 1180, § 3, 12-9-03; Ord. No. 1271, 5-23-06)

7-01-040. - Freeing impounded animals.

It is unlawful to release any animal confined pursuant to this chapter, or break open, aid or assist in breaking open any pen, enclosure or animal control vehicle, with intent of releasing any animal confined pursuant to this chapter.

(Ord. No. 682, § 2, 8-14-84)

7-01-050. - Animal nuisances prohibited.

(a) Any animal or animals, including dogs or cats, that are kept or maintained in such a manner or in such numbers as to disturb by noxious or offensive odors or otherwise endanger the health and welfare of the

inhabitants of the city are defined as an "animal nuisance." It is unlawful for any person to keep, harbor or maintain an animal nuisance.

(b) No owner or keeper of any animal shall allow that animal to defecate upon public property or upon any private property other than the property of the owner of the animal without thoroughly and immediately removing and disposing of the feces.

(c) Any unspayed female dog or cat in heat not securely confined in the owner's yard, pen or other enclosure is hereby declared to be a nuisance.

(Ord. No. 682, § 2, 8-14-84; Ord. No. 995, 11-12-96; Ord. No. 1180, § 4, 12-9-03)

7-01-060. - Cruelty to animals.

(a) Cruelty to animals consists of:

(1) Torturing, tormenting, poisoning, cruelly beating, mutilating, cruelly killing or overdriving any animal including wildlife.

(2) Depriving of shelter necessary to protect from rain, snow, wind and direct rays of the sun;

(3) Unnecessarily failing to provide any animal with proper food or drink;

(4) Abandoning an animal;

(5) Permanently coloring, painting, staining or dyeing any animal; an animal may be tattooed for identifying purposes.

(6) Placing or leaving any animal in an unattended motor vehicle without adequate ventilation or in such a manner as to subject the animal to extreme temperatures which may adversely affect the health of the animal; or

(7) Placing or leaving any animal in a condition whereby there is a substantial possibility the animal's life will be threatened pursuant to 7-03-070.

(8) Carrying an animal in or upon any vehicle in a cruel, inhumane or unsafe manner. An animal carried in the bed of a truck must be crated or restrained so it cannot fall or jump from the truck or be strangled.

(9) Taking part in any sexual abuse of an animal.

(10) Failing to maintain grooming standards.

(b) It is unlawful for any person to commit the offense defined in this section.

(Ord. No. 682, § 2, 8-14-84; Ord. No. 933, § 5, 12-12-94; Ord. No. 1180, § 5, 12-9-03)

7-01-065. - Protective care.

If any animal control officer finds that any animal is or will be without proper care because of its caretaker's injury, illness, incarceration, other absence of the owner or keeper, or other reason that leaves the animal without adequate care, the animal control officer may take the animal for protective care.

While in protective care, the animal control officer may take such action as a licensed veterinarian advises is necessary to prevent undue pain and suffering of the animal. If the animal is in protective care for ten (10) days without contact from the owner or the person responsible for the care of the animal, the animal may be placed for adoption or otherwise disposed of according to the provisions of this chapter. Animal control will take reasonable efforts to contact the owner or other person responsible for the animal in protective care to determine their wishes concerning the animal's care. All expenses involved in providing protective care are chargeable to the owner or person in charge of the animal's care.

(Ord. No. 1180, § 6, 12-9-03)

7-01-067. – Striking animals with vehicles.

Every operator of a motor or self-propelled vehicle upon the streets and ways of the city shall, upon injuring, striking, maiming or running down any animal provide immediate notification to animal control, furnishing sufficient facts relative to the incident or shall immediately transport the animal to a facility where it can receive treatment for its injuries. Such animal shall be deemed an uncared for animal within the meaning of this chapter. Emergency vehicles engaged in an emergency response are excluded from this provision but are required to inform dispatch of the incident.

(Ord. No. 1328, § 1, 5-13-08)

7-01-070. - Barking dogs.

A person owning or having the care, custody or control of an animal shall not permit that animal to howl, bark, or create noise which disturbs the comfort and repose of any person of ordinary sensibilities in the vicinity. It shall be a violation of this section if the howling, barking, or noise is frequent or long-continued; is audible beyond that property line of the premises on which the animal is located for more than ten minutes; and is attested to by:

- a. Complaints from two or more separate properties no more than 100 yards from the animals premises.
- b. A complaint from a separate property and verified by and audio/video recording which records the howling, barking, or noise for more than a continuous ten minutes.
- c. An animal control officer or other law enforcement officer.

(Ord. No. 682, § 2, 8-14-84; Ord. No. 1180, § 7, 12-9-03)

ARTICLE 7-02. - HEALTH AND LICENSING PROVISIONS

7-02-010. – Rabies and exposure requirements.

- (a) A person owning or having care, custody, or control over a dog or cat judged to be three months of age or older shall have the animal vaccinated against rabies.
 - (1) The vaccine shall be administered by or under the supervision of a veterinarian.
 - (2) The veterinarian shall issue for each administration a serially numbered certificate and a metal tag bearing the certificate number.
 - (3) The certificate shall contain the name and address of the owner of the animal, a description of the vaccinated animal, the date of vaccination, and the expiration date of the vaccination.
- (b) Rabies tag. A person owning or having care, custody, or control over a dog or cat judged to be three months of age or older shall maintain a current rabies vaccination tag affixed to a collar or harness worn by the animal at all times.
 - (1) The tag may be removed while the animal is undergoing treatment by a veterinarian or being groomed.
 - (2) A person shall not remove or transfer any legitimate rabies tag from one animal to another.
- (c) Rabies certificate. A person owning or having, care, custody, or control over a dog or cat judged to be three months of age or older shall exhibit the vaccination certificate upon request by an animal control officer.
- (d) Exposure; owner/patient responsibility. When any person is bitten by an animal, it is the duty of such person or their parent or guardian, or any person having knowledge of the whereabouts of the animal, to immediately notify the animal control office.
- (e) Exposure; Physician responsibility. A physician who renders professional treatment to a person bitten by an animal shall report to the animal control office such treatment immediately after the initial treatment.
 - (1) The physician shall report the name, address, and phone number (if known) of the person bitten as well as the type and location of the bite.
 - (2) The physician shall report the name and address of the owner of the animal that inflicted the bite (if known), and any other facts or details that may assist the animal control officer in ascertaining the immunization status of the animal.
- (f) Exposure; domesticated animal. Any mammal that bites or otherwise exposes a person to rabies shall be either destroyed and the head sent to the laboratory for rabies testing, or placed in isolation immediately at the owner's expense of a ten-day observation period at a place and in a manner designated by the animal control officer.
 - (1) The isolation and observation period shall end ten days following the date and time of the potential rabies exposure.
 - (2) If the mammal shows signs or symptoms of rabies during the ten-day isolation and observation period, it shall be destroyed and the head sent to the laboratory for testing.

(g) Exposure; wild animal. Any skunk, bat, raccoon, coyote, bobcat, or other wild animal not born or reared in captivity (with the exception of rodents or rabbits) that bites or otherwise exposes a person to rabies, shall be destroyed immediately and the head be sent to the laboratory for testing.

(1) Rabbits and rodents do not normally transmit rabies, but may be submitted for testing with the consent of the Infectious Disease Epidemiology Bureau (IDEB), part of the Epidemiology and Response Division of the New Mexico Department of Health.

(h) Home quarantine; the animal control officer may consent to confinement and isolation on the owner's premises of the dog or cat that bites a person.

(1) The premises where the home isolation is to occur shall be inspected and approved for such purpose by the animal control officer.

(2) The owner of the animal shall be required to enter into an indemnity agreement on a form approved and prescribed by the animal control supervisor for such home confinement.

(3) The owner shall immediately notify the animal control office if the animal shows signs of sickness or abnormal behavior, if the animal escapes confinement, or if the animal dies within the quarantine period.

(i) If any of the provisions of this section are in conflict with, or materially inconsistent with, regulations for the reporting of animal bites, confinement and disposition of rabies-suspect animals, rabies quarantine, and the disposition of dogs and cats exposed to rabies in the interest of public health and safety prescribed by the New Mexico Department of Health pursuant to NMSA Sec. 77-1-6, and as amended, the state regulations shall control.

(j) If the animal control officer deems that an in house quarantine is necessary and the animal does not have the rabies vaccination, then proof of the rabies vaccination shall be given to the officer or the animal control officer no later than 72 hours after the quarantine ends.

(Ord. No. 1328, § 2, 5-13-08)

Editor's note— Ord. No. 1328, § 2, adopted May 13, 2008, amended the Code by repealing former 7-02-010, and adding a new 7-02-010. Former 7-02-010 pertained to adoption of state provisions regarding animal control, and derived from Ord. No. 682, adopted August 14, 1984.

7-02-020. - Licensing.

(a) No person shall own, keep or harbor any dog or cat within the city unless the dog or cat is licensed (pet shops and commercial kennels exempted). Written application for the license shall be made to the animal shelter and shall state the name and address of the owner and the name, breed, color and sex of the dog or cat. The license fee shall be paid to the animal shelter (or the city's designee) upon the owner's furnishing a current certificate evidencing the rabies vaccination of the dog or cat.

(b) The yearly license fee for each dog or cat which is neutered or spayed or under six (6) months of age is five dollars (\$5.00) and for any other dog or cat is twenty-five dollars (\$25.00).

(c) An animal which has received a multi-year rabies vaccination may be licensed concurrent with the rabies certificate. The fee for a multi-year license will be the annual fee times the number of years for which the animal is vaccinated.

(d) If there is a change in ownership of a licensed dog or cat, the new owner may have the current license transferred to his name upon payment of a transfer fee of one dollar (\$1.00).

(e) The licensing fee is waived for service animals.

Exemptions.

Rescues with a valid 501(c)(3) tax-exempt status are exempt from the licensing and fee provisions of this article.

(Ord. No. 682, § 2, 8-14-84; Ord. No. 725, 12-8-87; Ord. No. 933, § 6, 12-12-94; Ord. No. 1180, § 8, 12-9-03)

7-02-030. - Tag and collar.

(a) With a license required by section 7-02-020, there shall be delivered to the owner a metallic tag stamped with number of the license and the year for which issued. The shape, color or both, of such tags shall be changed each year.

(b) The owner shall see that the dog or cat wears at all times a collar or harness to which such tag shall be attached.

(c) If such tag is lost or destroyed, the owner may obtain a duplicate upon the presentation of the license and payment of a fee of one dollar (\$1.00) for the duplicate, tag.

(d) No person shall use for any dog or cat a license, vaccination certificate or license tag issued for a different dog or cat.

Exemptions.

Rescues with a valid 501(c)(3) tax-exempt status are exempt from the licensing and fee provisions of this article.

(Ord. No. 682, § 2, 8-14-84)

7-02-035. - Notice.

Veterinarians who administer anti-rabies vaccinations or pet shops and kennels within the city shall post and maintain a notice informing the public that dogs and cats must have anti-rabies vaccinations and city licenses. The animal control center will provide one free sign to each location. Each location shall post a notice in a location which is clearly visible to the public. Replacement notices must be purchased from the animal control center or approved by the animal control manager.

(Ord. No. 933, § 7, 12-12-94)

7-02-040. - Exemptions.

(a) Hospitals, clinics and other premises operated by licensed veterinarians for the care and treatment of animals are exempt from the provisions of this article, except the duty to report rabies cases and to comply with the provisions specifically naming duties and responsibilities of licensed veterinarians in relation to animal regulation and rabies control.

(b) The licensing requirements of this article shall not apply to any dog or cat belonging to a nonresident of the city or a pet shop and kept within the city for not longer than thirty (30) days, if the dog or cat is at all times while in the city confined within a building, enclosure or vehicle, or under restraint by the owner.

(c) The licensing fee shall not apply to service animals.

(Ord. No. 682, § 2, 8-14-84; Ord. No. 933, § 8, 12-12-94)

ARTICLE 7-03. - ANIMAL CONTROL OFFICERS

7-03-010. - Authority.

There are hereby appointed one or more animal control officers who shall be authorized and commissioned to enforce the provisions of this chapter. However, no person not employed by the city department of public safety shall be commissioned to make arrests as a peace officer. The city may, by contract, provide for the appointment, supervision or control of the animal control officers, and, unless the context requires otherwise, references in this chapter to "animal control officer" shall include the entity to whom this contract is let.

(Ord. No. 682, § 2, 8-14-84)

7-03-020. - Impoundment.

(a) If any animal is found running at large contrary to the provisions of section 7-01-030, any animal control officer may take it up and confine it in a secure place or other place provided for that purpose.

(b) Any animal taken up and confined shall not be released until the owner or person entitled to the possession thereof shall pay to the officer having such animal in his keeping according to the fee schedule set out in section 7-03-050 of this chapter.

(c) Any dog or cat seized and not redeemed by the owner within three (3) working days thereafter, may be humanely destroyed or placed in the custody of some person deemed suitable who will agree to become the responsible owner thereof and comply with the provisions of this article. If an impounded dog or cat is licensed, reasonable effort shall be made to promptly notify its owner if the dog is one as to which the respective rights of the owner and the person in possession or custody are determined by state law, such law shall be complied with.

(d) Owner impound; the animal control officer may, but is not obligated to, detain and deliver to the animal control shelter, any animal impounded by its owner.

(1) An owner requesting to relinquish ownership of an animal to the city of Alamogordo animal control shall be required to complete and sign a release of ownership at the time of detainment or impoundment, by signing the release of ownership, the owner shall:

a. Affirmatively represent in writing that he or she is the legal owner of the animal.

b. Transfer ownership of the animal to the city of Alamogordo animal control.

c. Direct in writing that the animal be placed in the custody of the city of Alamogordo animal control or other suitable facility for disposition as the city of Alamogordo animal control or facility sees fit.

d. Agree that he or she will indemnify and hold the city of Alamogordo animal control and/or other suitable facility harmless from any loss or damage he or she may sustain, including attorney's fees, by reason of the destruction or placement for adoption of said animal.

(2) The animal control officer may, but is not obligated to, provide for the transport of the animal to the animal control shelter.

(e) The animal being impounded shall be free of any illness. The animal control shall make the determination based on the animal's health. If the animal control shelter determines that the animal being impounded needs to be seen by a veterinarian before the impoundment can occur, then the owner of the animal is responsible for all veterinarian costs that occur.

(Ord. No. 682, § 2, 8-14-84)

7-03-025. - Sterilization.

Every dog and cat adopted or reclaimed from the city animal control center shall be spayed or neutered by a licensed veterinarian at the expense of the adopting party/owner. In addition to any other lawful fees due, any person reclaiming, adopting, or buying a dog or cat from the city shall pay a sterilization fee equivalent to the city's actual cost for the sterilization, plus a five percent administrative fee for the sterilization service. An animal control officer shall transport the animal to a licensed veterinarian of the adopting party/owners choosing on the next business day for the sterilization procedure. An owner reclaiming their own animal that is of pure breed can purchase a one time "intact" license if the animal is registered through a nationally recognized breeder's foundation. The animal will be returned to the owner upon presentation of the proper registration certificate and the purchase of the "intact" license and a sworn statement from the city establishing the owner as a hobby breeder. A hold can be placed on the animal up to five days for the owner to acquire the proper registration certificate. The "intact" license will only be valid for the first offense. If the animal returns to the city animal control center a second time the "intact" license will no longer be valid and the animal will have to be sterilized in accordance with this section. If the animal is deemed to young for sterilization, a "too small" agreement shall be drawn up and all fees associated with the sterilization will be paid by the adopting party/owner to have the animal sterilized at an appropriate date. The animal control center will contact a licensed veterinarian of the adopting party/owners choosing and set a date for the sterilization procedure to occur.

Exemptions.

Rescues with a valid 501(c)(3) tax-exempt status are exempt from the licensing and fee provisions of this article.

(Ord. No. 933, § 9, 12-12-94; Ord. No. 1180, § 9, 12-9-03; Ord. No. 1328, § 3, 5-13-08)

7-03-030. - Auctions of animals.

(a) If the owner or person entitled to the possession of a dog or cat, or an animal other than a dog or cat, does not pay the charges and take it away within three (3) working days from the time it is taken into custody pursuant to section 7-03-020, the animal control officer may sell the animal at public auction. Before the auction, at least three (3) days' notice of the time and place of the sale must be given by publishing or by posting notice in five (5) public places in the city as well as serving a copy of such notice upon the owner or possessor, if known, of such animal. The animal may be redeemed at any time before the date of sale by payment to the officer in charge or his assistant of any fees, expenses and charges provided in this article.

(b) If the animal is not sold at the auction provided for in this section, it may be humanely destroyed or placed for adoption.

(Ord. No. 682, § 2, 8-14-84; Ord. No. 1180, § 10, 12-9-03)

7-03-040. - Disposition of revenue from sale of impounded animals.

In case any animal sold pursuant to the provisions of section 7-03-030 is sold for more than is sufficient to pay the fees and charges, and a claim is made for the excess, the officer shall pay the excess to the owner of such animal or animals or to the person entitled to the possession of the same within one year from the date of sale. If no claim is made, the funds shall be disposed of as provided in section 7-03-090.

(Ord. No. 682, § 2, 8-14-84)

7-03-050. - Fees.

The commission will adopt a resolution setting appropriate fees for services provided by the animal control division as appropriate.

(Ord. No. 682, § 2, 8-14-84; Ord. No. 933, § 10, 12-12-94; Ord. No. 967, 12-21-95; Ord. No. 1180, § 11, 12-9-03; Ord. No. 1328, § 4, 5-13-08)

7-03-060. - Investigation.

If there is reasonable cause to believe a violation of this chapter has occurred, any animal control officer may require the owner of an animal to exhibit any required license, vaccination certificate or other required documentation. Failure to exhibit any such documentation is a petty misdemeanor.

(Ord. No. 682, § 2, 8-14-84; Ord. No. 933, §11, 12-12-94)

7-03-070. - Entry of pens, vehicles; etc.

Where it is necessary to protect the life of an animal from imminent danger, any animal control officer may enter any pen, enclosure, yard or vehicle and remove any animal so endangered. The means used shall be the least drastic possible. Nothing in this section or in section 7-03-060 shall authorize the warrantless entry into any dwelling or any building used for business purposes.

(Ord. No. 682, § 2, 8-14-84)

7-03-080. - Interference.

No person shall interfere with, hinder or molest any animal control officer in the performance of any duty required by this article.

(Ord. No. 682, § 2, 8-14-84)

7-03-090. - Records and fee dispositions.

(a) It shall be the duty of the animal control officer to keep or cause to be kept accurate and detailed records of the vaccination, licensing and impoundment of dogs and cats.

(b) It shall be the duty of the animal control officer to keep or cause to be kept accurate and detailed records of all bite cases reported to him, and of his investigation of the same. The report of a bite involving a rabid animal shall be immediately transmitted to the district health officer.

(c) The records required by this section shall be audited annually in the same manner as other city records are audited, and shall be open to inspection as public records at all reasonable times.

(d) All fees received by the animal control officer shall be turned over to the city daily, except as otherwise provided by contract.

(Ord. No. 682, § 2, 8-14-84)

ARTICLE 7-04. - ANIMAL SALES

7-04-010. - Licensing.

(a) It shall be unlawful for any person, firm or corporation to offer dogs or cats for sale for profit or as a hobby within the city unless such person, firm or corporation shall have first obtained from the city clerk a license therefore as provided in this article.

(b) The fee for a license to sell a single litter of dogs or cats within a year shall be fifty dollars (\$50.00). The fee for a license to sell more than a single litter of dogs or cats within a year shall be one hundred fifty dollars (\$150.00).

(c) All licenses expire on the first day of January of each year.

(d) The license application shall contain the following information at a minimum:

- (1) Name of applicant;
- (2) Address of applicant;
- (3) Telephone number of applicant;
- (4) The proposed location from which the animals will be sold;
- (5) The clerk may require such other information as is deemed necessary in order to determine whether to approve or deny a license under this article.

Exemptions.

Rescues with a valid 501(c)(3) tax-exempt status are exempt from the licensing and fee provisions of this article.

(Ord. No. 1328, § 5, 5-13-08)

7-04-020. - Requirements.

Every licensee will comply with each of the following conditions:

(1) Every dog or cat offered for sale must be examined by a veterinarian and be certified free of congenital defects, distemper, worms, skin disease, skin and ear mites and other diseases or conditions which would be injurious to the animal or a potential owner.

(2) Every dog or cat offered for sale will have been vaccinated against distemper by a veterinarian. A certificate providing the name of the veterinarian and the date of treatment must be provided to the purchaser at the time of sale.

(3) No dog or cat will be transported by a licensee unless housed in a container designed for that purpose including provisions for adequate ventilation and food and water.

(4) No licensee will allow the whelping of more than one litter per female dog or cat during the license term.

(Ord. No. 1328, § 6, 5-13-08)

7-04-030. - Exemptions.

Rescues with a valid 501(c)(3) tax-exempt status are exempt from the licensing and fee provisions of this article.

(Ord. No. 1328, § 7, 5-13-08)

ARTICLE 7-05. - PIGEON NUISANCE ABATEMENT

7-05-010. - Findings and intent.

- (a) The commission finds that the urban feral pigeon population is expanding and the droppings associated with large flocks of feral pigeons interfere with use and enjoyment of private and public outdoor facilities, create undesirable conditions and may have an economic impact on the city.
- (b) The commission finds that pigeon droppings damage and depreciate property, make walkways unsafe and unsanitary, and potentially represent a public health hazard due to parasites or disease that may be associated with accumulation of pigeon droppings.
- (c) The commission finds that supplemental feeding of pigeons by humans, whether deliberate or through negligence, is a substantial cause of the overpopulation of pigeons in the city.
- (d) The commission finds that providing readily available food sources for pigeons allows their numbers to increase in a manner that negatively impacts safe and comfortable use of commercial and residential areas, and that research has demonstrated that restricting access to food is an important factor in maintaining urban feral pigeon populations at acceptable levels.
- (e) It is not the intent of the commission to eradicate the feral pigeon population; this article is intended to address public nuisance associated with large numbers of pigeons.
- (f) It is the intent of the commission that the city place an emphasis on disseminating information about, and assisting citizens with, effective measures for preventing and abating pigeon nuisance in a manner that promotes effective management of pigeon populations.

(Ord. No. 1472, 8-25-14)

7-05-020. - Definitions.

For the purpose of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

Feeding. Providing food to pigeons. Food may include, but is not limited to grain, seed, greens, breadcrumbs and other miscellaneous food scraps, including garbage not properly disposed of or contained.

Linger. For purposes of this article, "linger" means to be slow in departing.

Owner. That person holding the legal title to real property as shown by the records of the county assessor.

Person. An individual, partnership, association, syndicate, company, firm, trust, corporation, or any other entity recognized by law.

Pigeon. The common pigeon, *Columba livia*, also known as the rock dove or rock pigeon. For the purposes of this article, "pigeon" refers to any wild state (feral) pigeon, and does not include domestic pigeons used for recreation or show.

Pigeon harborage. Any condition which provides shelter or protection for pigeons; thus, favoring their multiplication and continued inhabitation in, under, outside a structure or premise at a location where there exists a pigeon nuisance. Housing or shelter provided for injured or ill pigeons that are being rehabilitated is not considered pigeon harborage.

Pigeon nuisance. The excessive congregation of pigeons at a location when such congregation of pigeons results in the accumulation of pigeon droppings or other pigeon related waste. In addition, the accumulation of pigeon excrement, nesting materials, pigeon carcasses and other pigeon related detritus that may be damaging to the property, pose a threat to public health and welfare or contribute to polluted storm water runoff to the river.

Property. Real property including buildings structures and land regardless of use for residential, commercial or other purposes.

Responsible party. That person or those persons who hold that legal or equitable interest in real property which empowers them to take appropriate actions to abate a pigeon nuisance found to exist on that real property. This may include, but not be limited to, a person with ownership, condominium rights, time-share rights, leasehold rights or an easement, license, contractual right, and any right or obligation to manage or act as agent or trustee for any person holding any of the foregoing. The owner of real property shall be presumed to be the responsible party.

Roost. For purposes of this article, "roost" is defined as settling down for rest or sleep.

(Ord. No. 1472, 8-25-14)

7-05-030. - Unlawful acts.

(a) It shall be unlawful for any person to:

(1) Intentionally feed feral pigeons on any public or private property within Alamogordo city limits.

(2) Permit or allow the placement or discard of food, food by-products, vegetables, garbage or animal food of any kind in a manner that such person knows will reasonably result in the lingering, roosting and/or congregating of feral pigeons.

(3) Encourage the lingering, roosting and/or congregating of feral pigeons by offering or providing food, food by-products, vegetables, garbage or animal food of any type.

(4) Create, permit or allow the existence of a pigeon harborage.

(b) This prohibition does not extend to domesticated birds used for show or for racing, or to injured pigeons that are kept at all times in cages or are prevented from creating pigeon nuisance conditions on nearby properties.

(c) This prohibition does not extend to bird seed set out in bird feeders or otherwise provided to birds other than pigeons, provided that the seed does not attract significant numbers of pigeons or create conditions that constitute a pigeon nuisance.

(d) Each act in violation of this section shall constitute a public nuisance and a separate violation. Any person who violates this section shall be subject to:

(i) The first violation of this section shall result in a written warning. This warning will provide the details of the violation and will specify corrective action.

(ii) Any person violating any provision of this article a second time, and for any subsequent violation, shall be guilty of a petty misdemeanor for each violation or each day of a continuing violation.

(Ord. No. 1472, 8-25-14)

7-05-040. - Other acts prohibited.

(a) It shall be unlawful for any person to create or foster any condition or allow any condition to exist or continue which in any way harbors a number of feral pigeons or results in an infestation of feral pigeons that would constitute a pigeon nuisance, as defined herein.

(b) It shall be unlawful for any person to allow the accumulation of pigeon excrement, nesting materials, pigeon carcasses and other pigeon related detritus that would constitute a pigeon nuisance, as defined herein, on property where the person is the owner or occupant.

(Ord. No. 1472, 8-25-14)

7-05-050. - Additional remedies.

Nothing in this article shall be construed to preclude the city from seeking any other remedy available in law or equity.

(Ord. No. 1472, 8-25-14)

7-05-60. – Keeping a seriously sick or injured animal.

- (a) It is unlawful for a person to have, keep, or harbor an animal which is seriously sick or injured or starved, without providing proper care through a licensed veterinarian.
- (b) The Animal Control Officer may require the owner to provide a letter of health evaluation from a licensed veterinarian describing the condition of the animal and the treatment provided.
- (c) In the absence of veterinary care, the Animal Control Officer may place the animal into protective custody in accordance with provisions of this chapter.

7-05-70. – Unlawful use of rabies tag and city license.

It is unlawful for any person to remove or transfer any rabies tag or city license from one animal to another. It is unlawful for any person to manufacture or cause to be manufactured or to have in his or her possession or under his or her control a stolen, counterfeit, or forged city license, rabies tag, or vaccination certificate or other form of licensing or permit required under this chapter.

7-05-80. – Deceased animal disposal requirements.

- (a) Owner responsibility. A Person owning or having care, custody or control of an animal carcass shall be responsible for its removal within 24 hours of death if the animal is not to be used for human consumption.
 - (1) An animal carcass may be disposed of at the animal control shelter.
- (b) Removal. The animal control officer may remove any animal carcass from the roadway or other public property. The officer shall make reasonable efforts to notify the animal's owner if known in the event of the animal's death.
 - (1) The officer may dispose of the animal carcass at the animal control shelter as authorized after microchip scanning and making reasonable efforts to notify the animal's owner.
 - (2) The officer shall turn over any tags or other identification found on an animal carcass to the animal control shelter.
- (c) Removal fee. The animal control unit may, but is not obligated to, provide for the removal of an animal carcass from property at the request of the animal owner or property owner for a set fee.
 - (1) The fee amount shall be established by City Commission resolution.

7-05-090. – Multiple dog and cat permit.

No person or household shall own, possess, harbor, or keep more than a combined total of 5 dogs or cats or any combination thereof over the age of three months without a valid breeder permit or a multiple dog and cat permit.

- (a) Any person intending to exceed the maximum limit of dogs and cats in a household as defined in this section shall obtain a multiple dog and cat permit.
- (b) All dogs and cats over the number allowed in this section at a multiple dog and cat permit site shall be spayed or neutered. The only exception is any dog or cat which is unable to be

sterilized due to medical reasons, is owned by a breeder with a breeder permit or is a dog or cat that is registered by a nationally recognize kennel club. The owner must present a valid veterinary certificate stating the medical reason(s) why a dog or cat may not be sterilized.

- (c) Fostering a pregnant dog or cat and the offspring of the fostered dog or cat will be considered a temporary exception to this section.
- (d) No person shall keep or maintain more that ten dogs or cats or any combination thereof at any multiple dog and cat permit site location.
- (e) Permits may be suspended for failure to comply with the requirements of this section, as well as for violation of other applicable laws, regulations, and ordinances.
- (f) Rescue organizations and owners who have the custody and care of a rescue dog or cat shall be exempt from the requirements for multiple dogs and cats while the rescue dog or cat is in the custody and care of the organization or owner. Accurate records shall be kept and maintained by the rescue organization and the organization shall permit the City of Alamogordo animal control personnel or other city officials to inspect such records upon reasonable notice and shall permit the inspection of the rescue dog or cats living conditions at the rescue organization facility.
- (g) The following individuals or groups are exempt from the requirements of the multiple dog and cat permit requirements:
 - a. Individual or groups holding a State of New Mexico regulated permit or a federally regulated permit.
 - b. Events sponsored by a municipal zoo or aquarium facility.
 - c. Competitive sporting events.
 - d. Persons involved in an exempt activity shall comply with all other applicable requirements of this chapter.
 - e. Qualified service dogs or cats shall be exempt from the requirements of the multiple dog and cat requirements.

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 4/23/2019

Report Date: 3/27/2019

Report No: 6.

Submitted By: Petria Schreiber

Subject: Consider, and act upon, Ordinance 1591 for final publication to approve a Local Economic Development Project for Secured Assistance Proposed by Moran & Wright Jewelry and Metal Care Products. (*Laurie Anderson, Business Development Director*) (**Roll Call Vote Required**)

Fiscal Impact: 225,000.00

Amount Budgeted: \$2,485,772.00

Fund:

Additional Fiscal Impact:

Recommendation:

Background: Laurie Anderson, the Business Development Director from OCEDC will present this item to commission.

ORDINANCE NO. 1591

APPROVING A LOCAL ECONOMIC DEVELOPMENT PROJECT FOR SECURED FINANCIAL ASSISTANCE PROPOSED BY MORAN & WRIGHT JEWELRY CARE AND METAL CARE PRODUCTS

BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF
ALALMOGORDO, NEW MEXICO that the following is added to the municipal code:

Pursuant to the City of Alamogordo Economic Development Plan, Ordinance No. 983 and NMSA 1978 Section 5-10-1, et seq. (Local Economic Development Act, the “Act”), the proposed economic development project of Moran & Wright Jewelry Care and Metal Care Products (“the Company”) is approved for the purposes set forth in NMSA 1978 Section 5-10-1, et seq., and the City of Alamogordo is authorized to enter into a Project Participation Agreement (“the Agreement”) with the Company as required by Section 10 of the Act, and in substantially the same form as attached hereto, the terms of which are incorporated herein.

The City Commission finds as follows:

1. The Company is an entity as defined in NMSA 1978, Section 5-10-3(G);
2. Under the Agreement, the Company will provide a substantive contribution for the proposed project as described in NMSA 1978 Section 5-10-10(B);
3. The Agreement complies with the requirements of the Act and Ordinance No. 983;
4. The benefit of the proposed project to the City of Alamogordo is repayment of the financial assistance through the creation of jobs and other benefits

arising from employment and economic activity under the project which exceeds the cost to the City of providing to the Company the assistance specified in the agreement, and,

5. The Agreement complies with the requirement of Section 10 of the Act and is hereby adopted and approved.

BE IT FURTHER ORDAINED, that the Mayor of the City of Alamogordo, New Mexico is authorized and directed to do all things necessary to implement this ordinance that is lawfully adopted.

PASSED APPROVED AND ADOPTED this _____ day of _____, 2019.

CITY OF ALAMOGORDO, NEW MEXICO
a New Mexico municipal corporation

By: _____
Richard A. Boss, Mayor

ATTEST:

Rachel Hughs, City Clerk

APPROVED AS TO FORM:

Petria Schreiber, City Attorney

PROJECT PARTICIPATION AGREEMENT

This Project Participation Agreement ("Agreement") is entered into on _____, 2019 by and between the **CITY OF ALAMOGORDO**, a New Mexico Municipal Corporation (the "City") and **Moran & Wright Jewelry and Metal Care Products** (the "Company").

Recitals.

- A. Pursuant to the New Mexico Local Economic Development Act, NMSA 1978, Sections 5-10-1 through 5-10-13 NMSA 1978 ("LEDA"), the City adopted Ordinance No. 15-07 authorizing the City to consider applications for economic development assistance.
- B. As provided in the Economic Development Plan Ordinance, the City considered an application from the Company, which proposed that the City provide \$225,000 of City funds (the "LEDA Funds") to go toward the Company's acquisition of facility and renovation in the City of Alamogordo (the "Project") which will result in 11 New Jobs by December 2022.
- C. The City has adopted Ordinance No. _____ finding that the Company is a "qualifying entity" and the Project is an "economic development project" as those terms are defined by the Act, and approving this Project Participation Agreement (this "Agreement") as meeting the requirements of the Act.

- 1. **Goals and Objectives.** The objective of this Agreement is to create and support an economic development project that fosters, promotes and enhances local economic development efforts. The goal is that the Project will provide jobs and career opportunities that will benefit the community and contribute to its long-term economic growth and sustainability.
- 2. **Substantive Contribution from the Company.**
 - a. **Facility.** The Company will establish manufacturing and business operations at 2350 Eudora Street in Alamogordo, NM 88310 (the "Facility").
 - b. **Investment.** The Company will make capital investments in the Project and costs associated therewith (including, for the acquisition of building, equipment, tangible personal property and services associated with the acquisition, construction and equipping of the Project) in the amount of \$600,000.00 by, December 31, 2019 (the "Project Contribution"). Provided, however, failure to meet this level of Project Contribution will not constitute a breach of this Agreement.
 - c. **Job Creation.** The Company will employ at least 11 full-time employees at the facility by December 31, 2022 the "Job Target". "Job" means a permanent, full-time employment position (at least 32 hours per week) offering the employee the full range of benefits offered to other full-time employees of the Company. While failure to meet certain Minimum Job Numbers may result in a Performance Claw back as provided in Section 6b, below, the Company's failure to meet the Job Target will constitute a breach of this Agreement.

- d. **Schedule.** A preliminary Project schedule is as follows, but failure to meet these milestones will not constitute a breach of this Agreement.

Summer 2019	Acquire Facility and Initiate improvements
Fall 2020	Additional Equipment Investment

- e. **Sustainability.** Although the Company intends to have a long-term presence in the City of Alamogordo, for purpose of the contractual obligations of this Agreement, the Company covenants to continue to operate the Project until December 31, 2021.

3. **The City Contribution**

- a. The City Contribution is composed of up to \$225,000. The City Contribution will be disbursed to the Company in accordance with the provisions of this agreement for such purposes as set forth in Section 5-10-3D NMSA 1978. The City will disburse the City Contribution only in the manner described in this Agreement. The City will disburse the City Contribution as reimbursement for LEDA Eligible Expenditures subject to the Company's achievement of the hiring and development targets provided in this Agreement. For purposes of this Agreement, LEDA Eligible Expenditures shall mean expenditures including, but not limited to, building and infrastructure, including permanently installed and situated physical assets and the design, labor and permitting required to put them in place. Examples include foundation, drainage improvements, electrical wiring, architecture fees, insulation, landscaping and equipment rentals.

4. **Disbursement of City Contribution**

- a. **Conditions to Disbursement; Performance Milestones.** The City Contribution will be disbursed when Qualifying Entity presents receipts for eligible expenditures under this agreement pursuant to section 3 (a). Each disbursement will be conditioned on (i) the Company's having incurred expenses which are eligible for reimbursement under LEDA prior to the disbursement, and (ii) the Company's satisfaction of the performance milestones set forth below (the "Disbursement Performance Milestones") for each allotment prior to the disbursement:

Amount of City Contribution Available for Disbursement	Disbursement Performance Milestone
\$125,000	Acquire the Project site prior to June 30, 2019 and incur \$125,000 of LEDA Eligible Expenses.
\$100,000	Maintain a minimum employment level of 11 or more (per quarterly Wage and Employment report) submitted to City of Alamogordo for six (6) consecutive months and incur \$100,000 of LEDA eligible expenses.

5. Disbursement Requests. From time to time, after the Company has satisfied the conditions to disbursement set forth above, the Company may submit to the City a written request for disbursement of the City Contribution (the "Disbursement Request"). All Disbursement Requests shall be accompanied by (i) documentation substantiating LEDA Eligible Expenses, and (ii) documentation of current employment level in New Mexico pursuant to Section 6-c below. The Company upon completion of all performance milestones, submit a Disbursement Request for up to the full amount of the City Contribution then available to the Company at any time. The City may, in good faith, object to or require additional information regarding a Disbursement Request to verify compliance with this Agreement.

Review. City will review the Disbursement Request to assure the charges submitted are LEDA eligible. The City's review shall occur within 15 days of receipt of the Disbursement Request, but disbursement may take longer subject to the City's internal controls.

Security. As security for the faithful performance and payment of Company's obligations under this Agreement, prior to the Company's receipt of any part of the City Contribution, Company shall furnish the City with a mortgage to the property (the "Security"). The maximum obligation secured by the Security (the "Maximum Obligation") will be \$225,000.

- i. The City may draw on the Security in order to satisfy any unpaid Claw back Penalty which shall become due and payable, but only thirty (30) days following written demand for payment to the Company. Such draw may be initiated without filing a proceeding in any court of competent jurisdiction.
- ii. Provided that the Company has not been required to pay any Claw back, the Security will terminate on January 31, 2022, unless earlier released in accordance with this Agreement.
- iii. If the City reduces the amount of LEDA Funds that are made available for the Project and/or if the Company does not draw the entire amount of the LEDA Funds available, the Maximum Obligation will be reduced proportionately to reflect the amount of LEDA Funds actually received by the Company.

6. Claw backs. Notwithstanding any other provision of this Agreement, the Claw back Penalties set forth in this Section (together with forfeiture of the security instrument provided to secure the Company's Claw back obligations), shall be one of any remedy available in law to the City for breach of this Agreement available to the City upon the Company's breach of this Agreement. The Company's financial obligation to repay LEDA funds as a result of Claw backs shall in no way exceed the amount of the LEDA funds received by the company.

- a. **Facility Closure Claw back.** If the Company ceases operations in the City on or before December 31, 2021 the Company will repay to the City all LEDA Funds that the Company actually received from the City as of that date (the "Facility Closure Claw back") and the City shall have the right to execute reimbursement from the Security to recover those funds, but only thirty (30) days following written demand for payment to the Company if the Company hasn't repaid the requested LEDA Funds by that date. For purposes of this Agreement, a failure to produce product for a period of 90 days or more or failure to occupy the Facility shall be considered a cessation of operations.

- b. **Performance Claw back.** It is the Company’s intent to create and maintain the number jobs set forth. If the Company does not meet or exceed the job numbers set forth under the column captioned “Minimum Job Number” (and after expiration of the Cure Periods), then the Company shall be required to pay a Claw back Penalty.

Job Measurement Date	Target Job Number	Minimum Job Number	Clawback Penalty if Minimum Job Number not Achieved
December 31, 2019	2	1	100% of Clawback Penalty
December 31, 2020	9	5	100% of Clawback Penalty
December 31, 2021	11	9	50% of Clawback Penalty
December 31, 2022	11	11	25% of Clawback Penalty

For the purposes of this Section:

The “Claw back Penalty” is a penalty that the Company will be required to pay the City upon the Company’s failure to meet the Minimum Job Target on the applicable Job Determination Date, if such Minimum Job Target is not otherwise reached by the Company during the Cure Period. The Claw back Penalty shall be equal to the product of the Percentage Hiring Shortfall (as defined herein), multiplied by the total City Contribution paid to the Company as of that time multiplied by the claw back penalty percentage for that job measurement date. For purposes of this subsection, the “Percentage Hiring Shortfall” shall be the quotient of (i) the Minimum Job Number for applicable Job Determination Date, minus the actual number of jobs the Company maintains at the Facility at that time, divided by (ii) the Minimum Job Number for applicable Job Determination Date.

“Cure Period” is the period of 180 days after each Job Determination Date during which the Company shall have the opportunity to cure any shortfall in meeting the Minimum Job Number. If the Company fails to reach the Minimum Job Number during the Cure Period, the Company shall pay the City a Claw back Penalty determined in accordance with the table set forth above.

The sum of any claw back penalties shall not exceed the amount of any LEDA funds dispersed to the Company.

- c. **Job Audit.** The Company shall submit annually employment reports in the form of an affidavit signed by an officer of the Company and a copy of its annually filing of the Department of Workforce Solutions’ (“DWS”) Employment and Wage Detail Reporting submitted to DWS. The Company will provide all of such reports to the City. The City may request a copy of the Company’s quarterly employment reports, at any time while this Agreement is in effect, and the Company agrees to provide such documents. The Company acknowledges this annual reporting will be relied upon by the City to ascertain if the Company is in compliance with the job creation provisions of this Agreement and all subsequent and ancillary agreements. The Company will receive no disbursements of City Contribution as stipulated in this Agreement without up to date annually job reporting as set forth herein.
7. **Fees.** Each party shall bear its own costs and expenses in connection with the negotiation, execution and delivery of this Agreement or any amendment or enforcement of this Agreement.

8. **Annual Performance Review.** To ensure the prudent use of the taxpayer's funds and as required by the LEDA statute and Ordinance, the Project will be subject to an annual performance review conducted by City staff beginning on December 31, 2019 and every year thereafter until this Agreement terminates. The review will evaluate whether the Project is meeting the requirements set forth in this Agreement and any subsequent agreements or amendments and shall be made available to the City. At this time, the Company may report any difficulties it has experienced under the terms of this Agreement or the LEDA program and may request any assistance it deems necessary. The City may request the Company to provide data and information to assess the broader economic impact of the Project, but the Company shall not be required to divulge information or documents it considers confidential or proprietary.

If the requirements are not being met, the City may terminate this assistance to the Project by passage of an ordinance which terminates this Agreement and specifies the disposition of all obligations of the Project. In addition, in accordance with LEDA, the City may enact an ordinance revoking the LEDA Ordinance and terminating any further payments for any or all Projects thereunder. In the event the City terminates the LEDA Ordinance or this Agreement while the Company is in compliance with the terms and requirements of this Agreement, the City will not have a right to clawback any of the payments already made to the Company.

9. **Termination.** This Agreement shall terminate at the close of business on January 31, 2022 or when otherwise terminated by ordinance.
10. **Request for early release of security.** After meeting the LEDA obligation, if the Company achieves and then sustains the Minimum Job Number of 11 employees for 180 consecutive days (6 months) prior to December 31, 2020, the Company may request that the Security be released. Said request shall be made in writing and accompanied by documentation comprising its quarterly job reports demonstrating such employment. A request for release of the Security may not be submitted prior to December 31, 2020. In the event that a request for early release of Security is granted, the job reporting and annual performance review requirements of this Agreement remain in full effect through the termination date stated above.
11. **Liability.** No party shall be responsible for liability incurred as a result of the other party's acts or omissions. Nothing herein shall operate or be deemed to alter or expand any liabilities or obligations under the applicable provisions of the New Mexico Tort Claims Act (NMSA 1978 §§ 41-4-1, et seq.), or to waive any immunities, limitations or required procedures thereunder. Nothing in this Agreement constitutes a waiver of any party's right to seek judicial relief.
12. **Amendments.** This Agreement shall not be altered, changed or amended, except by instrument in writing executed by all of the Parties hereto including the New Mexico Economic Development Department.
13. **Governing Law.** This Agreement shall be governed by the laws of the State of New Mexico.
14. **Miscellaneous.** This Agreement binds and inures to the benefit of the City and the Company and their respective successors and permitted assigns. This Agreement may be executed in any number of counterparts, each of which is an original and all of which taken together constitute one instrument.
15. **Notice.** All notices or other written communications, including requests for disbursement, that are required or permitted to be given pursuant to this Agreement must be in writing and

delivered personally, by a recognized courier service, by a recognized overnight delivery service, by fax, by electronic mail, or by registered or certified mail, postage prepaid, to the parties at the addresses shown below. If notice is mailed, it will be deemed received on the earlier of actual receipt or on the third business day following the date of mailing. If a notice is hand-delivered or sent by overnight delivery service, it will be deemed received upon actual delivery. If any written notice is sent by facsimile or electronic mail, it will be deemed received upon printed or written confirmation of the transmission. A party may change its notice address by written notice to the other party to this Agreement.

The initial notice addresses for the parties are as follows:

If to the City:

City of Alamogordo
Office of the City Manager
1376 E Ninth St
Alamogordo, NM 88310

If to the Company:

Moran & Wright Jewelry & Metal Care Products, LLC
Attn: SHANNAN T, WRIGHT, CEO
2350 EUDORA
ALAMOGORDO CITY, NM 88310
Tel: (575) 4307106

IN WITNESS WHEREOF, the Parties hereto have entered into this Agreement as of
this _____ day of _____, 2019.

CITY OF ALAMOGORDO, NEW MEXICO
a New Mexico municipal corporation

By: _____
Brian Cesar, Interim City Manager

MORAN & WRIGHT

By: _____
Shannon Wright

ATTEST:

Rachel Hughs, City Clerk

APPROVED AS TO FORM:

Petria Schreiber, City Attorney



LEDA PROJECT APPLICATION

The purpose of the Application is to identify the project area and to present a detailed plan on how the proceeds of the LEDA funds will be put to use. This Plan is presented to demonstrate to the City, what the public benefits of this project are and to help the City evaluate the application's merit in comparison to other projects submitted, as well as assist the review committee in determining eligibility according to the City's LEDA Act. The applicant and its agent will endeavor to provide the City any additional information reasonably requested.

APPLICANT INFORMATION

Legal Name	Moran & Wright Jewelry and Metal Care Products, LLC.
Trade Name (dba)	Rich Glo, Brilliant Shine
Project Name if different from above	N/A
Address	2350 Eudora St.
City, State, Zip	Alamogordo, NM 88310
Phone	575-430-7106
Fax	575-488-1966
Primary Contact Person	Shannan T. Wright
Federal Tax ID #	83-1164998 EXHIBIT 5
NM State Tax and Rev. #	03-388960-00-0
City/County Business License #	18-00023948 EXHIBIT 3
NAICS Code	325612
This business is organized as a:	☐ C-Corporation ☐ S-Corporation ☒ LLC ☐ Partnership ☐ Proprietorship ☐ NPO

Please attach copies of (exhibit 1, 2, etc.):

 X Incorporation Papers **Exhibit 1**

 By-laws

See Business Plan Resume of Owner **(Shannan T Wright) EXHIBIT 6**

A) Project Information:

- a. Description of Proposed Development, its product and its timeline.
See Business Plan page 2
- b. Provide a detailed scope of work that is specific to the funding request/award
- c. Business Plan or detailed information such as:
 - i. Executive Summary; Business description and history
See Business Plan page 2
 - ii. Infrastructure Development/Needs EXHIBIT 2
 - iii. Market analysis and strategy
See Business Plan page 6 & 9
 - iv. Summary of competition
See Business Plan page 7
 - v. Tax Reporting Status
 - vi. Effect on Existing Industry and Commerce during and after Construction
N/A
 - vii. Land Acquisition
Complete
 - viii. Local Purchasing
 - ix. Water Conservation
N/A
 - x. Relocation of Individuals or Businesses
All employees are anticipated to be local.
 - xi. Construction Schedule See Business Plan
 - 1. Target Close Date
 - 2. General Contract Signed
 - 3. Construction Start
 - 4. Construction End
 - 5. New Facility Operational Date 1 September 2018
 Operations plan (See Business Plan page 11)
Organizational chart- Shannan T Wright, Owner
 - xii. Any document or record that the local governing body, in its sole discretion, deems necessary.

B) Financial Information

- a. Detailed assumptions for business and proposed projects; pro--forma cash flow analysis; three year projected income statements, whichever is applicable (See Business Plan page 23, 25).
- a. Financial statements with independent audits, if available, or Tax returns, for the past three years.
- b. City/County business license number/proof or statement that registration will pursued or secured. 18-00023948 EXHIBIT 3
- c. Does the amount requested reasonably represent the money needed to complete the project? Yes
- d. If a gap exists, please define/explain options being pursued or solution to fund that gap. N/A
- e. Provide schedule of funding commitments. Provide copies of any term/commitment letters. N/A
- f. What is the equity investment from the applicant? \$275,000.00
- g. What is the collateral/security to be pledged to the funds awarded? Property Deed
- h. What is the method of appraisal for stated security? Purchase Price and Improvements

Funding Type	Source	Amount
Equity Investment	2350 Eudora Property	\$275,000
City funding	LEDA	\$225,000
Bank Loans	NA	NA
Cash down and % it represents of the total project costs		
Other Loans		
Other Sources		
	TOTAL	\$500,000

C) History and Background

- a. Track record with projects of this type? Fred Moran is a Consultant to us with 27 + years of experience.
- b. Explain the commitment to build, operate, and manage the project? I am a local Businessman and I am managing on a day to day basis.
- c. Any officers ever filed for bankruptcy? N/A
- d. List Current officers and directors
Shannan T. Wright – Managing Member Drivers Lic attached EXHIBIT 4
- e. Applicant or any of its officers ever defaulted on any loans or financial obligation? N/A
- f. Does the applicant have any loans or other financial obligations on which payments are not current? N/A

D) Community Aspects

- a. What are the infrastructure needs at the community level, not yet in place or in process that will affect this project's application?
- b. What specific incentives are being REQUESTED from the COMMUNITY (e.g. parcel of land, building lease, waiver of fees, utility access/extension)?

Property Tax Abatements _____
Infrastructure Improvement X
Tax Increment Financing _____
Grey Water _____
Other _____

Industrial Revenue Bonds _____
Access to Loan Funds _____
Public Improvement Districts _____
Other Customized Incentives _____

-
- c. What specific incentives are being PROVIDED from the COMMUNITY (e.g. parcel of land, building lease, waiver of fees, utility access/extension)?

E) Job Creation/Performance

- Outline the number and types of jobs to be created.
- Outline the proposed pay scale and payroll proposed by the entity
- Outline the benefits offered to the employees, including but not limited to health care and retirement?
- Outline any efforts being made or proposed by the applicant to employment opportunities to people within the local employment pool

SAMPLE			Number of Jobs Created	
Job Title or Type	Estimated Pay Scale	At Start-up	Beginning of Year 2	Beginning of Year 3
Receptionist /bookkeeper (L)	\$10 - \$15/hr.	0	1	0
Inside sales and customer support professional (L)	\$15 - \$20/hr.	0	0	1
Marketing research and data analyst (L)	\$10 - \$20/hr.	0	0	1
Machine Operator (filling line) (L)	\$10 - \$12/hr.	1	1	0
Screen Printing Professional (L)	\$10 - \$15/hr.	0	0	1
Director of Sales and Marketing (R)	\$20 - \$25/hr.	1	0	0
Social Media/Online marketing specialist (L)	\$10 - \$15/hr.	0	1	0
Package/Shipping (L)	\$8.50-\$10/hr.	1	1-2	2-3
Total No. of Jobs Created			7-9	9-11
Total Estimated Payroll			\$74,800	\$96,000

Please indicate in the above chart which jobs will be:

- Fill locally (L)
- Fill by transfer from other facilities (T) or recruited from outside the COMMUNITY (R)

JOB RETENTION INFORMATION (IF APPLICABLE) N/A

			Number of Retained/Impacted	
Job Title or Type	Estimated Pay Scale	At Start-up	Beginning of Year 2	Beginning of Year 3
Total No. of Jobs Created				
Total Estimated Payroll				

F) Impacts (environmental, fiscal, economic, etc.)

- a. Outline any impacts to the environment

N/A

- b. Status of permitting/regulatory matters needed for project: **Building Permits for Infrastructure that is needed**

- c. By request, NMEDD can provide the Economic Impact Analysis to address the impact to the local tax base, the school system, etc.)

☒ Yes ☐ No

Any supplemental documents that are submitted to support the application are to be included with this application and noted as "exhibit 1, 2" etc.

A review of the application and its contents will be done by a committee put together for the express purpose of accomplishing due diligence in review of all applicable information, accomplish any validation needed as to qualifying entities eligibility, and provide a recommendation to City Staff and the City Commission; applicant will be advised of any missing or supplemental information needed. This process may take upwards of 60 to 90 day to complete. Applicant's patience and accommodation towards any additional items asked for is greatly appreciated.

CITY OF ALAMOGORDO
Individual AUTHORIZATION FOR EXAMINATION AND RELEASE OF
INFORMATION

(if corporation, a different document will be provided)

I, Shannan T. Wright, hereby grant permission to the City of Alamogordo to conduct a review, full disclosure, and release of any and all information authorized pursuant to federal and state law. The purpose for obtaining and examining the information is to construct a record of my personal and professional history to ensure I meet the requirements the New Mexico Economic Development Department has established for recipients of State funds. I understand the investigation will be conducted by the New Mexico Economic Development Department, the New Mexico Department of Public Safety, or their contractors, and the results of the investigation will only be supplied to the New Mexico Economic Development Department.

I hereby grant the New Mexico Economic Development Department permission to obtain any information in my background pertaining to any credit (to include obtaining a copy of my credit report), education, investigation, arrest and/or conviction of myself in any criminal or civil matter. I also authorize an employee of the New Mexico Economic Development Department, as my authorized representative, to obtain from the New Mexico Taxation and Revenue Department any tax information that is in any way related to me or a company I own or have invested in. I hereby direct you to release such information upon the request of this bearer. I hereby release you as custodian of such records for any criminal justice, law enforcement or court agency, including its officers and employees, or related personnel, both individually and collectively, from any and all liability for damages of whatever kind, that may at any time result to the New Mexico Economic Development Department or the State of New Mexico because of compliance with this authorization and request to release information; or any attempt to comply with it.

1. The information reviewed, disclosed, and/or released may be used by the New Mexico Economic Development Department for any lawful purpose and/or to determine my or my company's suitability to receive funds from the State of New Mexico.
2. I hereby release the providers and users of the information collected pursuant to this authorization from any liability under state or federal privacy laws and further release the New Mexico Economic Development

Department, its contractors, agents, and/or employees from any liability which may be incurred as a result of the collection and use of information.

3. I understand I may revoke this authorization in writing at any time.
4. This authorization will automatically expire in 60 days from the date it is signed.

FULL NAME: Shannan T. Wright

SIGNATURE: _____

SSN: 476-72-7357

DOB: 06/03/1960

DATE: 6 December 2018

* PLEASE INCLUDE A PHOTO COPY OF THE INDIVIDUAL'S PHOTO ID.

Scribed and sworn to me on this _____ day of _____, 20____, _____ County, New Mexico

Signed _____
Notary Public

My Commission
expires: _____

Moran & Wright



Jewelry and Metal Care Products, LLC.

Business Plan
July 2018

Company

Company History

Rich Glo Products, Inc. ("Rich Glo") has been supplying jewelry merchants and manufacturers with quality jewelry care products for more than 30 years.

Rich Glo Products has had more than 30 years of experience in the jewelry industry, in both manufacturing and retail markets with Rich Glo Products in product development, manufacturing, and sale of jewelry cleaning products.

Rich Glo's products consist of polishing cloths to liquid cleaners and polishing creams. Rich Glo is the most innovative supplier of private-labeled jewelry care products in the industry, and has garnered customer trust and satisfaction. Rich Glo's product line is safe and easy to use and delivers professional results.

Rich Glo is able to serve the industry with fast and efficient order processing and delivery worldwide. The company provides services such as pre-ticketed items, compliance labeling, drop shipping, bulk packaged products for manufacturers, and personalized and private labeled products.

Moran & Wright Jewelry and Metal Products, LLC. Has purchased Rich Glo Jewelry Care Products, Inc. in July 2018. Rich Glo, Inc. has been dissolved & FM Consulting has been hired by Shannan T. Wright, The business has relocated operations to Alamogordo, NM. We will continue to supply jewelry merchants and manufacturers with the highest quality jewelry care products in the market, combining the most effective formulas with competitively priced, private-label, and brand name products.

Ownership & Structure

Moran & Wright Jewelry and Metal Products (Rich Glo, Inc.) is an LLC with national and international sales in the jewelry marketplace, specifically in jewelry care products. Shannan T. Wright will own 100% of M&W, LLC. FM Consultants LLC. has been hired as a Consultant and will assist with operations, Training and making sure the equipment is functional and operates as intended.

Our advantages

M&W products are effective and easy to use and manufactured under rigid quality standards. From polishing cloths to liquid cleaners and polishing creams, we are the most innovative supplier of private-labeled jewelry care products in the industry, and have garnered customer trust and satisfaction. Our product line is safe and easy to use and delivers professional results.

Moran & Wright Jewelry and Metal Products (Rich Glo, Inc.) is able to serve the industry with fast and efficient order processing and delivery worldwide. The company provides services such as pre-ticketed items, compliance labeling, drop shipping, bulk packaged products for manufacturers, and personalized and private labeled products.

Moran & Wright Jewelry and Metal Products (Rich Glo, Inc.) offers exceptional customer service to every customer, every day, every time and our customers keep coming back year after year.

Moran & Wright Jewelry and Metal Products (Rich Glo, Inc.) not only has products for Jewelry care we have exclusive products for high end air planes and plan to expand our products and market beyond Jewelry care. This will give us the edge over our competitors who only serve the Jewelry market.

Opportunity

Problem & Solution

Problem

Rich Glo, Inc. has been in business for over 30 years however in the last 5 years there has been a death of a partner which brought some changes of ownership and partnerships.

Most recently in 2015 Rich Glo was forced to operate in a warehouse that was also operating and manufacturing a different product while waiting for the completion of a new facility. This slowed Rich Glo's momentum and ability to produce large orders. The last three years have been slow.

Although the seven month period in 2017 showed an increase in sales revenue of \$30,000.00, we still show a loss of \$13,000 for the year. In large part, the loss was due to additional costs associated with moving into the new location, ie... HVAC, Electrical, Plumbing, RO & Water Softener Needs for the products being produced, Wiring of the relocated equipment and equipment maintenance; telephone system, security etc.

Lack of resources to adequately maintain day-to-day operations and the current partnership contributed to Rich Glo's inability to maintain a steady momentum and becomes a detriment to growth.

Our Solution

Moran & Wright Jewelry and Metal Products (Rich Glo, Inc.) has a proven business model and quality products. Fred Moran was at a point where he needed to dissolve the current partnership in order to grow Rich Glo. was looking for a Business person to invest and help provide dedicated support for the day to day operations.

Fred has chosen to sell out to Shannan T. Wright, a successful business owner in Alamogordo, NM to rejuvenate and grow the Rich Glo brand. Shannan will be able to provide Rich Glo with financial support to allow M&W to set up a new location, purchase materials, marketing campaign, and hire employees. This new venture

will allow M&W with Rich Glo products the opportunity to be 100% operational, launch newly developed products, and grow to its fullest potential.

In 2017 Rich Glo reduced costs associated with manufacturing and we plan to increase sales by a conservative estimate of 30% annual growth each year over the next 3 years. The growth will allow us to purchase materials in large quantities, minimize Shipping and Custom Fees therefore reducing our costs while increasing our revenue.

In 2018, Moran & Wright Jewelry and Metal Products, LLC. will introduce the "Brilliant Shine" line of products to the mix. These products will target higher end retailers and chain stores globally as well as jewelry supply companies for distribution purposes. Initially, two sizes of suede cloth, 4"x 8" and 8"x10" cloth will be offered, under this brand.

We have, in recent months acquired exclusivity agreements with fabric manufacturers in China as well as sole distribution rights to a line of cleaning solutions for fine time instruments. We have a formulation chemist that provides us with tweaks to our products formulas to ensure safety and efficacy of all our products.

By expanding and refreshing the look of our product line, executing our aggressive marketing plan, and hiring a dedicated team that supports Moran & Wright Jewelry and Metal Products' mission we will be profitable and ensure our future viability and success.

Target Market

Moran & Wright Jewelry and Metal Product's primary customers are jewelry retailers, jewelry wholesalers, house- to-house jewelry retail, retail jewelry catalogs, jeweler supply companies, and jewelry manufacturers. The current customer base is composed of approximately 500 independent U.S. jewelry and Canadian jewelry retailers, manufacturers, wholesalers and catalog houses.

In the near future, Moran & Wright Jewelry & Metal Products, LLC. plans to expand its reach into the industrial products market and to target higher end jewelry chains, department stores, major mass merchandisers, in-home jewelry sales, and direct to consumer sales (via the web), globally.

The total potential market in the USA is comprised of 56,000 potential accounts.

Competition

Current alternatives

There are many competitors offering Jewelry care products globally. Every competitor has a different formula for their Jewelry cleaning products. Rich Glo has had many companies' switch to their products from competitors because it simply works better.

Although Moran & Wright Jewelry and Metal Products does not have as many customization Jewelry options as some other competitors we do offer private label products. Our customers who purchase our private label jewelry care products have been long lasting customers and we are gaining new ones annually.

In addition to Jewelry care products we have customers that come to us exclusively to produce polishing puffs (pads) for polishing and cleaning silver and gold plated high end luxury insignia for custom aircraft, military regalia and mirrored finished metal manufacturing.

According to the new research, jewelry is the best performing personal accessories category with sales worth US\$ 316 billion in 2016. It is also the fastest growing segment within the personal accessories industry with 3 percent growth between 2015 and 2016. Rich Glo has customers not only in the U.S. but globally. These statistics show how large the market space is and we plan to dominate as much as the market as possible.

Execution



Marketing & Sales

Marketing Plan

Being the best means being the leader in design and development. We consistently challenge the status quo with offerings years ahead of the competition.

Moran & Wright Jewelry and Metal Products plans to focus on developing markets through the use of a newly designed and updated elaborate e-commerce website where customers can register to order directly on line, take advantage of special seasonal promotional offers, and download PDF formatted product brochures, care tips and information on new products and services.

Moran & Wright Jewelry and Metal Products will also utilize social media platforms combined with our email campaigns to both consumer and retailers to help elevate Moran & Wright Jewelry and Metal Products' presence in a global market.

In addition to social media and our new website we will include ads and articles in online trade magazines, National Jeweler and Canadian Jeweler. Exposure is the key to growth.

INDUSTRIAL MARKETS: (non-web supported targets)

- **Supply Houses:** Display Packs, Refill Packs, Bulk Packs and Concentrates
- **Manufacturers:** Bulk Packs and Concentrates
- **Distributors:** Branded Products and Private Labeled Programs.
- **Independent Retailers:** Private Labeled and Personalized Programs, Display Packs and refills.
- **Chain Store Retailers:** High End Branded Products, Higher End Private Labeled Products, Display Packs and Refills
- **Mass Merchandisers:** Discount Brand Products, Private Labeled Products, Display Packs and refills customers will be required to register to access pricing,

promotions etc...This will allow Rich Glo to build their data base and keep track of ordering trends and product popularity. This information will also help with managing inventory and will enable the company to better manage purchasing and budgeting.

Sales Plan

FM Consultants will assist with Advertising and marketing efforts, utilizing our interactive website with integrated social media platforms combined with our email campaigns to both consumer and retailers, FM Consultants will assist the director of sales and marketing for Moran & Wright Jewelry and Metal Products.

FM Consulting suggests that we visit current and potential customers all over the world introducing our new products, delivering samples and building business relationships.

In 2018, Moran & Wright Jewelry and Metal Products will introduce the "Brilliant Shine" line of products to the mix. These products will target higher end retailers and chain stores globally as well as jewelry supply companies for distribution purposes. Initially, two sizes of suede cloth, 4"x 8" and 8"x10" cloth will be offered, under this brand.

We are reviewing new stylish jars and caps for our liquid products, as our current supply is depleted. We are also in the process of formulating and testing a new silver cream.

During 2017 Rich Glo has reduced costs associated with manufacturing by:

- Reformulating polishing products, eliminating the number of chemicals used in older formulations while improving efficacy and perceived value of these products.
- Minimizing the expenditure of packaging materials by purchasing locally in smaller volumes for items that are not big retail sales items but rather are sold to industrial venues such as plating and metal finishing companies.

Key Customers

Moran & Wright Jewelry and Metal Products (Rich Glo, Inc.) primary customers are jewelry retailers, jewelry wholesalers, house- to-house jewelry retail, retail jewelry catalogs, jeweler supply companies, and jewelry manufacturers. The current customer base is composed of approximately 500 independent U.S. jewelry and Canadian jewelry retailers, manufacturers, wholesalers and catalog houses.

DESERT ROSE	QUAKER CITY PLATING, LTD.
HIGH TECH FINISHING	EL CHARRO MEXICAN FOODS
LILLY BARRACK	RIO GRANDE THE BELL GROUP
MIRROR MAGIC	RUNNING BEAR TRADING
MONICA VINADER	SILVER FEATHER JEWELRY
ORTEGA'S ON THE PLAZA	THUNDERBIRD SUPPLY COMPANY

Operations

Locations & Facilities

Moran & Wright Jewelry and Metal Products (Rich Glo, Inc.) will be re-locating from Roswell, NM to Alamogordo, NM in August 2018. Moran & Wright Jewelry and Metal Products has secured a building at 2350 Eudora St, Alamogordo, NM 88310. The new location is 5,000 square feet and offers a loading dock, and office space that is exactly what we need to operate and be successful.

2350 Eudora St. Alamogordo, NM 88310



Moran & Wright Jewelry and Metal Products (Rich Glo, Inc.) is in the process of updating our website and we are expanding our marketing to more social media platforms. Our website also contains an e-commerce store front to receive orders online. We will utilize financial book keeping software as well as payment processing equipment. Each employee will have a business computer for business operations.

Equipment & Tools

1. Aztec Pad Dry Line- Cloth treater
2. MTR Gauntlet- Semi-Auto Screen Printing Press
3. A second manual Silk Screening machine:
 - Inks, Flash Dryer,
 - Oven Belt
 - Exposure unit
4. Oden Servo Pro filling equipment
5. Hydraulic Swing- Arm Cutting Machine
6. Cloth spreader and Fabric Saw
7. Pneumatic Torquing equipment
8. Pillar Automatic Induction Sealing Equipment
9. Puff Treating machine
10. Utility tables and chairs
11. Color Label printer

Milestones & Metrics

Milestones Table

Milestone	Due Date	Who's Responsible
Complete LEDA Application	December 1, 2018	Shannan T Wright
Completed purchase building	May 25, 2018	Shannan T Wright
Relocate Rich Glo Equipment	August 15-30, 2018	Shannan T Wright
Hire Employees	January 15, 2019	Shannan T Wright
M & W in production and operating in Alamogordo	September 15, 2018	Shannan T Wright FM Consultant's

Key metrics

Keeping direct costs low in order to be profitable.

Keeping our website up to date, operational, informative and attractive.

Utilizing sales, social media, and website statistics to target new customers and engage with current customers.

Build a solid team with motivation and dedication to our mission.

Roadmap

In 2018, Moran & Wright Jewelry and Metal Products (Rich Glo, Inc.) will introduce the "Brilliant Shine" line of products to the mix. These products will target higher end retailers and chain stores globally as well as jewelry supply companies for distribution purposes. Initially, two sizes of suede cloth, 4"x 8" and 8"x10" cloth will be offered, under this brand.



We are in the process of testing our new polishing cream and will be releasing this product also in 2018 with the newly updated product look.

Moran & Wright Jewelry and Metal Products (Rich Glo, LLC.) is also updating our product image and packaging for liquid cleaners and creams and these will also be released in 2018 before the Christmas shopping season.

Our Jewelry Polishing clothes have recently been upgraded to a micro fiber cloth and we will be updating the packing to match our new cleaner look.



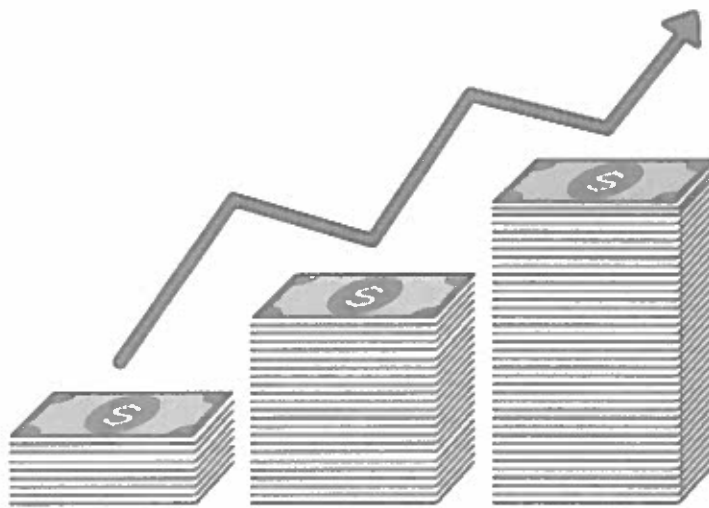
Team



Shannan T. Wright, Owner

Shannan T. Wright is originally grew up in Albert Lea & Owatonna in Minnesota. In 1978 Shannan, newly enlisted in the military, was stationed at Holloman Air Force Base as a Jet Engine Tech for the 479 CRS Squadron and worked at the J-85 Test Cell which Tested and maintained over 300 Jet Engines for the T-38 Trainer Aircraft. Shannan Also served on the Holloman AFB Honor Guard while Active Duty, Shannan Was Honorably Discharged in July of 1982 and was working part time in 1980 at Polson & Grady, Ltd. Shannan is a successful business man and is the President and Owner General Hydronics Inc. & General Hydronics Plumbing, LLC for the past 38 years. He also is a Co-Owner in the Waffle Shoppe & Pancake House in Alamogordo, NM; His wife Tammi & he have STWF LLC. This is a holding company. Shannan is Vice President of Polson & Grady LTD Mechanical & Electrical Contractors. Owner of STW 308 LLC a VRBO Vacation Rental Property, Shannan has served as Secretary on the Board of Directors at the Worship Center for the past 10 years, He is currently on the Board of Directors at the Alamogordo Chamber of Commerce and He is the Honorary Commander for the 635th Material Maintenance squadron (Bear Base) for the past 7 years. Shannan Was Past President of the Alamogordo Parks and Recreation Board, Commissioner for the USSSA Co Ed Softball Association and has coached numerous Soccer, Baseball, Softball & Basketball teams in Men's, Women & Co ED. Shannan will provide financial support and oversee operations and financials. Shannan was the 1996 United States Youth Soccer Federation National Coach of the Year and the 1997 Olympic Committee Developmental Coach of the Year for Youth Soccer.

Financial Plan



Forecast

Key assumptions

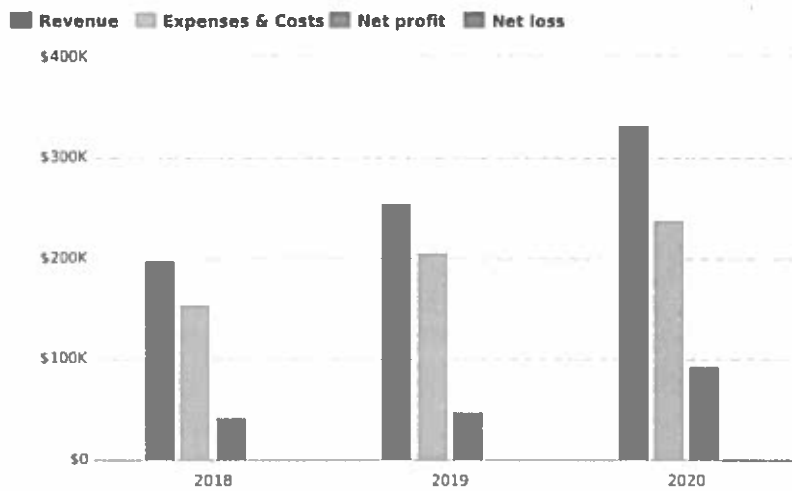
I have projected Moran & Wright Jewelry and Metal Products (Rich Glo, Inc.) projected revenue based on past tax returns, profit and loss statements while keeping in mind new products, new location, and partnerships that will increase revenues.

In a seven month period in 2017 we showed an increase in sales revenue of \$30,000.00, in this short period in the proper building we were able to boost revenue with limited employees and marketing.

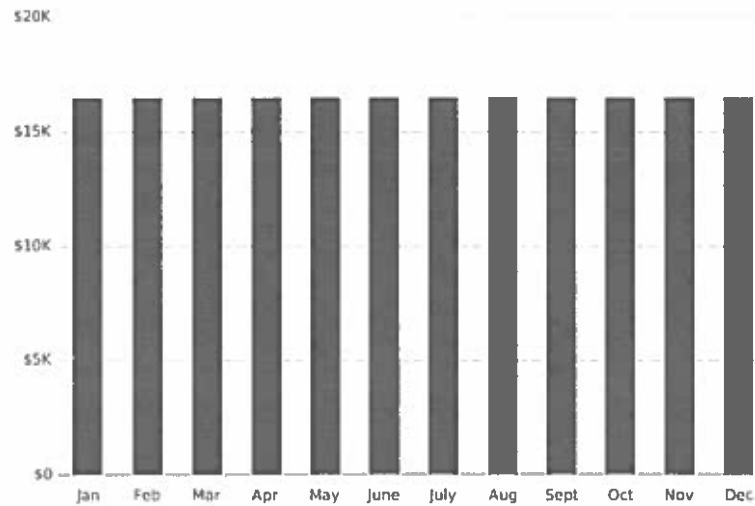
In 2018 with the new location, financial partner, full staff, and newly design products we are confident that we will meet our goal of growing revenue annually by 20 to 25%. Our products are the highest quality of jewelry care products in the market and we have the most effective formulas with competitively priced products will dominate the market.

Moran & Wright Jewelry and Metal Products (Rich Glo, Inc.) plans to possibly hire 4-8 employees. FM Consulting will continue to train and develop the sales, marketing, product development, and overall management of operations. New hires will include Director of sales and Marketing, office manager/secretary, manufacturing and production manager, marketing specialist, and production laborer, Packaging Staff and possible future positions like Equipment Maintenance.

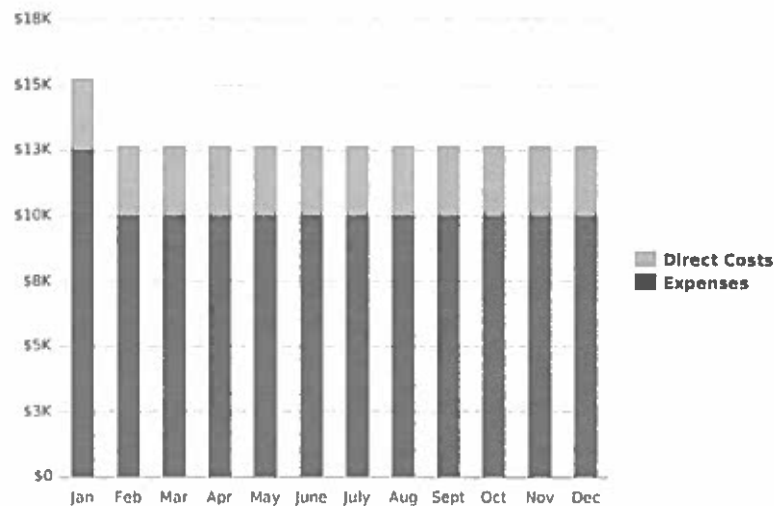
Financial Highlights by Year



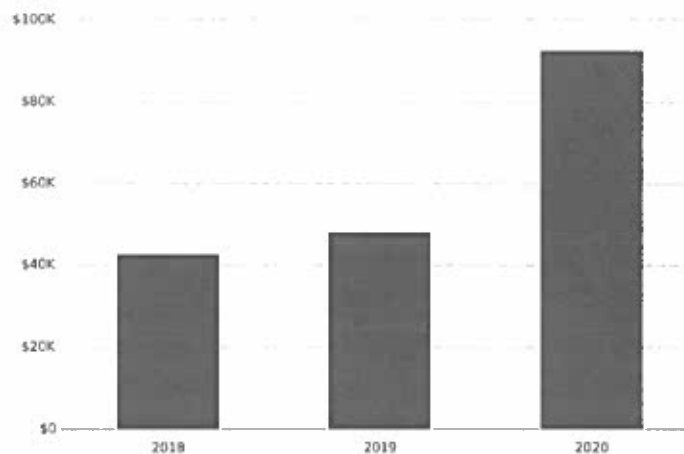
Revenue by Month



Expenses by Month



Net Profit (or Loss) by Year



Financing

Moran & Wright Jewelry and Metal Products, LLC. is seeking funds through the City of Alamogordo's Local Economic Development Act (LEDA) program to reimburse Shannan T. Wright for the purchase of the new location located at 2350 Eudora St., Alamogordo, NM 88310.

Moran & Wright Jewelry and Metal Products (previously Rich Glo) is requesting \$225,000 to Upgrade the Infrastructure and Mechanical System for the 5,000 sq ft. building located at 2350 Eudora St. Alamogordo, NM and complete some needed facility upgrades necessary to operate such as GC, HVAC, Electrical, Plumbing, ADA modifications, Phone & Internet Infra structure improvement's. The collateral/security to be pledged to the funds awarded will be the building and property located at 2350 Eudora St. Alamogordo, NM 88310.

Shannan T. Wright has invested approximately \$375,000 to acquire the new location, complete necessary building upgrades and utilities, purchase Rich Glo, Inc. assets, and relocate equipment and material.

Within the next 5 years Moran & Wright Jewelry and Metal Products, LLC. will provide 4-8 jobs to this community. See our team section for starting personnel details. Our financial projections show that we will be able to fulfill our LEDA obligations within the contract period. We intend to work with the SBDC and Department of Workforce Solutions to develop long term career opportunities over a 3-5 year period, utilizing on the job training and business development programs offered through these agencies.

Projected future positions to be filled are:

- Director of Sales and Marketing
- Social media/online marketing specialist
- Receptionist / bookkeeper
- Inside sales and customer support professional
- Marketing research and data analyst
- Machine Operator (filling line)
- Screen Printing Professional

Rich Glo, Inc. was at a point where a selling out to M&W and moving from Roswell, NM is necessary to grow the company and once again become a leader in the Jewelry care market. Shannan T. Wright felt Alamogordo will be a better community to retain employees. Moran & Wright Jewelry and Metal Products (previously Rich Glo) does not depend solely on the local economy as we are a manufacturer and provide products to local and global markets. We are excited to relocate to Alamogordo and provide jobs for individuals in the Alamogordo area.

Statements

Projected Profit and Loss

	2018	2019	2020
Revenue	\$198,228	\$255,123	\$331,660
Direct Costs	\$32,496	\$63,590	\$87,833
Gross Margin	\$165,732	\$191,533	\$243,826
Gross Margin %	84%	75%	74%
Operating Expenses			
Salaries & Wages	\$74,800	\$95,600	\$95,600
Employee Related Expenses	\$5,984	\$7,648	\$7,648
Utilities	\$3,700	\$3,700	\$3,700
Misc. Supplies	\$5,400	\$2,400	\$2,400
Website-Phone-Internet	\$7,812	\$7,812	\$7,812
Accounting	\$3,600	\$3,600	\$3,600
Insurance	\$3,500	\$3,500	\$3,500
Advertising	\$5,000	\$5,000	\$5,000
Travel	\$2,400	\$2,400	\$2,400
Dues / Subscriptions	\$3,000	\$3,000	\$3,000
Total Operating Expenses	\$115,196	\$134,660	\$134,660
Operating Income	\$50,536	\$56,873	\$109,167
Interest Incurred			
Depreciation and Amortization			
Income Taxes	\$7,580	\$8,531	\$16,375
Total Expenses	\$155,272	\$206,781	\$238,868
Net Profit	\$42,956	\$48,342	\$92,792
Net Profit / Sales	22%	19%	28%

Projected Balance Sheet

	2018	2019	2020
Cash	\$49,016	\$98,531	\$194,815
Total Assets	\$49,016	\$98,531	\$194,815
Accounts Payable	\$0	\$0	\$0
Income Taxes Payable	\$2,096	\$2,131	\$4,092
Sales Taxes Payable	\$3,964	\$5,102	\$6,633
Short-Term Debt			
Prepaid Revenue			
Total Current Liabilities	\$6,060	\$7,233	\$10,725
Long-Term Debt			
Total Liabilities	\$6,060	\$7,233	\$10,725
Paid-In Capital			
Retained Earnings		\$42,956	\$91,298
Earnings	\$42,956	\$48,342	\$92,791
Total Owner's Equity	\$42,956	\$91,298	\$184,090
Total Liabilities & Equity	\$49,016	\$98,531	\$194,815

Projected Cash Flow Statement

	2018	2019	2020
Net Cash Flow from Operations			
Net Profit	\$42,956	\$48,342	\$92,792
Change in Income Tax Payable	\$2,096	\$35	\$1,961
Change in Sales Tax Payable	\$3,964	\$1,138	\$1,531
Change in Prepaid Revenue			
Net Cash Flow from Operations	\$49,016	\$49,515	\$96,283
Net Cash Flow from Investing & Financing			
Cash at Beginning of Period	\$0	\$49,016	\$98,531
Net Change in Cash	\$49,016	\$49,515	\$96,283
Cash at End of Period	\$49,016	\$98,531	\$194,815

On a side note we have had to start production the 1st of September to be able to fulfill current customer's orders and retain their business. We have had over \$100,000.00 in sales in September & October alone. However due to the amount of resources required to make this move our cost will be a little higher this year but this is a good start to offsetting those costs.

We are very excited to be a part of the Alamogordo Community and are looking forward to be partnering with the Alamogordo Chamber of Commerce and OCDEC.

Thank you very much for your consideration. Please feel free to contact me with any questions or concerns you may have.

Respectfully,

Shannan T Wright
575-430-7106

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 4/23/2019

Report Date: 4/19/2019

Report No: 7.

Submitted By: Britney Courtier

Subject: Consider, and act upon, the amended contract (Amendment #1) with the New Mexico Economic Development District, Non-Metro Area Agency on Aging (NMAAA) for the Direct Purchase of Services (*Magdalena Morales, ASC Manager*).

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

IIIC1 (Congregate Meals): Original Contract Amount: \$49,885.20

Increasing Funding by: \$51,485.72

Revised Amount: \$101,370.92

IIIC2 (Home-bound Meals): Original Contract Amount: \$15,929.30

Increasing Funding by: \$13,998.70

Revised Amount: \$29,928.00

IIIB (Transportation): Original Contract Amount: \$27,375.96

Increasing Funding by: 20,100.75

Revised Amount: \$47,476.71

IIID (Evidence-based): Original Contract Amount: \$25,556.18

Increasing Funding by: 12,778.09

Revised Amount: \$38,334.27

Recommendation: Approve the increase in grant funding.

Background: The Alamo Senior Center receives funding for the congregate meal setting, Meals on Wheels, transportation, and evidence-based programs through the Non-Metro Area Agency on Aging.



North Central New Mexico
Economic Development District
Non-Metro Area Agency on Aging
3900 Paseo Del Sol Santa Fe, New Mexico 87507
505.395.2668 Toll Free 866.699.4627 www.ncnmedd.com



March 25, 2019

To: Non-Metro AAA DPS Vendors PSA 4

From: Marcia Medina, Community Services Director
Non-Metro Area Agency on Aging

Re: FY19 DPS Federal Title III Contract Amendment #1

Attached you will find the contract amendment #1 for your signature and prompt return. Also included is a copy of the revised Summary of Budget Revenues (SBR).

The FY19 DPS Federal Title III fund increases are applied to services and include increases in units of service. You will see little to no change in the unit costs.

Please return signed documents to Lesah Sedillo lsedillo@ncnmedd.com and me marciam@ncnmedd.com electronically. We are both available to answer any questions you may have.

Attachments: DPS Federal Title III Amendment #1
Summary of Budget Revenues (SBR)

North Central New Mexico Economic Development District
Non-Metro Area Agency on Aging

DIRECT PURCHASE OF SERVICES
VENDOR AGREEMENT
AMENDMENT NO. 1

This Amendment is made and entered into this 26th day, March 2019, by and between the North Central New Mexico Economic Development District, Non-Metro Area Agency on Aging hereinafter referred to as the “Agency” and City of Alamogordo, hereinafter referred to as the “Contractor”.

1. Purpose of Amendment. The purpose of the Amendment is to:

TITLE FEDERAL	ORIGINAL CONTRACT AMOUNT	INCREASING DOLLAR AMOUNT BY	REVISED TOTAL AMOUNT	INCREASED UNITS	FED/STATE RATE
III C1	\$ 49,885.20	\$51,485.72	\$101,370.92	14,350	\$3.58785

TITLE FEDERAL	ORIGINAL CONTRACT AMOUNT	INCREASING DOLLAR AMOUNT BY	REVISED TOTAL AMOUNT	INCREASED UNITS	FED/STATE RATE
III C2	\$15,929.30	\$13,998.70	\$29,928.00	3,495	\$4.00535

TITLE FEDERAL	ORIGINAL CONTRACT AMOUNT	INCREASING DOLLAR AMOUNT BY	REVISED TOTAL AMOUNT	INCREASED UNITS	FED/STATE RATE
III B	\$27,375.96	\$20,100.75	\$47,476.71	3,125	\$6.43224

TITLE FEDERAL	ORIGINAL CONTRACT AMOUNT	INCREASING DOLLAR AMOUNT BY	REVISED TOTAL AMOUNT	INCREASED UNITS	FED/STATE RATE
IIID	\$25,556.18	\$12,778.09	\$38,334.27	300	\$42.59363

2. Changes to Contract. The following changes are amendments to the contract:

Payment for services is amended to read: For the Services by the Agency to be satisfactorily provided by the Vendor hereunder, the Agency shall pay the vendor during the Term an aggregate amount, not to exceed \$ 217,109.90 said aggregate amount to be derived from the following sources, when units are met.

1. \$ 47,476.71 from Title III-B of OAA;
2. \$ 101,370.92 from Title III-C1 of OAA;
3. \$ 29,928.00 from Title III-C2 of OAA;
4. \$ 38,334.27 from Title III-D of OAA;
5. \$ 0 from Title III-E of OAA;
6. \$ 0 from the NMGAA-State/HB-2.

3. All other clauses in the original Agreement will remain unchanged and together with this Agreement constitute the entire Agreement between the Contractor and NCNMEDD, Non-Metro AAA.
4. For the faithful performance of the terms of this agreement, the parties affix their signatures and bind themselves effective March 26, 2019.

Legal Name of Vendor/Contractor

NCNMEDD Non-Metro Area Agency on Aging
Name of Area Agency on Aging

Signature



Signature

Printed/Typed Name of Signatory

Thomas A. Garcia, Interim Executive Director
Printed/Typed Name of Signatory

Date

3/26/2019
Date

Non-Metro Area Agency on Aging
Summary of Budgeted Revenues (SBR)
Fiscal Year: 07/01/2018- 06/30/2019
Date: 10/16/2018

Contractor: City of Alamogordo

SBA #5 DPS amendment No 1[illegible]

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 4/23/2019

Report Date: 4/19/2019

Report No: 8.

Submitted By: Britney Courtier

Subject: Consider, and act upon, the amended contract (Amendment #2) with the New Mexico Economic Development District, Non-Metro Area Agency on Aging (NMAAA) for the Direct Purchase of Services (*Magdalena Morales, ASC Manager*).

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Physical Fitness program: Original Contract Amount: \$34,744.41

Increase Funding by: \$12,578.00

Revised Amount: \$47,322.41

The funding increase of \$12,578.00 will come from the now-defunct Homemaker program.

Recommendation: Approve the transfer of funding from the Homemaker program to the Physical Fitness Program.

Background: The Senior Center Homemaker program has been defunct since 2018. The City of Alamogordo served a termination notice for the Homemaker Program to the Non-Metro Area on Agency in July of 2018. Regretfully, the Senior Center was unable to meet the State-contracted units of service while also maintaining cost efficiency for the City of Alamogordo.

After losing our employee of ten years in this position to retirement, the Senior Center was unsuccessful in employing another candidate. The Area Agency on Aging has graciously transferred the units of service from the Homemaker Program to the Senior Center's Physical Fitness Program.

**North Central New Mexico Economic Development District
Non-Metro Area Agency on Aging**

**DIRECT PURCHASE OF SERVICES
VENDOR AGREEMENT
AMENDMENT NO. 2**

This Amendment is made and entered into this 29th day, March 2019, by and between the North Central New Mexico Economic Development District, Non-Metro Area Agency on Aging hereinafter referred to as the "Agency" and City of Alamogordo, hereinafter referred to as the "Contractor".

1. Purpose of Amendment. The purpose of the Amendment is to:

TITLE STATE	ORIGINAL CONTRACT AMOUNT	INCREASING/DECREASING DOLLAR AMOUNT BY	REVISED TOTAL AMOUNT	INCREASED UNITS	FED/STATE RATE
State Homemaker	\$ 12,578.00	(\$12,578.00)	\$0		
State Physical Fitness	\$34,744.41	\$12,578.00	\$47,322.41	4000	\$3.05306

2. Changes to Contract. The following changes are amendments to the contract:

Payment for services is amended to read: For the Services by the Agency to be satisfactorily provided by the Vendor hereunder, the Agency shall pay the vendor during the Term an aggregate amount, not to exceed \$ 47,322.41 said aggregate amount to be derived from the following sources, when units are met.

1. \$ 0 from Title III-B of OAA;
2. \$ 0 from Title III-C1 of OAA;
3. \$ 0 from Title III-C2 of OAA;
4. \$ 0 from Title III-D of OAA;
5. \$ 0 from Title III-E of OAA;
6. \$ 47,322.41 from the NMCAA-State/HB-2.

3. All other clauses in the original Agreement will remain unchanged and together with this Agreement constitute the entire Agreement between the Contractor and NCNMEDD, Non-Metro AAA.

4. For the faithful performance of the terms of this agreement, the parties affix their signatures and bind themselves effective March 01, 2019.

Legal Name of Vendor/Contractor

NCNMEDD Non-Metro Area Agency on Aging
Name of Area Agency on Aging

Signature



Signature

Printed/Typed Name of Signatory

Thomas A. Garcia, Interim Executive Director
Printed/Typed Name of Signatory

Date

4/01/2019
Date

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 4/23/2019

Report Date: 4/15/2019

Report No: 9.

Submitted By: Sue Ashe

Subject: Consider, and act upon, Resolution 2019-13 for the acceptance and approval of the FY18 Audit. (*Stephanie Hernandez, Finance Director*) **(Roll Call Vote Required)**

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation:

Approve the Resolution.

Background: The New Mexico Department of Finance and Administration requires the Annual Audit Report to be accepted by Resolution.

RESOLUTION No. 2019-13

**A RESOLUTION REQUESTING ACCEPTANCE AND APPROVAL OF THE FY18
AUDIT**

WHEREAS, the City of Alamogordo, New Mexico is required by statute to contract with an independent auditor to perform the required annual audit or agreed upon procedures for Fiscal Year 2018; and,

WHEREAS, the City of Alamogordo Governing Body has directed the accomplishment of the audit for FY18 be completed; and,

WHEREAS, this audit has been completed and presented to the City of Alamogordo Governing Body per the March 7, 2019 Letter from the State Auditor authorizing release of the FY18 audit.

WHEREAS, NMAC 2.2.2.10 (M) (4) provides in pertinent part that “Once the audit report is officially released to the agency by the state auditor (by a release letter) and the required waiting period of five calendar days has passed, unless waived by the agency in writing, the audit report shall be presented by the IPA, to a quorum of the governing authority of the agency at a meeting held in accordance with the Open Meetings Act, if applicable;” and,

NOW THEREFORE, BE IT RESOLVED THAT THE GOVERNING BODY OF THE CITY OF ALAMOGORDO, NEW MEXICO, does hereby accept and approve the completed audit report and findings as indicated within this document.

ACCEPTED AND APPROVED by the Governing Body of the City of Alamogordo, New Mexico, at a Regular Meeting held this 23rd day of April 2019.

CITY OF ALAMOGORDO, NEW MEXICO
A NEW MEXICO MUNICIPAL CORPORATION

By: _____
Richard Boss, Mayor

ATTEST:

Rachel Hughs, City Clerk

APPROVED AS TO FORM:

Petria Schreiber, City Attorney

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 4/23/2019

Report Date: 4/19/2019

Report No: 10.

Submitted By: Petria Schreiber

Subject: Consider, and act upon, Resolution No. 2019-16 authorizing execution of a Gross Receipts Investment Program Agreement between the City of Alamogordo and LBP Alamo, LLC. (*Petria Schreiber, City Attorney*) **(Roll Call Vote Required)**

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation: Approve Resolution No. 2019-16.

Background:

LBP, LLC submitted a GRIP application for their proposed new development of the property located at 3550 Mesa Village Drive. Based upon the GRIP application submitted, a copy of which is attached, the cost of the new structure is estimated at \$7,300,000. It is estimated after opening the hotel will generate approximately \$91,250.00 in gross receipts taxes while creating an estimated 25 full-time jobs. The developer is utilizing a local general contractor and to the extent possible, preference will be given to local sub-contractors.

RESOLUTION NO. 2019-16

**A RESOLUTION AUTHORIZING EXECUTION OF A GROSS RECEIPTS INVESTMENT
PROGRAM (“GRIP”) AGREEMENT BETWEEN THE CITY OF ALAMOGORDO AND
LBP ALAMO, LLC**

BE IT RESOLVED by the City Commission of the City of Alamogordo, New Mexico as follows:

1. That the form and substance of a certain Gross Receipts Investment Program Agreement (the “Agreement”), between the City of Alamogordo (the “City”) and LBP Alamo, LLC (the “Developer”), as set forth in the form of the Agreement submitted to this meeting, is hereby approved.
2. That the City Manager is hereby authorized and directed for and on behalf of the City to execute the Agreement substantially in the form approved in the foregoing paragraph of this Resolution.
3. That LBP Alamo, LLC shall be refunded the portion of gross receipts tax and municipal gross receipts tax paid to the City of Alamogordo for the construction of a 4 story, 90-unit hotel at 3550 Mesa Village Dr., Alamogordo, New Mexico in an amount to be determined by submission of invoices on which gross receipts taxes were paid to the State of New Mexico to be credited to the City of Alamogordo and in compliance with Article 2, Section 15 of the Alamogordo Code of Ordinances.
4. That the proper officials, agents and employees of the City are hereby authorized and directed to take such further action as they may deem necessary or appropriate to perform all obligations and commitments of the City in accordance with the provisions of the Agreement.

DONE this _____ day of April, 2019.

CITY OF ALAMOGORDO, NEW MEXICO
A New Mexico municipal corporation

By: _____
Richard A. Boss, Mayor

ATTEST:

APPROVED AS TO FORM:

Rachel Hughs, City Clerk

Petria Schreiber, City Attorney

GROSS RECEIPTS INVESTMENT PROGRAM (“GRIP”) AGREEMENT

THIS AGREEMENT made on this _____ day of April, 2019, between the City of Alamogordo, a New Mexico municipal corporation (“City”), and LBP Alamo, LLC, a New Mexico corporation, whose address is 9201 Montgomery Blvd NE, Building 1, Albuquerque, NM 87111 (“Developer”).

WHEREAS, pursuant to Ordinance No. 1379, effective on October 12, 2010, and extended by Ordinance No. 1505, effective on December 11, 2015, the City is authorized to enter into “Gross Receipts Investment Program” (“GRIP”) Agreements with qualified applicants for eligible projects, as defined in said Ordinance, in order to provide new job opportunities within the City, promote the economic growth and welfare of the City, and to improve the City through new construction and or the rehabilitation of existing commercial or industrial property; and,

WHEREAS, Developer owns certain real property within the City located at 3550 Mesa Village Dr, Alamogordo, NM 88310, and legally described in Exhibit “A” attached hereto, City of Alamogordo, Otero County, New Mexico; and,

WHEREAS, Developer has made application (attached hereto as Exhibit “B”) for reimbursement of certain gross receipts taxes directly attributable to construction activities associated with the project as described in the application; and,

WHEREAS, in said application, the Developer makes the good faith projection that the total cost of the Project will be approximately seven million, three hundred thousand dollars (\$7,300,000); and

WHEREAS, after having considered the application, the City Commission has concluded that the economic and other benefits of the Project to the City will be substantial, that it is desirable and necessary at this time to authorize the City to enter into the Agreement, and that the City’s provision of the assistance contemplated by the Agreement will foster, promote and enhance the economic growth and welfare of the City, and improve the City through new construction and or the rehabilitation of existing commercial or industrial property; and,

WHEREAS, by Resolution 2018-35, the City Commission has authorized the City Manager to execute this GRIP Agreement with the Developer.

NOW THEREFORE the parties hereto do mutually agree as follows:

1. General Terms.

- (a) The Project consists of construction of a 4 story, 90-unit hotel. Developer, after receipt of the promises and inducements contained herein, agrees to develop the Project in accordance with plans and specifications approved by the Construction Industries Division of the New Mexico Regulation and Licensing Department. The estimated cost of the improvements is \$7,300,000.00 exclusive of gross receipts tax.

- (b) The parties hereto acknowledge, and the Developer represents and warrants, that: (i) the Project involves the building of a structure, or the expansion of an existing structure, for use by a commercial activity whose services are partially subject to gross receipts tax, said structure to have a value in excess of \$50,000; (ii) the Developer has, or will establish, and maintain a physical presence in the City sufficient to subject the Project to Local Option Gross Receipts Tax; and (iii) the Developer will give preference and priority to local manufacturers, suppliers, vendors, contractors and labor, except where not reasonably possible to do so without significant added expense, substantial inconvenience, or sacrifice in operating efficiency.
- (c) For purposes of this Agreement, the use of the terms “gross receipts tax” and “gross receipts tax revenue” shall be construed to refer to that net portion of the tax imposed by the State of New Mexico for distribution to the City pursuant to the Gross Receipts and Compensating Tax Act and which are collected by the State of New Mexico and distributed to the City (current rate = 1.225%), and all revenue derived from such taxes, and that portion of the tax imposed by the City pursuant to the Municipal Gross Receipts Tax Act (current rate = 0.5%), and all revenue derived from such taxes. It is expressly understood that if a governmental or legislative body other than the City enacts any law or statute which results or which may result in any material changes or amendments to the foregoing provisions, which changes or amendments prohibit the City from complying with this Agreement or which adversely affect the City’s ability to comply herewith, then the City and the Developer shall reevaluate this Agreement and the incentives provided hereunder and may mutually agree to restructure the Agreement. If a restructured agreement cannot be agreed to by both parties within a reasonable period of time not more than sixty (60) days from the effective date of the law or statute which has materially affected the City’s compliance herewith, then this Agreement shall automatically terminate releasing both parties from their obligations hereunder.

2. Municipal Gross Receipts Tax Payment. The City agrees to set aside and thereafter rebate to the Developer the municipal gross receipts tax revenues directly attributable to construction of the Project. It is estimated that approximately \$91,250 in gross receipt tax revenues will be abated pursuant to this Agreement (*\$7,300,000 estimated construction costs x 1.7250%*). The City and the Developer hereby acknowledge that this estimate is only an approximation, and that the actual abatement may be for a greater or lesser amount depending upon the actual amount of such taxes levied. Payment shall be made to the Developer within ninety (90) days after the City is presented with copies of each invoice associated with the Project. In the event that any invoices that have been submitted to the City are amended, the Developer shall promptly forward a photocopy of such amended invoice to the City, clearly identifying them as an amendment of an amendment previously submitted to the City.

3. No General Obligation/Special Fund. It is an overriding consideration and determination of the City that existing sources of its gross receipts tax revenues shall not be used, impaired or otherwise affected by this Agreement. The amount due pursuant to this Agreement shall not be a general obligation of the City. The City shall not have an obligation to pay any amounts to Developer except an amount equal to the City's share of the tax imposed by the State of New Mexico for distribution to the City pursuant to the Gross Receipts and Compensating Tax Act (current rate = 1.225%), and that portion of the tax imposed by the City pursuant to the Municipal Gross Receipts Tax Act (current rate = 0.5%).

4. Term. The term of this Agreement shall be thirty-six (36) months from the date of issuance of a building permit for the Project. Upon receipt of the maximum rebate amount by Developer in accordance with this Agreement, the City's obligation to rebate gross receipts tax revenue to Developer shall terminate, but all other provisions of this Agreement shall remain in full force and effect through the end of the thirty-six (36) month term. Upon expiration of the term of this Agreement, the parties' obligations hereunder shall terminate, whether or not the maximum amount of gross receipts tax revenue rebate has been reached.

5. Escrow. The parties agree that in the event of any legal challenge to this Agreement, the City shall place any and all funds to which the Developer would have a claim under the terms of this Agreement in an interest bearing account, capable of separate identification, during the pendency of the legal challenge. Upon any final decision upholding the enforceability of this Agreement, all amounts in such account, including principal and accrued interest, shall be paid forthwith to the Developer. If this Agreement is determined to be invalid or unenforceable, all amounts in such account, including principal and accrued interest, shall be deposited by the City into its general fund and the Developer shall have no further claim thereto. The parties covenant that neither will initiate any legal challenge to the validity or enforceability of this Agreement, and the parties will cooperate in defending the validity or enforceability of this Agreement against any challenge by any third party.

6. Approval and Modification. This Agreement shall take effect only upon approval by the Alamogordo City Commission at a regular or special City Commission meeting. No modification of this Agreement shall be valid or binding unless the same is in writing and approved by the City Commission at a regular or special meeting.

7. Assignment. This Agreement shall be binding upon and inure to the benefit of the Developer and the City. The City's commitment to make the payments hereunder are made for the benefit of the Developer, and shall be enforceable by the Developer or any affiliate of the Developer or other party who is a successor-in-title to Developer's interest in the Project and has assumed in writing the duties and obligations of the Developer, provided that nothing shall require the Developer to assign the benefits of this Agreement to any successor-in-title to Developer's interest in the Project and the City agrees that the Developer may transfer title to the Project while retaining the benefits of this Agreement. The Developer shall also have the right to assign this Agreement, and the City's obligation to make payment of the gross receipts tax revenues, to a third party independent of a transfer of title to the Project, including, but not limited to, any assignment, pledge or encumbrance of the Developer's rights under this Agreement in favor of any lender or other person providing financing for construction and development of the Project. The term "affiliate" shall mean an entity or individual which

directly or indirectly controls, is controlled by, or is under common control with any identified person and, as to natural persons, shall also include the immediate family of such persons. Except as authorized in this Paragraph, this Agreement is personal to the Developer. This Agreement shall not run with the land.

8. Controlling Law and Venue. This Agreement shall be construed pursuant to the laws of the State of New Mexico. Exclusive jurisdiction for the resolution of any dispute relating to this Agreement is hereby vested in the Otero County District Court or the United States District Court of New Mexico.

9. Contingency; No Debt. The City's financial obligations under this Agreement are specifically contingent upon annual appropriation of funds sufficient to perform such obligation. This Agreement shall never constitute a debt or obligation of the City within any statutory or constitutional provision. Each year, the City shall include in the budget presented to the City Council a proposed appropriation for the rebate of the gross receipts tax revenues to which Developer is entitled under this Agreement, if any. The decision of the City Council not to appropriate funds in any given year shall not affect, impair or invalidate any of the remaining provisions of this Agreement in future years, and the failure of the City in any year to appropriate the gross receipts tax revenues otherwise due Developer shall cause the term of this Agreement to be extended by one year. Without contradiction of the preceding sentence, the City does hereby state that it is the present intent and expectation of the parties that the City will make all of the payments contemplated by this Agreement.

10. No Joint Venture. Notwithstanding any provision hereof, the City shall never be a joint venture in any private entity or activity which participates in this Agreement, and the City shall never be liable or responsible for any debt or obligation of any participant in this Agreement.

11. No Third-Party Beneficiaries. Except as may be expressly provided herein, there are no intended third-party beneficiaries to this Agreement.

12. Force Majeure. The time of performance of any duty or obligation of Developer or the City hereunder shall be extended for the period during which performance was delayed or impeded by reason of riots, insurrections, war, fire, casualty, earthquake, acts of God, or other reasons of a like nature not the fault of the party performing such duty or obligation.

CITY OF ALAMOGORDO, NEW MEXICO
a New Mexico municipal corporation

By: _____
Brian Cesar, Interim City Manager

LBP Alamo, LLC

By: _____
Brad Allen

ATTEST:

Rachel Hughs, City Clerk

APPROVED AS TO FORM:

Petria Schreiber, City Attorney

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 4/23/2019

Report Date: 4/19/2019

Report No: 11.

Submitted By: April Jones

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

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation: Appoint to Alamogordo Promotion Board.

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

Mayor's Committee on Aging. Three (3) vacancies. One (1) of these vacancies may be filled by a county resident. Staff Liaison - Britney Courtier.
No applications received.

Alamogordo Promotions Board. One city (1) vacancy. Staff Liaison - Michelle Brideaux.
Vacancy due to the expiring term of Christopher Orwoll on 5/15/19.
The following individual is interested in being reappointed:
Christopher Orwoll: if reappointed this will be his 2nd term.

Senior Volunteer Programs Advisory Council. Three (3) city vacancies. Staff Liaison - Neil McFarland.
No applications received.

If anyone is interested in serving on a board or committee you may apply with the City Clerk's office.

RECEIVED

APR 03 2019

CITY CLERK

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

Name: CHRISTOPHER ORWOLL
Home Phone: 575-434-1372 Work Phone: 575-437-2840
Cell Phone: 575-430-7099 Fax No: 575-434-2245
e-mail address: CHRIS. ORWOLL@STATE.NM.US
Physical Address: 24 RODEO DRIVE, LA LUB, NM 88337
Is the above address within City limits? Yes ☐ No ☒
Mailing Address: SAME
Present Employer: NM MUSEUM OF SPACE HISTORY Job Title: DIRECTOR

Board/Committee you wish to serve on:

First choice: ALAMOGORDO PROMOTION BOARD
Second choice: _____

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: CURRENTLY A MEMBER.
APPLYING FOR 2ND TERM. 13 YEARS OF MUSEUM EXPERIENCE AS
MUSEUM DIRECTOR/PRESIDENT IN KS + NM. BS NAVAL ARCHITECTURE
@ US NAVAL ACADEMY. MS IN STRATEGIC STUDIES.

Please indicate your interest in serving on a City Board/ Committee: WANT TO CONTINUE
MY SERVICE TO BOARD + CITY TO HELP INCREASE TOURISM
TO LOCAL ATTRACTIONS + REGION.


CDR, USN (RET.)

Please return completed application to:

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

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 4/23/2019

Report Date: 4/17/2019

Report No: 12.

Submitted By:

Subject: Adjourn into Executive Closed Session in compliance with 10-15-1(H)(8), NMSA 1978 (as amended) to discuss real property as it relates to the Fairgrounds Parking Lot. **(Roll Call Vote Required)**

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation:

Background: