



Alamogordo City Commission

NOTICE OF MEETING

Regular Meeting Agenda

November 17, 2020 - 6:00 PM

The Commission Meeting will be a VIRTUAL MEETING with City Commission and City staff participating through video. The link is: <https://www.youtube.com/channel/UCTTgU3xsQBqlyRaME7TaYrQ/live>

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

- Brian Cesar City Manager
- Petria Bengoechea 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 a 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 575-439-4100.

CALL TO ORDER & ROLL CALL

Announce the presence of a Quorum.

INVOCATION & PLEDGE OF ALLEGIANCE

APPROVAL OF AGENDA

PUBLIC COMMENT

Residents must submit comments to the City Clerk prior to 3 p.m. on the day of the Commission meeting. Comments will be distributed to the Commission and the City Manager and will be included in the public record.

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.

1. Approve the minutes for the October 27, 2020 Regular meeting. *(Rachel Hughs, City Clerk)*
2. Approve the statements related to the Executive Closed Session held on October 27, 2020. *(Rachel Hughs, City Clerk)*
3. Consider, and act upon, adoption and final publication of Ordinance 1619, amending chapter 28 of the Alamogordo Code of Ordinances regarding Fats, Oils and Grease (FOG). *(Larry Garner, Public Works Director) (Roll Call Vote Required)*
4. Consider, and act upon, acceptance of grant agreement from NMDOT to Alamogordo-White Sands Regional Airport in the amount of \$130,000.00 to replace the airport's AWOS power cable. *(Jim Talbert, Airport Manager)*

ITEMS REMOVED FROM CONSENT AGENDA

NEW BUSINESS

5. Consider and act upon, Case Z-2020-0001(A) for first publication of Ordinance 1620 amending the zoning map to change the zoning of property 2706 Stapp Ave. from MH2-Manufactured Housing Park to MH1- Manufactured Housing Subdivision. *(Stella Rael, City Planner) (Roll Call Vote Required)*
6. Consider and act upon, Case Z-2020-0002(A) for first publication of Ordinance 1621 amending the zoning map to change the zoning of a subdivided section of property located at 1007 Eddy Dr. from M2-Industrial to C3-Business. *(Stella Rael, City Planner) (Roll Call Vote Required)*
7. Consider, and act upon, the Land Exchange Agreement between the Alamogordo Public Schools and the City of Alamogordo. *(Petria Bengoechea, City Attorney and Jerrett Perry, Superintendent of Alamogordo Public Schools)*
8. Consider, and act upon, Ordinance 1622 for first publication amending Chapter 7 of the Alamogordo Code of Ordinances regarding Animals at Large. *(Petria Bengoechea, City Attorney) (Roll Call Vote Required)*
9. Appointments to Boards and Committees. *(Richard Boss, Mayor)*

ADJOURNMENT

AGENDA REPORT

CITY OF ALAMOGORDO
CITY COMMISSION

Meeting Date: 11/17/2020

Report Date: 10/30/2020

Report No: 1.

Submitted By: Rachel Hughs

Subject: Approve the minutes for the October 27, 2020 Regular meeting. *(Rachel Hughs, City Clerk)*

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation: Approve the minutes.

Background: This is required by the Open Meetings Act.

**CITY OF ALAMOGORDO, NEW MEXICO
CITY COMMISSIONER REGULAR MEETING MINUTES
6:30 P.M., VIRTUAL MEETING
October 27, 2020**

**RICHARD BOSS, MAYOR
SHARON McDONALD, COMMISSIONER
JOSH RARDIN, COMMISSIONER
DUSTY WRIGHT, COMMISSIONER
SUSAN PAYNE, COMMISSIONER**

**NADIA SIKES, MAYOR PRO-TEM
JASON BALDWIN, COMMISSIONER
BRIAN CESAR, CITY MANAGER
PETRIA BENGOCHEA, CITY ATTORNEY
RACHEL HUGHS, CITY CLERK**

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

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

APPROVAL OF AGENDA

**Commissioner Baldwin moved to approve the agenda.
Commissioner Payne seconded the motion. Motion carried with a vote of 7-0-0.**

PRESENTATIONS

1. Presentation on Otero County Economic Development Council quarterly report. (*Laurie Anderson, Interim Executive Director*)

Ms. Anderson spoke about businesses in the Community and the Otero County Economic Development Council (OCEDC) organization. She talked about projects OCEDC is working on, recruitment, work operations during COVID-19, film festivals, marketing, and social media.

PUBLIC COMMENT

City Clerk Hughs read the following comment:

Mr. William Pollard submitted a verbal public comment. He stated there is an unhitched trailer at 1808 Scenic Drive and wants to know why this unhitched trailer is exempt from the ordinance. He also said last year, beginning around Thanksgiving, a FedEx truck and a UPS truck parked at 1806 Scenic Drive to take packages of various sizes off the trucks to put them on golf carts to deliver. He stated this is a residential area and should not be used as a postal transaction to do business.

CITY MANAGER'S REPORT

City Manager Cesar made the following remarks:

1. He said the comment from Mr. Pollard, an officer went to the location of the unhitched trailer and found it was not on the street, but on the person's property so there is no violation of the ordinance. The postal trucks are on City streets and have every right to pull over, assuming they do not pull over in front of a no parking sign or block a hydrant. If the smaller vehicle (golf cart or ATV) meets State and local requirements they can operate that vehicle on a City street.
2. He said this Sunday is daylight savings time so the next meeting will be starting at 6:00 p.m.
3. He said as part of their accreditation process, the Alamogordo Police Department (APD) will be holding their static display at the Fairgrounds starting about 8:30 a.m. and scheduled to last till 5:00 p.m.

REMARKS AND INQUIRIES BY THE CITY COMMISSION

None.

CONSENT AGENDA

- 2. Approve the minutes for the October 13, 2020 Regular meeting. (*Rachel Hughs, City Clerk*)**
- 3. Consider, and act upon, Aging and Long-term Services Department (ALTSD) State-wide emergency grant funding to be used solely for Senior Centers. (*Magdalena Morales, ASC Manager*)**
- 4. Consider, and act upon, acceptance of Commitment Letter from NMFA for a \$2,151,300.00 Drinking Water State Revolving Fund Loan to make Bonito Lake Infrastructure Improvements. (*Debbie Osborne, Grant Coordinator*)**
- 5. Consider, and act upon, Resolution 2020-42 requesting written approval from the Local Government Division of the Department of Finance and Administration, State of NM for the revised budget numbers computed as of October 27, 2020. (*Evelyn Huff, Finance Director*) (Roll Call Vote Required)**
- 6. Consider, and act upon, the confirmation of David Overstreet as alternative Municipal Judge. (*Petria Bengoechea, City Attorney*)**

Mayor Boss asked to remove Item # 4 from the Consent Calendar.

Commissioner Baldwin moved to approve items 2,3,5,6 of the consent calendar.

Commissioner Rardin seconded the motion.

Roll Call vote was taken.

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

ITEMS REMOVED FROM CONSENT AGENDA

- 4. Consider, and act upon, acceptance of Commitment Letter from NMFA for a \$2,151,300.00 Drinking Water State Revolving Fund Loan to make Bonito Lake Infrastructure Improvements. (*Debbie Osborne, Grant Coordinator*)**

Mayor Boss read the background information from the agenda report. He said this is important they do this now that the lake is drained, it is not practical to drain it again. He thanked everyone involved.

City Manager Cesar said Engineering Manager Johnson and Water Operations Manager Nunnelley have been instrumental in the rehabilitation of the lake, removal of the materials and these projects. He said this has been an item of deficiency since 1998. It would not be an easy process if they did not do it now. Finance Director Huff gave a shout out to Grants Coordinator Osborne for her work on this loan.

Commissioner Baldwin asked about the portion of the loan that is "forgivable". Grants Coordinator Osborne explained the portion of the loan that is forgivable is given as a grant.

Mayor Boss pointed out the interest rate of 0.34 percent.

Commissioner Baldwin moved to approve.

Mayor Pro-Tem Sikes seconded the motion.

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

NEW BUSINESS

7. Consider, and act upon cancelling the November 4, 2020 Commission meeting. (Brian Cesar, City Manager)

City Manager Cesar said eight days from now is the next scheduled Commission meeting and with short meetings and the City Clerk's office will not have the meeting minutes ready, so he is asking to cancel the November 4th meeting.

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

8. Consider, and act upon, first publication of Ordinance 1619, amending chapter 28 of the Alamogordo Code of Ordinances regarding Fats, Oils and Grease (FOG). (Larry Garner, Public Works Director) (Roll Call Vote Required)

Public Works Director Garner said this is an add on to Chapter 28 of their ordinance. He said this is basically their FOG (Fat, Oil and Grease) program they have been trying to get off the ground for some time. This will protect the City's sewer infrastructure.

**Mayor Boss moved to approve.
Mayor Pro-Tem Sikes seconded the motion.
Roll Call vote was taken.
Motion carried with a vote of 7-0-0.**

EXECUTIVE SESSION

9. Adjourn into Executive Closed Session in compliance with 10-15-1(h)(8)(7), NMSA (as amended) to discuss Real Property – APS Land Swap Proposal, Alamogordo, NM and to discuss Threatened or Pending Litigation - possible TRD settlement. (Roll Call Vote Required)

**Commissioner Payne moved to adjourn into Executive Closed Session at 7:31 p.m.
Commissioner Rardin seconded the motion.
Roll Call vote was taken.
Motion carried with a vote of 7-0-0**

ADJOURNMENT

ATTEST:

Mayor Richard Boss

City Clerk Rachel Hughs

(Prepared by Eric Barraza, Deputy Clerk)
Approved at the Regular Meeting held on November 17, 2020.

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 11/17/2020

Report Date: 10/28/2020

Report No: 2.

Submitted By: Rachel Hughs

Subject: Approve the statements related to the Executive Closed Session held on October 27, 2020.
(Rachel Hughs, City Clerk)

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

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

Background: Approve the following statements authorizing them to be included in the minutes of November 17, 2020: "The Governing Body of the City of Alamogordo, New Mexico, hereby states that on October 27, 2020, a Closed Executive Session was held and matters discussed in the closed meeting were limited only to: discuss Real Property – APS Land Swap Proposal, Alamogordo, NM and to discuss Threatened or Pending Litigation - possible TRD settlement.

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 11/17/2020

Report Date: 10/28/2020

Report No: 3.

Submitted By: Larry Garner

Subject: Consider, and act upon, adoption and final publication of Ordinance 1619, amending chapter 28 of the Alamogordo Code of Ordinances regarding Fats, Oils and Grease (FOG). (*Larry Garner, Public Works Director*) **(Roll Call Vote Required)**

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation: Approve adoption and final publication of Ordinance 1619.

Background: Commission approved final publication of Ordinance 1619 during the Commission meeting of October 27, 2020 with a vote of 7-0.

Information from the October 27, 2020 meeting:

Addition and amending chapter 28 of the Alamogordo Code Of Ordinances regarding the addition of a Fats, Oil and Grease (FOG) program to meet State and Federal mandates and protect the City of Alamogordo's Waste Water Treatment infrastructure and plant.

ORDINANCE NO. 1619

CREATING NEW CHAPTERS IN ARTICLE 28-02 CONCERNING THE FATS, OILS, GREASE (FOG) PREVENTION PROGRAM

WHEREAS, the City of Alamogordo, New Mexico and its commissioners recognize that the ordinances regarding Fat, Oil and Grease (FOG) have not been updated or a program developed in many years; and,

WHEREAS, the City Commission wishes to strengthen and update its ordinances to be more in line with the needs of the Clean Water Act and General Pretreatment Regulations; and,

WHEREAS, the City Commission recognizes the city publicly owned Wastewater Treatment System as important and in need of protection.

THEREFORE BE IT ORDAINED by the City Commission of the City of Alamogordo, New Mexico that Chapter 28 of the *Code of Ordinances* shall be amended to add new sections 28-02-290 through 28-02-340 as follows.

28-02-290 through 28-02-340.

Fats, Oils, Grease (FOG) Prevention Program

28-02-290. – Purpose

The purpose of this article is to protect the health, safety and welfare of the Citizens of Alamogordo through setting forth uniform requirements for users of the Publicly owned Waste Water Treatment System to capture and dispose of (FOG) and enables the City to comply with all applicable State and Federal laws, including the Clean Water Act, 33 U.S.C. & 1251, et seq.; and General Pretreatment Regulations, Title 40 C.F.R. Part 403. By:

- (1) Prevention of introduction of FOG into the publicly owned Wastewater Treatment System that will interfere with its' operation;
- (2) to prevent the introduction of FOG that could pass through the Publicly Owned Wastewater Treatment System, inadequately treated, into reclaimed water systems;
- (3) to prevent sanitary sewer overflow (SSO). These overflows can then contaminate the ground, local water bodies, and any property that the sewage comes into contact with;
- (4) to promote reuse and recycling of waste grease (FOG) from the Publicly Owned Wastewater Treatment System;
- (5) to enable the City to meet Federal, State and Local Pollutant Discharge limits;
- (6) Judicial Enforcement Remedies.

28-02-300. Applicability.

The provision of this article shall apply to all Commercial Businesses in the City of Alamogordo, whose business involves preparation and sale of any Product that has potential to introduce (FOG) into the City’s Publicly owned Wastewater Treatment System or furthermore referred to (POWTS).

(1) This ordinance shall apply to all non-domestic users of the POWTS, as defined in section 28-02-210 of this ordinance.

(2) Grease interceptors shall not be required for residential users.

(3) The ordinance shall apply to both new and existing facilities generating fats, oils, and grease as a result of food manufacturing, processing, preparation, or food service shall install, use, and maintain appropriate grease interceptors as required in section 28-02-210 of this ordinance. These facilities include but are not limited to restaurants, food manufacturers, food processors, hospitals, hotels and motels, nursing homes, and any other facility preparing, serving, or otherwise making any food available for consumption.

(4) No user may intentionally or unintentionally allow the direct or indirect discharge an fats, oils, or greases of animal or vegetable origin into the POWT system in such amounts as to cause interference with the collection and treatment system, or as to cause pollutants to pass through the treatment works into the environment.

28-02-310. Definitions

The following definitions shall apply in the interpretation and enforcement of this article. Definitions put in alphabetical order for simplification.

Act: Refers to the Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. 1251, et. seq.

AHJ: The authority having jurisdiction.

BOD: The value of the 5-day test for Biochemical Oxygen Demand, as described in the latest edition of “Standards Methods for the Examination of Water and Wastewater.”

COD: The value of the test for Chemical Oxygen Demand, as described in the latest edition of “Standard Methods of the Examination of Water and Wastewater.”

EPA: The United States Environmental Protection Agency.

Fats, Oils, and Grease (FOG): All organic polar compounds derived from animal and/or plant sources that contain multiple carbon chain triglyceride molecules. These substances are detectable and measurable using analytical test procedures established in 40 CFR 136,

as may be amended from time to time. All are sometimes referred to herein as “grease” or “greases.”

FOG Disposal System: A grease interceptor that reduces nonpetroleum fats, oils, and grease (FOG) in effluent by separation, and mass and volume reduction.

Generator: Any person who owns or operates a grease trap/grease interceptor, or whose act or process produces a grease trap waste.

Grease Interceptor: An appurtenance or appliance that is installed in a sanitary drainage system to intercept non- petroleum fats, oil, and grease (FOG) from a wastewater. These two types of grease interceptors, gravity grease interceptors and hydro mechanical grease interceptors.

Gravity Grease Interceptors: A plumbing appurtenance or appliance that is installed in a sanitary drainage system to intercept non- petroleum fats, oils and greases (FOG) from a wastewater discharge and is identified by volume, 30-minute retention time, baffle(s), a minimum of two (2) compartments, a minimum total volume of 300 gallons, and gravity separation. These interceptors are designed by a registered professional engineer. Gravity grease interceptors are generally installed outside.

Hydro Mechanical Grease Interceptor: A plumbing appurtenance or appliance that is installed in a sanitary drainage system to intercept non- petroleum fats, oils, and grease (FOG) from a wastewater discharge and is identified by flow rate, and separation and retention efficiency. The design incorporates air entrainment, hydro mechanical separation, interior baffling, and/or barriers in combination or separately, and an external flow control, with air intake (vent).

Grease Removal Device (GRD): Any hydro mechanical grease interceptor that automatically, mechanically removes non- petroleum fats, oil, and grease (FOG) from the interceptor, the control of which are either automatic or manually initiated.

Grease Waste: Means material collected in and from a grease interceptor in the sanitary sewer service line of a commercial, institutional, or industrial food service or processing establishment, including the solids resulting from de-watering process.

Indirect Discharge or Discharge: Means the introduction of pollutants into a POWTS from any non-domestic source.

Industrial Liquid Wastewater: “Industrial liquid wastes” shall mean all waterborne solids, liquids or gaseous wastes resulting from any industrial, manufacturing of food processing operation or process, or from the development of any natural resource, or any mixture of these with water or domestic sewage as distinct from normal domestic sewage. Industrial manufacturing of process shall include, but are not limited to: ordinance and accessories, food and allied products; tobacco manufacturers, textile mill products; apparel and other finished products made from fabrics and similar materials; lumber and wood products, except furniture; furniture and fixtures; printing , publishing and allied industries;

chemicals and allied products; petroleum refining and related industries; rubber and miscellaneous plastic products; leather and leather products; stone, clay, glass, and concrete products; primary metal industries; fabricated metal products, except excepted ordinance, machinery transportation equipment; machinery, except electrical; electrical machinery, equipment and supplies; transportation equipment; photographic and optical goods; watches and clocks; miscellaneous manufacturing industries.

Interference: Means a discharge which alone or in conjunction with a discharge or discharges from other sources inhibits or disrupts the POWTS, its treatment processes or operations or its sludge processes, use or disposal, or is a cause of violation of the City's TPDES permit.

Interference with any Wastewater Facility: "Interference with any wastewater treatment process" shall mean any condition or combinations which cause the degradation of the operational efficiency of a wastewater facility.

pH: Means the measure of the relative acidity or alkalinity of water and is defined as the negative logarithm (base 10) of the hydrogen ion concentration.

POWTS or Publicly Owned Wastewater Treatment System: Means a treatment system which is owned by a State or Municipality as defined by section 502(4) of the Clean Water Act. This definition includes any devices and systems used in the storage, treatment, recycling and reclamation of public sewage or industrial wastes of a liquid nature. It also includes all sewer, pipes and other conveyances that convey wastewater to a POWT plant. The term also means the public or municipality as defined in section 502(4) of the Act, which has jurisdiction over the indirect discharges to and the discharges from such a treatment system. For purposes of this ordinance, the terms "sanitary sewer system" and POWTS may be used interchangeably.

Sanitary Sewer: Shall mean the Public sewer portion of a wastewater facility which transports wastewater and to which storm, surface and ground water are not intentionally admitted.

Settleable Solids: Means those solids which settle during a preselected period of time as expressed in millimeters per liter of sample.

Standard Methods: shall mean the laboratory procedures set forth in the latest edition, at the time of analysis, of "Standard Methods for the Examination of Water and Wastewater," as prepared, approved and published jointly by the "American Public Health Association" and "American Water Works Association" and the "Water Pollution Control Federation."

Storm Sewer: shall mean a sewer which carries storm and surface waters and drainage, but excludes wastewater and polluted industrial wastes.

Transporter: Means a person who is registered with and authorized by the AHJ or POWTS to transport sewer sludge, water treatment sludge, domestic waste, chemical toilet waste, grit trap waste, or grease trap waste in accordance with current regulations.

Trap: “Trap” is a device for retaining sand, silt, grit mineral material, petroleum solvent, grease or oil by gravity – differential separation from wastewater and of a design and capacity approved by the City of Alamogordo, New Mexico.

TSS: Means the value of the test of Total Suspended Solids, as described in the latest edition of “Standard Methods for the Examination of Water and Wastewater.”

Unpolluted Process Water: shall mean water or waste containing none of the following: Free or emulsified grease or oil; acid or alkali, phenols, or other substances imparting taste and odor to receiving water; toxic substances in suspension, colloidal state or solution; and noxious or odorous gases.

User: Means any person, including those located outside the jurisdictional limits of the City, who contributes, causes or permits the contribution of discharge of wastewater into the POWTS, including persons who contribute such wastewater from mobile sources.

Wastewater: shall mean the used water of a community. Such used water may be a combination of the liquid and waterborne wastes from residences, commercial buildings, industrial plants and institutions.

28-02-320. Installation and Maintenance Requirements.

(A) Installations:

Grease, oil and sand traps shall be provided by the owner when the City deem it necessary for proper handling of liquid wastes containing grease in excessive amounts, or any flammable wastes, sand, or other harmful ingredients; except that such traps shall not be required for private living quarters or dwelling units. All traps shall be of a type and capacity approved by the City and shall be located as to be readily and easily accessible for cleaning and inspection. Grease and oil traps shall be installed in all new filling stations, garages, restaurants, and other new facilities wherein heavy discharge of grease and oil is to be expected. In new businesses that will have minimum impact on the City’s sewer infrastructure a minimum grease of a 50-gallon grease interceptor shall be required. Where preliminary treatment of flow equalizing facilities are provided for any industrial liquid wastes, they shall be maintained continuously in satisfactory and effective operation by the owner at their own expense.

(1) New Facilities. – Food processing or food service facilities which are newly proposed or constructed, or existing facilities which will be expanded or renovated to include a food service facility, where such facility did not previously exist, shall be required to design, install, operate and maintain a grease interceptor in accordance with locally adopted plumbing codes or other applicable ordinances. Grease interceptors shall be installed and inspected prior to issuance of a certificate of occupancy.

- (2) Existing Facilities. Existing grease interceptors must be operated and maintained in accordance with the manufacturer's recommendations and in accordance with these Model Standards, unless specified in writing and approved by the POWTS.
- (3) All grease interceptors shall be properly sized. Hydro mechanical grease interceptors shall be sized in accordance with PDI G101 standard. Gravity interceptors shall be sized by a professional engineer to allow for a minimum retention time of 30 minutes.
- (4) Bioremediation: Bioremediation media shall only be used with approved Fog disposal systems ASME A112.14.6. The BOD, COD, and TSS discharged to the sanitary sewer after use of the media does not exceed the BOD, COD, and TSS. The pH levels must be between 5 and 11.
- (5) All grease bearing fixtures shall discharge to a grease interceptor.
- (6) All users with a Grease interceptor must adhere to all the requirements; procedures and detailed record keeping outlined in their approved application, to ensure compliance with this ordinance. A maintenance log shall be kept that indicates, at a minimum, the following information:
- (a) Date the grease interceptor was serviced;
 - (b) Name of the person or company servicing the grease interceptor;
 - (c) Waste disposal method used;
 - (d) Gallons of grease removed and disposed of;
 - (e) Signature of the operator after each cleaning that certifies that all grease was removed, disposed of properly, grease trap/interceptor was thoroughly cleaned, and that all parts were replaced and in operable condition.
- (7) Cleaning Schedules:
- (A) Grease interceptors shall be cleaned as often as necessary to ensure that the sediment and floating materials do not accumulate to impair the efficiency of the grease interceptor; to ensure the discharge is in compliance with local discharge limits; and to ensure no visible grease is observed in discharge.
 - (B) Grease interceptors shall be completely evacuated a minimum of every thirty (30) days, or more frequently when:
 - (a) Twenty-five (25) percent or more of the wetted height of the grease trap or grease interceptor, as measured from the bottom of the device to the invert of the outlet pipe, contains floating materials, sediment, oils or greases; or
 - (b) The discharge exceeds BOD, COD, TSS, FOG, pH, or other pollutant levels established by the POWTS; or
 - (c) If there is a history of non-compliance.
 - (C) Any person who owns or operates a grease interceptor may submit to the POWTS a request in writing for an exception to the thirty (30) day cleaning

frequency of their grease interceptor. The POWTS may grant an extension for required cleaning frequency on a case-by-case basis when:

(a) The grease interceptor owner/operator has demonstrated the specific interceptor will produce an effluent, based on defensible analytic results, in consistent compliance with established local discharge limits such as BOD, TSS, FOG, or other parameters as determined by the POWTS, or

(b) Less than twenty-five (25%) percent of the wetted height of the grease interceptor, a measured from the bottom of the device to the invert of the outlet pipe, contains floating material, sediments, oils and greases.

(8) User Cleaning: Hydro-mechanical grease interceptors only.

Grease interceptor cleaning by the user must receive approval from the POWTS to remove grease from their own grease hydro-mechanical grease interceptors. The following conditions shall apply:

(A) The grease interceptor is no more than 100 GPM size.

(B) The proper on-site material disposal methods are implemented (e.g. absorbed liquid into solid form and disposed into trash;

(C) The local solid waste authority allows such practices;

(D) Grease waste is placed in a leak proof, sealable container(s) located on the premises and in an area for the transporter to remove or pump-out; and

(E) Detailed records on these activities are maintained.

(9) Manifest requirements: Gravity grease interceptors only.

(A) Each pump-out of a grease interceptor must be accompanied by a manifest to be used for record keeping purposes.

(B) Persons who generate, collect and transport grease waste shall maintain a record of each individual collection and deposit. Such records shall be in the form of a manifest. The manifest shall include:

(a) name, address, telephone, and commission registration number of transporter;

(b) name, signature, address and phone number of the person who generated the waste and the data collected;

(c) type and amount(s) of waste collected or transported;

(d) name and signature(s) of responsible person(s) collecting, transporting, and depositing the waste;

(e) date and place where the waste was deposited;

- (f) identification (permit or site registration number, location, and operator) of the facility where the waste was deposited;
- (g) name and signature of facility on-site representative acknowledgement receipt of the waste and the amount of waste received;
- (h) the volume of the grease waste received; and
- (i) a consecutive numerical tracking number to assist transporters, waste generators, and regulating authorities in tracking and volume of grease transported.

(c) Manifest: The manifest shall be divided into five (5) parts and records shall be maintained as follows.

(a) One part of the manifest shall have the generator and transport information completely filled out and given to the generator at the time of waste pickup.

(b) The remaining four parts of the manifest shall have all required information correctly filled out and signed by the appropriate party before distribution of the manifest.

(c) One part of the manifest shall go to the receiving facility.

(d) One part shall go to the transporter, who shall retain a copy of all manifests showing collection and disposition of waste.

(e) One copy of the manifest shall be returned by the transporter to the person who generated the wastes within fifteen (15) days after the waste was received at the disposal or processing facility.

(f) One part of the manifest shall go to the local authority.

(g) Copies of manifests returned to the waste generator shall be retained for five (5) years and be readily available for review by the POWTS.

(10) Prohibited Practices:

(A) No person shall introduce, or cause, permit, or suffer the introduction of any surfactant, solvent or emulsifier into a grease interceptor. Surfactants, solvents, and emulsifiers are materials which allow the grease to pass from grease interceptors into collection system, and include but are not limited to enzymes, soap, diesel, kerosene, terrene, and other solvents.

(B) No person shall discharge or cause to be discharged any storm water, surface water, groundwater, roof runoff, subsurface drainage, uncontaminated cooling water, or unpolluted industrial process waters to any sanitary sewer.

(C) Storm water and all other unpolluted drainage shall be discharged to such sewers as are specifically designated as storm sewers, or to a natural outlet approved by the governing body of the City of Alamogordo. Industrial cooling water or unpolluted process water may be discharged on approval of the governing body of the City, to a storm sewer or natural outlet.

(D) No person shall discharge or cause to be discharged any of the following described liquids or wastes to any public sewers:

(a) Any gasoline, benzine, naphtha, fuel oil, or other flammable or explosive liquid or gas.

(b) Any water or wastes containing toxic or poisonous solids, liquids, or gases in sufficient quantity, either singly or by interaction with other wastes, to injure or interfere with any wastewater facility, constitute a hazard to humans or animals, create a public nuisance, or create any hazard in the receiving waters of the wastewater treatment works, including but not limited to cyanides in excess of two (2) mg/l as CN in the wastes as discharged to the public sewer.

(c) Any herbicides and pesticides.

(d) Any waters or wastes having a pH lower than (5.5), or having any other corrosive property capable of causing damage or hazard to structures, equipment, and personnel of the wastewater facility,

(e) Solid or viscous substances in quantities or of such size capable of causing obstruction to the flow in sewers, or other interference with the proper operation of the waste water facility such as, but not limited to, ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, unground garbage, whole blood, dishes, cups, milk containers, etc., either whole or ground by garbage grinders.

(f) Any amount of the following heavy metals:
Antimony, Arsenic, Barium, Beryllium, Bismuth, Boron,
Cadmium, Chromium (Hexa), Chromium (Tri), Cobalt, Copper,
Iron, Lead, Manganese, Mercury, Molybdenum, Nickel, Rhenium,
Selenium, Silver, Strontium, Tellurium, Tin, Uranyl ion, Zinc.
Dilution of toxic materials and heavy metals in lieu of removal is not acceptable.

(E) No person shall discharge or cause to be discharged the following described substances, materials, waters, or wastes if it appears likely in the opinion of the governing body of the City that such wastes can harm wastewater facility, or equivalent, have an adverse effect on the receiving stream, or can otherwise endanger life, limb, public property, or constitute a nuisance. In forming an opinion as to the acceptability of these wastes, the governing body of the City will give consideration to such factors such as the quantities of subject wastes in relation to flows and velocities in the sewers, materials of construction of the sewers, nature and capacity of the wastewater facility, degree of treatability of wastes in the wastewater treatment works and other pertinent factors. The substances which must be considered include but are not limited to the following.

(a) Any liquid or vapor having a temperature higher than one-hundred fifty (150°F) or (65°C).

(b) Any water or waste containing fats, grease, wax, or oils, whether emulsified or not, in excess of one-hundred (100) mg/l or containing substances which may solidify or become viscous at temperatures between thirty-two (32°F) and one-hundred-fifty (150°F) or (0° to 65° C).

(c) Any garbage that has not been properly shredded. The installation and operation of any garbage grinder larger than those normally manufactured and sold for residential and noncommercial use will not be installed without specific review and approval by the City.

(d) Any waters or wastes containing strong acid, iron pickling wastes, or concentrated plating solutions cannot be discharged to the wastewater facility unless completely neutralized and approved by the City for discharge.

(e) Any waters or wastes containing reducing substances of an organic or inorganic nature, toxic or non-toxic, which exert an immediate chlorine demand not to be discharged into the wastewater facility if discharge of such agents will prevent the achievement of an adequate chlorine residual in the effluent of the wastewater treatments works.

(f) Any waters or wastes containing phenols or other taste odor-producing substances, in concentrations exceeding limits established by the City after treatment of the composite sewage, to meet the requirements of the State, Federal, or other public agencies of jurisdiction for such discharge to the receiving waters.

(g) Any radioactive wastes or isotopes of such half-life or concentrations as may exceed limits established by the governing body of the City in compliance with applicable State and Federal regulations.

(h) Any waters or wastes having a pH in excess of (9.5).

- (i) Materials which exert or cause:
 - (1) Unusual concentrations of inert suspended solids (such as, but not limited to Fullers earth, lime residues) or of dissolved solids (such as, but not limited to, sodium chlorine and sodium sulfate).
 - (2) Excessive discoloration (such as, but not limited to, dye wastes and vegetables tanning solutions).
 - (3) Unusual chemical oxygen demand or chlorine requirements in such quantities as to constitute a significant load on the wastewater treatment works.
 - (4) Slugs or shocks constituting an unusual volume of flow or concentration of wastes which will disturb the normal functioning of the wastewater facility.

- (j) Waters and wastes containing substances which are not amendable to treatment or reduction by the wastewater treatment works employed, or amendable to treatment only to such degree that the effluent cannot meet the requirements of agencies having jurisdiction over discharge to the receiving waters.

(F) If any waters or wastes are discharged, or are proposed to be discharged to the public sewers, which water contain the substances or possess the characteristics enumerated in section 5 of this ordinance, and which in the judgement of the governing body of the City, may have a deleterious effect upon the waste water facilities, or receiving waters, or which otherwise create a hazard to life or constitute a public nuisance, the City may:

- (a) Reject the wastes.
- (b) require the pretreatment to an acceptable condition for discharge to the public sewers, or
- (c) require control over the quantities and rates of discharge.

28-02-330. Compliance and Penalties:

All testing designed to satisfy the criteria set forth in this section shall be scientifically sound and statistically valid. All tests to determine oil and grease, TSS, BOD, COD, pH, and other pollutant levels shall use appropriate tests which have been approved by the Environmental Protection Agency which are defined in Title 40, Code of Federal Regulations, Part 136. Testing shall be open to inspection by the POWTS and shall meet the AHJ or POWTS approval.

28-02-340. Compliance Monitoring:

A) Right of Entry. The POWTS or AHJ shall have the right to enter a premises of any user or potential user to determine whether the user is complying with all requirements of this section and any wastewater discharge permit or order issued hereunder. Users shall allow the POWTS or AHJ ready access to all parts of the premises for the purposes of inspection, sampling, records examination and copying, and the performance of any additional duties.

- a) Where a user has a security measures in force which require proper identification and clearance before entry into its premises, the user shall make necessary arrangements with its security guards so that, upon presentations of suitable identification, the POWTS will be permitted to enter without delay for the purposes of performing specific responsibilities.
- b) The POWTS shall have the right to set up user's property, or require installation of, such devices as are necessary to conduct sampling and/or metering of the user's operations.
- c) The POWTS may require the user to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the user at its own expense.
- d) Any temporary or permanent obstruction to safe and easy access to the Facility to be inspected and/or sampled shall be promptly removed by the user at the written or verbal request of the POWTS and shall not be replaced. The cost of clearing such access shall be borne by the user.
- e) Unreasonable delays in allowing the POWTS access to the user's premises shall be a violation of this ordinance.

B) Search Warrants. If the POWTS has been refused access to a building, structure, or property, or any part thereof, and is able to demonstrate probable cause to believe that there may be a violation of this ordinance, then the POWTS may seek issuance of a search warrant.

C) Schedule of Penalties.

(a) If the POWTS determines that a generator is responsible for a blockage of a collection system line the generator shall owe a civil penalty of \$1,000 for the first violation, \$1,500 for a second violation and \$2,000 for a third violation within a two (2) year period. Continuous violations shall result in an increase in penalty by \$500 and may also result in termination of services.

(b) Any person violating any of the provisions of this Ordinance shall be subject to a written warning for the first (1st) violation, a \$1000 civil penalty for the (2nd) second violation, a \$1,500 civil penalty for the third (3rd) violation, and a \$2,000 civil penalty for the fourth (4th) violation within a two-year period, Consistent violations will result in a \$500 increase in civil penalty and may result in termination of services.

D) Judicial Enforcement Remedies.

A) Injunctive Relief. When the POWTS or AHJ finds that a user has violated or continues to violate any provision of this Ordinance, a wastewater discharge

permit, or issued hereunder, or any other pretreatment standard or requirement, they may petition the District Court for the issuance of a temporary or permanent injunction, as appropriate, which restrains or compels the specific performance of the wastewater discharge permit, order, or other requirement imposed by this Ordinance on activities of the user. They may also seek such other action as is appropriate for legal and/or equitable relief, including a requirement for the user to conduct environmental remediation. A petition for injunctive relief shall not be a bar against or a prerequisite for taking any other action against a user.

PASSED, APPROVED AND ADOPTED this _____ day of _____, 2020.

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 Bengoechea, City Attorney

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 11/17/2020

Report Date: 11/9/2020

Report No: 4.

Submitted By: Jim Talbert

Subject: Consider, and act upon, acceptance of grant agreement from NMDOT to Alamogordo-White Sands Regional Airport in the amount of \$130,000.00 to replace the airport's AWOS power cable. (*Jim Talbert, Airport Manager*)

Fiscal Impact: 13,000.00
Amount Budgeted: \$47,100.00
Fund: 091

Additional Fiscal Impact: Funds were budgeted for this project prior to receipt of the grant so there are sufficient funds for the required match.

Recommendation: Accept grant from NMDOT.

Background: Alamogordo-White Sands Regional Airport received a grant offer from New Mexico Department of Transportation in the amount of \$130,000.00 to replace the airport's AWOS power cable. The FAA does not provide grants for this type of AWOS repair. A 10% City match is required and has been budgeted for in the FY21 airport budget.

NEW MEXICO DEPARTMENT OF TRANSPORTATION
Aviation Grant Agreement Form



Date

Project Location

Sponsor

Address

City NM Zip Code

The Sponsor must sign and send a digital PDF copy to their Airport Development Administrator at the NMDOT Aviation Division.

Participation

Funding Breakdown

Contract No. _____

Project No.

Vendor No.

Expiration Date _____

Purchase Order No: _____

AVIATION GRANT AGREEMENT

This Agreement is between the New Mexico Department of Transportation, acting through its Aviation Division (Department), and the Sponsor. This Agreement is effective as of the date of the last party to sign on the signature page below.

Now Therefore, pursuant to the New Mexico Aviation Act, NMSA 1978, Section 64-1-11 et seq., and the New Mexico Municipal Airport Law, NMSA 1978 Sections 3-39-1 et seq., the parties agree as follows:

1. Purpose.

The purpose of this Agreement is to provide funding, authorized in Section 64-1-13, NMSA 1978, to the Sponsor to assist in financing an aviation project.

a. Project Description:

AWOS ELECTRICAL POWER SUPPLY REHAB

- b. Site of Development. The site of development is identified on the property map, attached as Exhibit A.
- c. Funding. Below is the funding for the Project. The State's contribution is the maximum amount that the Department will contribute. Attached as Exhibit B is the engineer's cost estimate.

State	Sponsor	Other	Total
\$ 117,000	\$ 13,000	\$	\$ 130,000

2. The Sponsor Shall:

- a. Pay all costs, perform all labor, and supply all material, except as described in the Engineers Estimate attached as EXHIBIT B.
- b. Provide a representative from its organization who shall serve as the single point of contact for the Department.
- c. Establish and maintain a resolution by which the Sponsor agrees to establish an airport maintenance program and appoint an individual to be responsible for management of the program.
- d. Initiate engineering, survey, and all other design activities, inspect Project construction and, coordinate all meetings.
- e. Be responsible for all design and pre-construction activities.
- f. Initiate and cause to be prepared all necessary documents including plans, specifications, estimates (PS&E), and reports for this Project.
- g. Assure that all design and PS&E are performed under the direct supervision of a Registered New Mexico Professional Engineer.
- h. Design the Project in accordance with State and Federal guidelines and/or advisory circulars, hereby incorporated into this Agreement. Construction projects will be accomplished in accordance with the Federal Aviation Administration's Standards for Specifying Construction of Airports (Advisory Circular 150/5370-10, current edition).

- i. Notify the Department when the plans and specifications are sufficiently complete for review.
- j. Make no changes in design or scope of work without documented approval of the Department.
- k. Advertise for and contract for the construction of the Project in accordance with federal and state laws or local ordinances.
- l. Require the Engineer to prepare a final detailed estimate of the work, indicating the bid items, the quantity in each item, the unit bid price and cost of the items based on low acceptable bid prices. Progress estimates shall be submitted to the Department in acceptable form so that details of quantities allowed on various items of work shall be shown on each progress payment.
- m. The Sponsor shall submit to the Department one complete set of plans and specifications which incorporate all comments and recommendations received during pre-bid activities and which have been fully executed by all involved parties.
- n. The Sponsor shall take all steps, including litigation if necessary, to recover State funds spent in violation of state laws and rules. The Sponsor shall return any recovered state funds to the Department. It shall furnish to the Department, upon request, all documents and records pertaining to the determination of the amount of the state's share of any settlement, litigation, negotiation, or the efforts taken to recover such funds. All settlements or other final dispositions by the Sponsor, in court or otherwise, involving the recovery of such state funds shall be approved in advance by the Department.
- o. The Sponsor shall, upon reasonable notice, allow the Department the right to inspect the Project for the purposes of determining if it is being constructed in a good and workmanlike manner, and if the approved plans and specifications are being complied with satisfactorily. If an inspection discloses a failure to substantially meet such requirements and standards the Department may terminate payment or payments until a mutually satisfactory remedy is reached.

3. The Department Shall:

- a. Assign a contact person for this project.
- b. Provide timely reviews of all submittals of scopes, plans, specifications, investigations or other documents.
- c. The Department shall not provide an extensive check of any plans submitted by the Sponsor. The Department's concurrence of the Project plans does not relieve the Sponsor or its Consultant of their responsibility for errors and omissions.

4. Both Parties Agree:

- a. The allowable costs of this Project shall not include costs determined by the Department to be ineligible for consideration under the Aviation Act.
- b. The expenditure of any State money is subject to approval by the Department.
- c. Funds granted under the Local Governments Road Fund, NMSA 1978 Section 67-3-28.2, shall not be used to administer this Project or used to meet the local match.

5. Method of Payment - Reimbursement.

The Department shall reimburse the Sponsor in accordance with the terms of this agreement. Claims for reimbursement shall be completed on form A-1159, Request for Reimbursement. Each request for reimbursement shall contain proof of payment for valid expenditures for services rendered by a third party or items of tangible property received by the Sponsor for the implementation of the Project. The Department reserves the right to withhold reimbursement on requests that are incorrect and/or incomplete. The Final reimbursement request must be received no later than thirty (30) days after completion of the project or the expiration of this Agreement.

The Sponsor shall not be reimbursed for any costs incurred prior to the full execution of the Agreement, after the expiration of the Agreement or in excess of the maximum dollar amount of the agreement unless the maximum dollar amount is duly amended prior to incurring the service or deliverable. Any unexpended portion of funds subject to this Agreement shall revert to the State Aviation Fund.

6. Accountability of Receipts and Disbursements.

There shall be strict accountability for all receipts and disbursements. The Sponsor shall maintain all records and documents relative to the Project for a minimum of three (3) years after completion of said Project. The Sponsor shall furnish the Department or State Auditor, upon demand, all records which support the terms of this Agreement.

7. Term.

The Agreement becomes effective upon signatures of all parties. The effective date is the date when the last party signed the Agreement on the signature page below. This agreement shall expire two (2) years from the effective date, unless terminated pursuant to Sections 8 and 17, below.

8. Termination for Cause.

The Department has the option to terminate this Agreement if the Sponsor fails to comply with any provision of this Agreement. A written notice of termination shall be given at least thirty (30) days prior to the intended date of termination and shall identify all of the Sponsor's breaches on which the termination is based.

The Department may provide the Sponsor a reasonable opportunity to correct the breach. If within ten (10) days after receipt of a written notice of termination, the Sponsor has not corrected the breach or, in the case of a breach which cannot be corrected in ten (10) days, the Sponsor has not begun and proceeded in good faith to correct the breach, the Department may declare the Sponsor in default and terminate the Agreement. The Department shall retain any and all other remedies available to it under the law.

By such termination neither party may nullify obligations already incurred for performance or failure to perform for the work rendered prior to the date of termination. However, neither party shall have any obligation to perform services or make payment for services rendered after such date of termination.

9. Disposition of Property.

- a. Upon termination of this Agreement, the Sponsor shall account for any remaining property, materials or equipment belonging to the Department and dispose of them as directed by the Department.
- b. Any equipment, materials or supplies procured under this Agreement shall be used solely for aviation purposes maintained according to the manufacturers guidelines and stored at the airport.

10. Representations and Certification.

The Sponsor, by signing this Agreement, represents and certifies the following:

- a. Legal Authority - The Sponsor has the legal power and authority to: (1) do all things necessary in order to undertake and carry out the Project in conformity with the provisions stated in the New Mexico Aviation Act and Rules and Regulations pursuant thereto; (2) accept, receive and disburse grant funds from the State of New Mexico in aid of the Project; and (3) carry out all provisions stated in this Aviation Grant Agreement.
- b. Defaults - The Sponsor is not in default on any obligation to the State of New Mexico relative to the development, operation or maintenance of any airport or aviation project.
- c. Possible Disabilities - The Sponsor states, by execution of this Agreement, there are no facts or circumstance (including the existence of effective or proposed leases, use agreements, or other legal instruments affecting use of the airport or the existence of pending litigation or other legal proceedings) which in reasonable probability might make it impossible for the Sponsor to carry out and complete the Project.
- d. Land - The Sponsor holds the property interest in the areas of land which are to be developed or used as part of or in connection with the Project and is identified in a current Airport Property Map. The Sponsor further certifies that the aforementioned is based on a title examination by a qualified attorney or title company who has determined that the Sponsor holds the stated property interests.

11. Assurances.

The Sponsor, by signing this Agreement, covenants and agrees to the following Assurances:

- a. That it will operate the airport for the use and benefit of the public on fair and reasonable terms and without unjust discrimination.
- b. That it will keep the airport open to all types, kinds and classes of aeronautical use without discrimination between such types, kinds, and classes. The Sponsor shall establish fair, equal and not unjustly discriminatory conditions to be met by all users of the airport as may be necessary for the safe and efficient operation.

- c. Neither it nor any person or organization occupying space at the airport will discriminate against any person or class of persons by reason of race, color, creed, or national origin in the use of the facility and, further that any person, firm or corporation rendering service to the public on the airport will do so on a fair, equal and not unjustly discriminatory basis.
- d. Operate and maintain in a safe and serviceable condition the airport and all facilities which are necessary to serve the aeronautical users and will not permit any activity which would interfere with its use for airport purposes.
- e. By acquisition of land interest, acquisition of easements, airspace zoning, or other accepted means, protect the runway approaches and the airspace in the immediate vicinity of the airport from the construction, alteration, erection or growth of any structure which would interfere with the use or operation of the airport.
- f. Comply with the New Mexico Aviation Act and associated provisions, NMSA 1978 Sections 64-1-1 to 64-5-4 and the New Mexico Municipal Airport Law, NMSA 1978 Sections 3-39-1 et seq.
- g. That it shall not award the contract nor give bidding documents to any contractor who is subject to suspension or debarment by the U.S. Department of Transportation or the Department at the time of the bidding or award of the contract. Violation of this provision shall void this Agreement.

12. Third Party Beneficiaries.

It is not intended by any of the provisions of any part of this Agreement to create in the public or any member thereof a third party beneficiary or to authorize anyone not a party to the Agreement to maintain a suit(s) for wrongful death(s), bodily and/or personal injury(ies) to person(s), damage(s) to property(ies), and/or any other claim(s) whatsoever pursuant to the provisions of this Agreement.

13. New Mexico Tort Claims Act.

As between the Department and the Sponsor, neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1, *et seq.* This paragraph is intended only to define the liabilities between the parties and it is not intended to modify, in any way, the parties' liabilities as governed by common law or the New Mexico Tort Claims Act.

14. Scope of Agreement.

This Agreement incorporates all the agreements, covenants, and understandings between the parties concerning the subject matter. All such covenants, agreements, and understandings have been merged into this written Agreement. No prior Agreement or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

15. Terms of this Agreement.

The terms of this Agreement are lawful; performance of all duties and obligations shall conform with and do not contravene any state, local, or federal statutes, regulations, rules, or ordinances.

16. Equal Opportunity Compliance.

The parties agree to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, the parties agree to assure that no person in the United States shall, on the grounds of race, color, national origin, ancestry, sex, sexual preference, age or handicap, be excluded from employment with, or participation in, any program or activity performed under this Agreement. If the parties are found to not be in compliance with these requirements during the term of this Agreement, the parties agree to take appropriate steps to correct these deficiencies.

17. Appropriations and Authorizations of State and Federal Funds.

The terms of this Agreement are contingent upon sufficient appropriations and authorizations being made by the governing board of the Sponsor, the Legislature of New Mexico, or the Congress of the United States if federal funds are involved, for performance of the Agreement. If sufficient appropriations and authorizations are not made by the Sponsor, Legislature or the Congress of the United States if federal funds are involved, this Agreement shall terminate upon written notice being given by one party to the other. The Department and the Sponsor are expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered, and approved for expenditure.

18. Severability.

In the event that any portion of this Agreement is determined to be void, unconstitutional or otherwise unenforceable, the remainder of this Agreement shall remain in full force and effect.

19. Applicable Law.

The Laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with NMSA 1978, Section 38-3-1(G).

20. Principal Contacts and Notices.

The principal contacts for this Agreement are listed below. Except as otherwise specified, all notices shall be in writing (including notice by facsimile or E-mail) and shall be given to the principal contacts listed below.

Name: Daniel R. Moran
Title: Finance & Administrative Manager

Address: New Mexico Department of Transportation - Aviation Division
3501 Access Rd C.
Albuquerque, NM 87106
Office: (505) 244-1788 ext. 9112
Fax: (505) 244-1790
E-mail: dan.moran@state.nm.us

Name
Title
Sponsor
Address
City NM Zip Code
Office Phone Fax
E-Mail

21. Amendment.

This Agreement shall not be altered, modified, or amended except by an instrument in writing and executed by the parties.

In witness whereof, each party is signing this Agreement on the date stated opposite of that party's signature.

NEW MEXICO DEPARTMENT OF TRANSPORTATION

By: _____
Cabinet Secretary or Designee

Date: _____

Recommended by:

By: _____
Aviation Division Director
or Designee

Date: _____

Approved as to form and legal sufficiency by the New Mexico Department of Transportation's Office of General Counsel

By: _____
Assistant General Counsel

Date: _____

SPONSOR

Print Name: _____

By: _____

Date: _____

Title: _____

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 11/17/2020

Report Date: 11/9/2020

Report No: 5.

Submitted By: Stella Rael

Subject: Consider and act upon, Case Z-2020-0001(A) for first publication of Ordinance 1620 amending the zoning map to change the zoning of property 2706 Stapp Ave. from MH2-Manufactured Housing Park to MH1- Manufactured Housing Subdivision. (*Stella Rael, City Planner*) **(Roll Call Vote Required)**

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation: Approve for First Publication.

Background: Clay Carpenter is requesting that the city amend the zoning map to change the zoning of property located at 2706 Stapp Ave. from MH2-Manufactured Housing Park to MH1- Manufactured Housing Subdivision. The property owner intends to subdivide the parcel into ten (60x150) individual lots.



City of Alamogordo

City Commission



Z-2020-0001(A)

Stella Rael, City Planner
November 17, 2020

Zoning Request Case: Z-2020-0001(A)

Request:

The applicant is requesting a map amendment to the official zoning map of the City of Alamogordo to rezone the property located at 2706 Stapp Ave. (2.08 acres) from MH-2 Manufactured Housing Park District to MH-1 Manufactured Housing Subdivision. If approved property owner is proposing to divide parcel into ten (60x150) lots to sale as individual lots.

Applicant:

Clay Carpenter

48 Dusty Lane

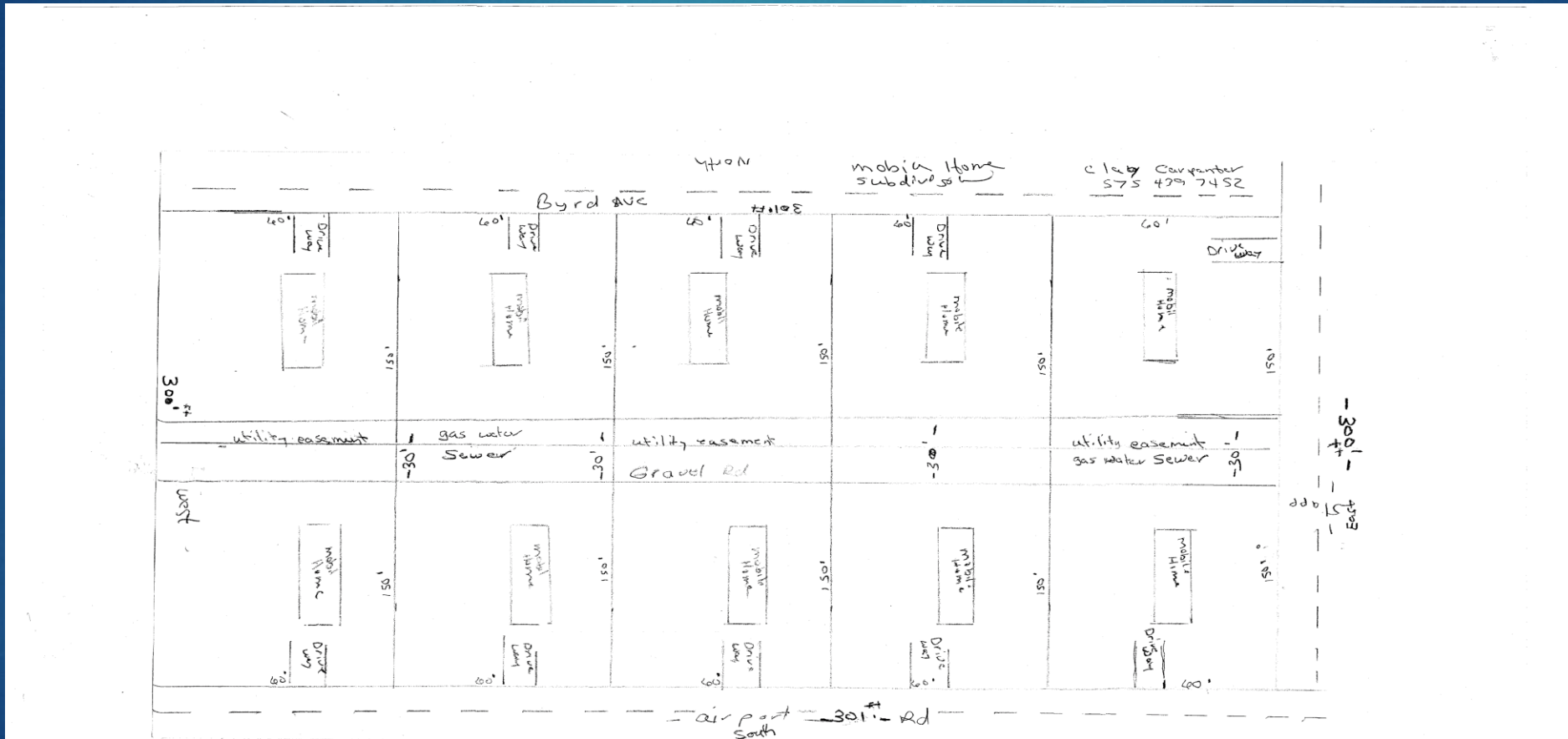
Tularosa, NM 88352

Z-2020-0001 (A) SURROUNDING ZONING



2706 Stapp Avenue

Z-2020-0001 (A) Proposed Site Plan



Zoning Request Case: Z-2020-0001(A)

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Findings of Fact

- ▶ 1. The property is located at 2706 Stapp Ave. within the Manufactured Housing Park District.
- ▶ 2. The application was filed on October 2, 2020
- ▶ 3. The legal notice was published on October 11, 2020
- ▶ 4. Fifteen (15) letters were mailed by certified/return receipt mail to all property owners of record within two hundred (200) feet from the property excluding public right-of-way, of the property for which the rezoning is sought.
- ▶ 5. As of November 9, 2020 there has been one (1) letter returned undeliverable and I have received one (1) letter of opposition
- ▶ 6. This item was presented to the Planning and Zoning Board for recommendation to City Commission on November 5, 2020.
- ▶ 7. Planning and Zoning Board recommended approval by a vote of 4-0-0.

Zoning Request Case: Z-2020-0001(A)

6

Staff Recommends:

To accept the finding of facts as presented and approve Zone Request Case: Z-2020-0001(A).

ORDINANCE No. 1620

AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF ALAMOGORDO, CHANGING THE CLASSIFICATION OF A CERTAIN PROPERTY COMMONLY KNOWN AS 2706 STAPP AVE. FROM THEIR PRESENT DESIGNATION AND ZONING DISTRICT MH-2 MANUFACTURED HOUSING PARK DISTRICT TO MH-1 MANUFACTURED HOUSING SUBDIVISION, WITHIN THE CORPORATE BOUNDARIES OF THE CITY OF ALAMOGORDO, OTERO COUNTY, NEW MEXICO.

WHEREAS, Clay Carpenter (hereinafter referred to as "the Owners") is the owner of certain real property commonly known as 2706 Stapp Ave. and legally described below (herein after referred to as "the Property") located within the corporate boundaries of the City of Alamogordo, New Mexico, (hereinafter referred to as "the City"); and

WHEREAS, an application has been filed in the Owner's names under Case No. **Z-2020-0001(A)** to change the zoning of the Property, and

WHEREAS, the Planning and Zoning Commission, after notice and hearing did recommend to the City Commission adoption of an ordinance amending the zoning map by removing the Property from the present designation and zoning district of MH-2, Manufactured Housing Park District to MH-1, Manufactured Housing Subdivision District; and

WHEREAS, the City Commission, after notice and hearing, finds and determines that the application for re-zoning of the Property is in the public interest and is consistent with proper development of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION, THAT the zoning of the Property, which is more fully described below:

AIRPORT BLOCKS #1 LOT: E1/2 BLOCK: 24

Is hereby changed from MH-2, Manufactured Housing Park District to MH-1, Manufactured Housing Subdivision District; and the official zoning map and comprehensive plan of the City are hereby amended to reflect this change.

PASSED, APPROVED, AND ADOPTED this _____ day of _____, 2020

**CITY OF ALAMOGORDO, NEW MEXICO a
New Mexico municipal corporation**

By: _____
Richard Boss, Mayor

ATTEST:

Rachel Hughs, City Clerk

APPROVED AS TO FORM:

Petria Bengoechea, City Attorney

Record of Decision
City of Alamogordo
A New Mexico Municipal Corporation

Case#: Z-2020-0001(A)

For the Subject Property as follows:

Commonly Known As: 2706 Stapp Ave.

Uniform Property Code & Parcel Code: 01N4053098450249

Legal Description: **AIRPORT BLOCKS #1 Lot: E1/2 Block: 24**

The Alamogordo Planning & Zoning Commission considered this item on November 5, 2020 and recommended the following action to the Alamogordo City Commission by a vote of 4-0-0

Approve the rezoning of the property detailed above for Case # Z-2020-0001(A).

.....
The Alamogordo City Commission issued the following decision on November 17, 2020 by a vote of _____

Approve as recommended for first publication Ordinance # 1620

.....
The Alamogordo City Commission issued the following decision on _____, by a vote of _____

Approve as recommended for final publication Ordinance #1620 .

Attest:

CITY OF ALAMOGORDO, New Mexico,
A New Mexico Municipal Corporation

Rachel Hughs, City Clerk

Richard Boss, Mayor

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 11/17/2020

Report Date: 11/9/2020

Report No: 6.

Submitted By: Stella Rael

Subject: Consider and act upon, Case Z-2020-0002(A) for first publication of Ordinance 1621 amending the zoning map to change the zoning of a subdivided section of property located at 1007 Eddy Dr. from M2-Industrial to C3-Business. (*Stella Rael, City Planner*) **(Roll Call Vote Required)**

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation: Approve for first publication

Background: Kathleen Hodgkinson and Patrick Casem are requesting that the city amend the zoning map to change the zoning of a subdivided section of property located at 1007 Eddy Dr. from M2- Industrial to C3-Business. The subdividing of one parcel into two parcels is contingent on the approval of this map amendment. The property currently has an active sheet metal business which will remain within the M2-Industrial District parcel once subdivided.



City of Alamogordo

City Commission



Z-2020-0002(A)

Stella Rael, City Planner
November 17, 2020

Zoning Request Case: Z-2020-0002(A)

Request:

The applicant is requesting a map amendment to the official zoning map of the City of Alamogordo to rezone a portion of the partial that will be subdivided contingent on the approval of this request. The request to rezone the property located at 1007 Eddy Dr. from its current zoning of M-2 Industrial Zoning District to C-3 Business Zoning District.

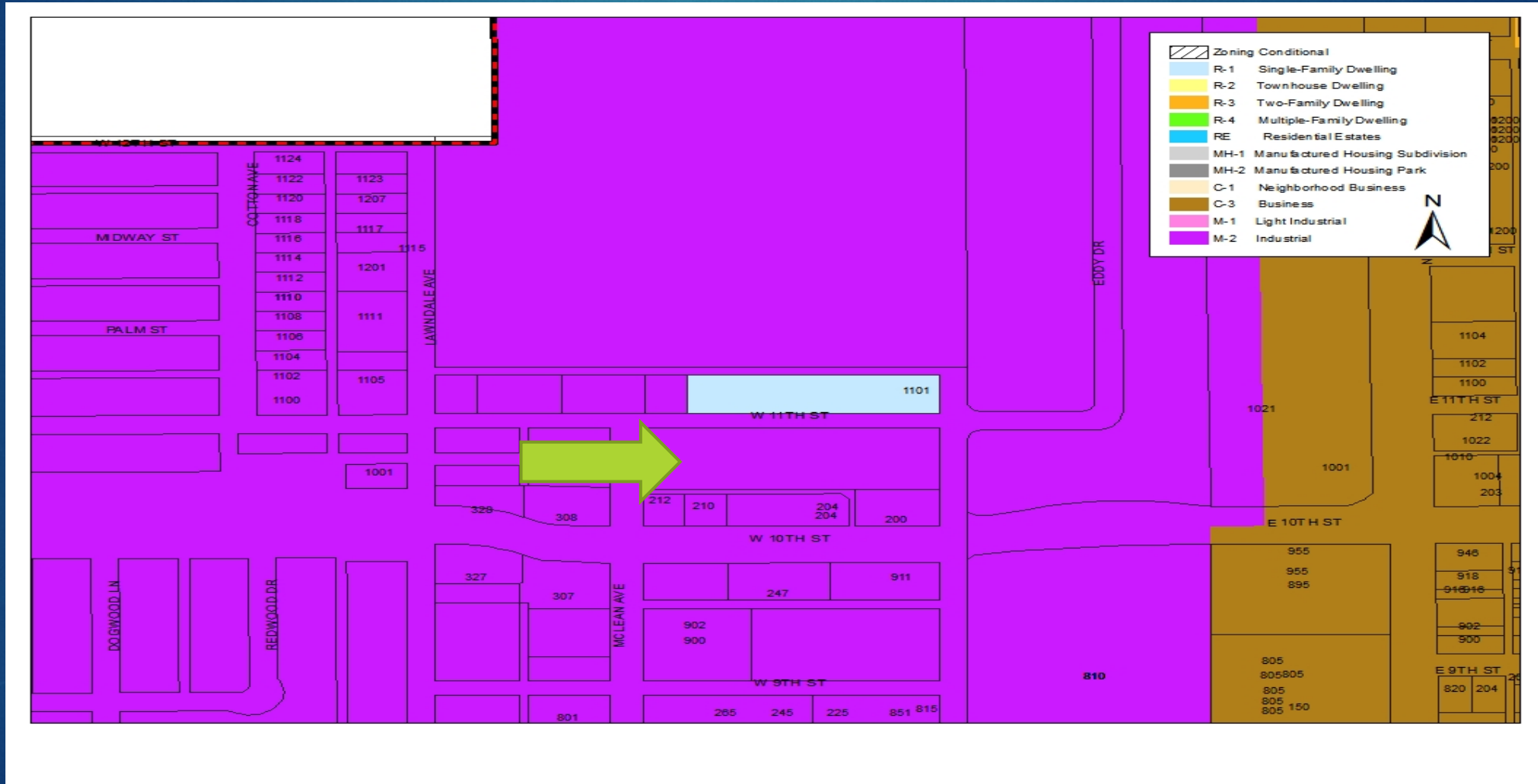
Applicant:

Kathleen Hodgkinson & Patrick Casem

1007 Eddy Drive

Alamogordo, NM 88310

Z-2020-0002(A) SURROUNDING ZONING



Zoning Request Case: Z-2020-0002(A)

4

Findings of Fact

- ▶ 1. The property is located at 1007 Eddy Dr. within the M-2 Industrial Zoning District.
- ▶ 2. The application was filed on October 5, 2020
- ▶ 3. The legal notice was published on October 11, 2020
- ▶ 4. Thirteen (13) letters were mailed by certified/return receipt mail to all property owners of record within two hundred (200) feet from the property excluding public right-of-way, of the property for which the rezoning is sought.
- ▶ 5. As of November 9, 2020 there has been one (1) letter returned undeliverable and there have been no letters of opposition.
- ▶ 6. This item was presented to the Planning and Zoning Board for recommendation to City Commission on November 5, 2020.
- ▶ 7. Planning and Zoning Board recommended approval by a vote of 4-0-0.

Zoning Request Case: Z-2020-0002(A)

5

Staff Recommends:

To accept the finding of facts as presented and approve Zone Request Case: Z-2020-0002(A).

ORDINANCE No. 1621

AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF ALAMOGORDO, CHANGING THE CLASSIFICATION OF A CERTAIN PROPERTY COMMONLY KNOWN AS 1007 EDDY DR. FROM THEIR PRESENT DESIGNATION AND ZONING DISTRICT M-2 INDUSTRIAL DISTRICT TO C-3 BUSINESS DISTRICT, WITHIN THE CORPORATE BOUNDARIES OF THE CITY OF ALAMOGORDO, OTERO COUNTY, NEW MEXICO.

WHEREAS, Kathleen K. Hodgkinson and Patrick Casem (hereinafter referred to as "the Owners") are the owners of certain real property commonly known as 1007 Eddy Dr. and legally described below (herein after referred to as "the Property") located within the corporate boundaries of the City of Alamogordo, New Mexico, (hereinafter referred to as "the City"); and

WHEREAS, an application has been filed in the Owner's names under Case No. **Z-2020-0002(A)** to change the zoning of the Property, and

WHEREAS, the Planning and Zoning Commission, after notice and hearing did recommend to the City Commission adoption of an ordinance amending the zoning map by removing the Property from the present designation and zoning district of M-2 Industrial District to C3-Business District ; and

WHEREAS, the City Commission, after notice and hearing, finds and determines that the application for re-zoning of the Property is in the public interest and is consistent with proper development of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION, THAT the zoning of the Property, which is more fully described below:

S: 25 T: 16 R: 9 TR IN SE1/4NE1/4

Is hereby changed from M-2 Industrial District to C-3, Business District; and the official zoning map and comprehensive plan of the City are hereby amended to reflect this change.

PASSED, APPROVED, AND ADOPTED this _____ day of _____, 2020

**CITY OF ALAMOGORDO, NEW MEXICO a
New Mexico municipal corporation**

By: _____
Richard Boss, Mayor

ATTEST:

Rachel Hughs, City Clerk

APPROVED AS TO FORM:

Petria Bengoechea, City Attorney

Record of Decision
City of Alamogordo
A New Mexico Municipal Corporation

Case#: Z-2020-0002(A)

For the Subject Property as follows:

Commonly Known As: 1007 Eddy Dr.

Uniform Property Code & Parcel Code: 01N4054095497095

Legal Description: S: 25 T: 16 R: 9 TR IN SE1/4NE1/4

The Alamogordo Planning & Zoning Commission considered this item on November 5, 2020 and recommended the following action to the Alamogordo City Commission by a vote of 4-0-0

Approve the rezoning of the property detailed above for Case # Z-2020-0002(A).

.....
The Alamogordo City Commission issued the following decision on November 17, 2020 by a vote of _____

Approve as recommended for first publication Ordinance # 1621

.....
The Alamogordo City Commission issued the following decision on _____ , by a vote of _____

Approve as recommended for final publication Ordinance #1621 .

Attest:

CITY OF ALAMOGORDO, New Mexico,
A New Mexico Municipal Corporation

Rachel Hughs, City Clerk

Richard Boss, Mayor

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 11/17/2020

Report Date: 11/9/2020

Report No: 7.

Submitted By: Petria Bengoechea

Subject: Consider, and act upon, the Land Exchange Agreement between the Alamogordo Public Schools and the City of Alamogordo. (*Petria Bengoechea, City Attorney and Jerrett Perry, Superintendent of Alamogordo Public Schools*)

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation:

Background: The attached Land Exchange Agreement contemplates exchanging the land at Chaparral Middle School for the City's property known as Hang Glider Park. The land at Chaparral Middle School is approximately 19.622 acres and was appraised at \$345,000. The land at Hang Glider Park is approximately 24.959 acres and is valued at \$325,000. In addition, the Alamogordo Public Schools have agreed to demolish the current middle school, and give the City a \$200,000 allowance for an irrigation system and landscaping to be put on the site after the school is demolished. The City would plan to turn the land at Chaparral Middle School into recreation areas and green space for youth activities and well as adult recreation activities.

LAND EXCHANGE AGREEMENT

This Land Exchange Agreement (“Agreement”) is made by and between the Board of Education, Alamogordo Public Schools, the governing body of a New Mexico local political subdivision, hereinafter referred to as “APSD” or “District”, and the CITY of Alamogordo a local New Mexico municipal corporation , hereinafter referred to as the “CITY”, as follows:

RECITALS

A. APSD has a need to acquire real property and to construct a new public school to serve District needs and to replace the currently owned Chaparral Middle School site located at 1401 College Ave., Alamogordo, New Mexico, consisting of approximately 19.622 ac. +/- with improvements, (the “APSD Site”) which no longer meets the District’s needs and is not economically feasible to renovate to current state adequacy standards. The APSD has been approved by the PSFA to demolish the improvements on the APSD Site and the facilities are not available for lease to a District Charter School within the contemplation of the Charter Schools Act. A current survey of the APSD Site is attached hereto as Exhibit “A” and incorporated by reference.

C. The CITY owns the approximately 24.959 acres +/- of unimproved land located at Fairgrounds Rd., Alamogordo, New Mexico (the “CITY Parcel”). A current survey of the City Parcel is attached hereto as Exhibit “B” and incorporated by reference.

A. The APSD has determined that the City Parcel is suitably located and of suitable size for acquisition and construction of a new public District school. The CITY has determined that the APSD Site and improvements would be suitable for CITY purposes. The CITY has agreed to convey the CITY Parcel to APSD and accept the APSD Site as consideration in full for the conveyance subject to the remedial actions contemplated in Paragraph 3 (a) and (b) below. APSD has agreed to convey the APSD Site to the CITY in exchange for the CITY Parcel, subject to approval by the State Board of Finance, and accept the conveyance of the CITY Parcel as consideration in full for the APSD Site.

A. Subject to the State Board of Finance’s approval of the conveyance of the APSD Site to the CITY, the parties have agreed to an exchange of the APSD Site and the CITY Parcel (referred to, collectively, herein as the “Parcels”); in accordance with the terms and conditions hereinafter set forth.

AGREEMENT

NOW, THEREFORE, in consideration of these premises, the mutual covenants and provisions contained herein and other good and valuable consideration, the parties agree as follows:

1. Due Diligence Review.

a. Before submitting the exchange to the Board of Education, APSD inspected the CITY Parcel and investigated the historical uses of the CITY Parcel. The City acquired a larger parcel, of which the City Parcel is a portion, in 1946. Since then the City Parcel has not been used for manufacturing or commercial purposes but has been vacant and used as an accessory recreational parcel to municipal athletic fields. APSD has obtained and reviewed a current Environmental Phase I analysis of the City Parcel and has concluded that there are no environmental indicators requiring a more extensive environmental analysis or that would require remediation in order to permit the construction of a public school on the City Parcel. APSD has reviewed title to the City parcel and determined that it is acceptable.

b. The City has had the opportunity to obtain such inspections of the APSD Site as it deemed necessary or advisable to evaluate the environmental suitability and other suitability factors of the APSD Site and has reviewed the title of the APAD Site. Based on its inspections and review, the City has determined the APSD Site is acceptable.

2. State Board of Finance. The conveyance of the APSD Parcel to the CITY in exchange for the CITY Parcel, is subject to approval by the State Board of Finance pursuant to § Section 13-6-2.1, NMSA 1978. Therefore, exchange of the Parcels is expressly conditioned upon that approval being granted by the State Board of Finance. APSD shall submit the exchange to the State Board of Finance for approval, as soon as is practicable. The CITY agrees to cooperate with APSD in order for APSD to obtain State Board of Finance approval. Without limiting the foregoing, the CITY agrees that the City Manager or his designee will attend the meeting of the State Board of Finance at which the exchange is heard, in order to answer any questions that the Board of Finance Members may have.

3. Exchange. Subject to State Board of Finance approval,

(a) APSD hereby agrees to acquire from the CITY and the CITY hereby agrees to grant and convey to APSD by means of a statutory form Quitclaim Deed, the real estate located in Otero County, New Mexico identified herein as the CITY Parcel and more specifically described on Exhibit B. The conveyance of the CITY Parcel to APSD does not include any well or ground water rights. However, the City Parcel is within the City's municipal water and sewer distribution boundaries and the City has a sprinkler system serving the City Parcel with non-potable water and has agreed to supply the City Parcel with potable water and sewer service sufficient for the proposed public school upon the APSD's acquisition of the City Parcel.. APSD acknowledges and agrees that it will be responsible for the cost, if any, of extending City water and sewer distribution lines to the boundary of the City Parcel.

(b) In consideration of CITY's conveyance of the CITY Parcel to APSD, APSD agrees to grant and convey to the CITY, by means of a statutory form Quitclaim Deed, the real estate located in Otero County, New Mexico identified herein as the APSD

Site and more specifically described on Exhibit A. APSD further agrees that as part of its responsibility to demolish the existing improvements, it will remove all debris from the APSD Site and will install piping for an in ground sprinkler system for a cost not to exceed Two Hundred Thousand Dollars, (\$ 200,000.00) including applicable gross receipts tax but subject to the sufficiency of appropriations. APSD further agrees that it will be responsible for the cost of a traffic signal at the intersection of Fairgrounds Rd. and Pecan Dr. as part of its new facility construction costs if a traffic study reflects the need for a signal light. The City acknowledges and agrees it will be responsible for the cost, if any, of extending non-potable water distribution lines to the boundary of the APSD Site for landscaping and athletic field irrigation and a signal light at Fairgrounds Rd. and Florida Ave..

4. Equivalency of Exchange Value. The APSD Parcel was acquired in 1966 and 1977 in two separate transactions and is currently appraised at \$345,000, (\$17,500/ac.) including improvements, The CITY Parcel was acquired in 1985 as part of a larger parcel and the larger parcel is currently appraised at \$ 325,000 for 24.959 acres (\$13,000/ac.).. APSD has determined that the costs of acquiring additional land and constructing a new facility on the City Parcel will result in significant cost savings over any reconstruction or renovation of the APSD Site when the changes in school population and future growth are factored in. In addition, APSD is acquiring more acreage which will allow for more flexible planning for future expansion. As a consequence, APSD and the City have therefore concluded that APSD Site is approximately equivalent in value to the CITY Parcel.

5. Closing.

(a) CITY's Obligations at Closing. On the Closing Date, CITY shall deliver to APSD all of the following:

(i) CITY Deed. A Quitclaim Deed in such form as will convey to APSD title to the CITY Parcel, executed and acknowledged by the CITY.

(b) APSD' Obligations at Closing. On the Closing Date, APSD shall deliver to the City all of the following:

(i) APSD Deed. A Quitclaim Deed in such form as will convey to the CITY title to the APSD Site, executed and acknowledged by the APSD.

c) Other Documents. The City and APSD agree to execute and deliver to the other party all other documents expressly or implicitly contemplated by this Agreement to effectuate its intent.

(d) Closing Date: The Closing date shall be the fifth (5th) business day following approval of the exchange by the Board of Finance unless a later date is set by mutual agreement of the parties.

6. As-Is. Subject to the obligations of APSD in paragraph 3 (a) and (b). above, and the City's obligation in paragraph 3 (b). above, the Parcels are conveyed "as-is" without any representation or warranty whatsoever. Without limiting the foregoing, the parties make no representation as to the suitability of a Parcel for the intended use by the party to be conveyed the Parcel. As a material part of the consideration for this Agreement, each party agrees to accept the Parcel conveyed to it on an "as is" and "where is" basis, with all faults and to rely only on its own investigations to determine the condition and suitability of the Parcel it is acquiring under this Agreement.

7. Possession. As of the Closing Date, the CITY shall deliver possession of the CITY Parcel to APSD, and APSD shall deliver possession of the APSD Site to the CITY.

8. Full Compensation. Each party hereby agrees that the Parcel received in this exchange as herein provided, constitutes full compensation for its interests in the Parcel conveyed to the other party.

9. Nonappropriation.

- a. In accordance with the New Mexico Constitution, including Article IX, Sections 11 and 12, if the performance of any of APSD's obligations under this Agreement, whether conditional or unconditional, require the expenditure of funds other than in the current school year for APSD, then APSD's obligations to perform are contingent upon sufficient appropriations being made by the Legislature and the encumbrances and authorizations for the expenditure of funds for the performance of those obligations by APSD being duly obtained ; and
- b. if the performance of any of the City's obligations under this Agreement, whether conditional or unconditional, require the expenditure of funds other than in the current fiscal year for the CITY, then the CITY's obligations to perform are contingent upon sufficient appropriations being made by the City Council subject to approval by the Department of Finance.
- c. If the APSD or the CITY determines that it does not have sufficient appropriations to perform its obligations under this Agreement in the upcoming school year, with respect to APSD, or the upcoming fiscal year, with respect to the CITY, then the APSD or the CITY, as applicable, may terminate this Agreement by giving thirty (30) days prior written notice to the other of the event of non-appropriation. . Such termination shall not nullify either party's obligation to pay for such work as has been performed prior to such notice termination unless otherwise modified in writing by the parties. Each party's decision as to whether sufficient authorizations and appropriations are or have been made in any fiscal year shall be final.

10. Miscellaneous.

(c) Time is of the essence of this Agreement. The term "days" shall mean calendar days unless otherwise stated. If the date or expiration of a time period set for performance under this Agreement falls on a Saturday, Sunday or federally recognized holiday the time for performance shall be extended to the next day that is not a Saturday, Sunday or federally recognized holiday.

(d) This Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns.

(e) This Agreement constitutes the entire Agreement between the parties hereto with respect to the Parcels and there are no agreements, understandings, warranties, or representations between them except as set forth herein.

(f) This Agreement is expressly conditioned upon approval being granted by the State Board of Finance. APSD shall submit this Agreement to the State Board of Finance for approval as soon as is practicable. The parties agree to cooperate in executed such amendments as may be required in order for APSD to obtain State Board of Finance approval. In the event such approval is not granted, this Agreement shall be null and void without penalty to either party.

(g) This Agreement cannot be amended except in writing, and executed by APSD and CITY and approved by the State Board of Finance. Any verbal agreement will be void. In the event modifications to this Agreement are required as a condition of approval by the Board of Finance, the parties agree to cooperate in effectuating such modifications.

(h) Headings in this Agreement are for convenience only and are not substantive terms or intended to provide an interpretation of the terms of this Agreement. The recitals set forth above are incorporated herein as substantive provisions in this Agreement.

(i) This Agreement is made solely for the benefit of APSD and the City, their successors and assigns, and no other person shall have any right, benefit or interest under or because of this Agreement, except as otherwise specifically provided for in this Agreement.

(j) This Agreement may be executed in counterparts that together will be one agreement.

IN WITNESS WHEREOF, the CITY and APSD have executed this Agreement on the dates set forth below.

(signature pages follow)

BOARD OF EDUCATION OF ALAMOGORDO PUBLIC SCHOOLS

By: _____ Date: _____, 2020
Jerrett Perry, Superintendent

STATE OF NEW MEXICO

COUNTY OF OTERO

This instrument was acknowledged before me on _____ (date) by
Jerrett, Perry Superintendent of Alamogordo Public School District on behalf of
the Board of Education of Alamogordo Public Schools.

Notary Public

My commission expires:

Seal

Approved as to form and legal sufficiency:

By: _____

Attorney for the Board of Education of Alamogordo Public Schools

CITY OF ALAMOGORDO

By: _____ Date: _____ , 2020

Name: _____

Title: _____

This instrument was acknowledged before me on _____ (date) by _____, the _____ of the City of Alamogordo on its behalf.

Notary Public

My commission expires:

Seal

Approved as to form and legal sufficiency:

By: _____

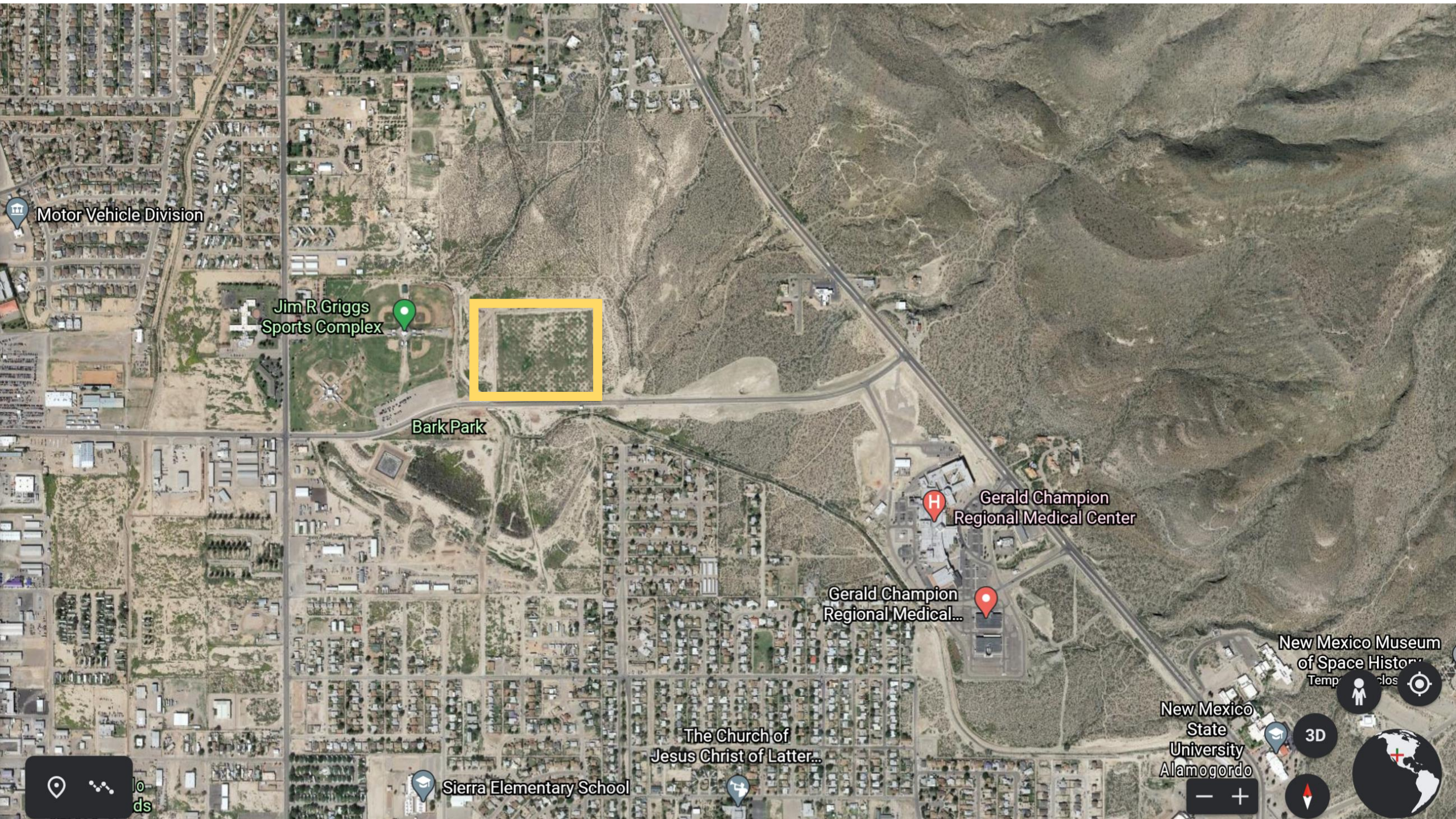
Attorney for the City of Alamogordo

EXHIBIT A

Description of the APSD Site

EXHIBIT B

Description of the CITY Parcel



Motor Vehicle Division

Jim R Griggs Sports Complex

Bark Park

Gerald Champion Regional Medical Center

Gerald Champion Regional Medical...

New Mexico Museum of Space History

New Mexico State University Alamogordo

The Church of Jesus Christ of Latter...

Sierra Elementary School





Alamogordo Public Schools



Chaparral Middle School

(Examples)



Rationale and Benefits of a Land Exchange

- **Building a new middle school for the Alamogordo community is a once in a generation opportunity. The current Chaparral Middle School is now over 60 years old, and we can expect for the replacement facility to last just as long.**
- **Locating our new school in the right place is critically important. Currently, Chaparral MS and Mountain View MS are within 1.3 miles of each other. This close proximity has created zoning and boundary challenges, as well as transportation and other logistical challenges. We do not want to miss the opportunity to position our new school on a site that best serves Alamogordo residents, and provides the most potential for the future of Alamogordo.**

Additional Field and Recreation Space

- By exchanging the Hang Glider Park property for the existing Chaparral Middle School property, Alamogordo residents can enjoy new recreation spaces and youth sports league opportunities.
- The Alamogordo Public Schools will extend the grass and irrigation system to the entire Chaparral site following demolition of the buildings.
- The new Chaparral will also have a new sports field that will ease the scheduling and congestion of the limited number of soccer and football spaces in town.
- The existing Chaparral site provides an ideal park space within walking distance of hundreds of Alamogordo residents.

Alamogordo Citizen's Input

- The Alamogordo Public Schools conducted a survey of our parents regarding what is most important to them in selecting a new site for Chaparral Middle School. Of the ten categories included in the survey, the two most important to our survey respondents were:
 - Site connection to community services such as recreation facilities, parks, or sports fields, and
 - Site ability to operate as a demonstration school in conjunction with NMSU-A Community College.

The Hang Glider Park location is in the ideal location to support both of these priorities.

The Alamogordo Public Schools is a Good Partner

- The economic and quality of life impact of having modern, state-of-the-art school buildings in our community is incalculable. Families are the lifeblood of any community. In addition to good jobs and affordable housing, the quality of our public schools will continue to be the determining factor for the growth and prosperity of Alamogordo.
- Through local G.O. Bond revenue and State of NM matching funds, the Alamogordo Public Schools has led the way in investing more than \$100 million into our community through the construction of new schools and other major renovation projects.

APS is Doing Our Part

Completed Projects:

- Renovated Pre-K Facilities
- North Elementary School Remodel
- Yucca Elementary School Remodel
- New Desert Star Elementary School
- Security Upgrades
- New Sunset Hills Elementary School
- Alamogordo High School Renovations

In Progress:

- New Holloman Elementary School
- New Chaparral Middle School

Coming Up:

- New Sierra Elementary School
- New Alamogordo High School

Why it Must Be This Site

- The new Chaparral Middle School will be a nearly \$40 million facility. Many factors have been considered in choosing Hang Glider Park as the optimal location for the new Middle School. This site is ideally located to accomplish every District objective.
- There is a fixed amount of money available for this school building project. Every dollar that is spent on site acquisition for land to build on must be taken away from building features such as technology, sustainability, and building system details.
- This land exchange allows the School District to maximize our available funds and spend the money where it matters most - toward a facility that provides 21st century learning opportunities and prepares our children for the careers of tomorrow.
- While other entities may have ample funds available to outright purchase the property that best suits their needs, the Alamogordo Public Schools does not. Without this land exchange partnership with the City of Alamogordo, the overall quality of the new facility and the elements of the learning environment we will provide for our children could be impacted.

Please partner with the Alamogordo Public Schools for the future of our community!

Questions?

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 11/17/2020

Report Date: 11/9/2020

Report No: 8.

Submitted By: Petria Bengoechea

Subject: Consider, and act upon, Ordinance 1622 for first publication amending Chapter 7 of the Alamogordo Code of Ordinances regarding Animals at Large. (*Petria Bengoechea, City Attorney*) **(Roll Call Vote Required)**

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation:

Background: This is an ordinance amending the City's Animal's at Large ordinance and adding in several sections, which ban tethering (chaining) animals unless it is done temporarily. Additionally this prohibits any chaining when weather conditions are such that it would be dangerous for a dog to be outside in the weather (extreme heat, cold, rain, hail, snow).

ORDINANCE 1622 AMENDING CHAPTER 7 OF THE ALAMOGORDO CODE OF ORDINANCES REGARDING ANIMALS AT LARGE

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 recognizes animals as important and in need of protection; and

WHEREAS, the City Commission recognizes that both extreme heat and extreme cold can be detrimental to the health of animals, and that chaining animals outside is inherently dangerous to the animal's health;

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:

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.~~
- (c) No owner of keeper of any animal shall tether, fasten, chain, tie, or restrain a dog to any dog house, tree, fence, or other stationary object. A person may temporarily tether a dog no longer than is necessary for the person to complete a temporary task. If a dog is tethered temporarily, the animal cannot extend onto or over a sidewalk, street, alley, or other public property or beyond the owner or keepers property or in a common area accessible to the public.
- (d) If an animal is restricted by a leash, rope, or chain, the leash, rope, or chain shall be affixed in such a manner that it will prevent the animal from becoming entangled or injured and permit the animal's access to adequate shelter, food, and water. No animal shall be tethered for any length of time while wearing a coat hanger, choke collar, prong-type collar, head halter or any other collar, halter or device that is not specifically designed or properly fitted for the restraint of such dog.
- (e) No owner or keeper of a dog shall tether a dog outdoors to a stationery object or to a mobile device, or keep a dog outside in the conditions without adequate shelter when a weather advisory or warning is issued by authorities, or when outdoor conditions (extreme heat, cold, wind, rain, snow or hail) pose an adverse risk to the health or safety of particular dog.

DONE this _____ day of _____, 2020.

CITY OF ALAMOGORDO, NEW MEXICO
a New Mexico municipal corporation

By: _____
Richard Boss, Mayor

ATTEST:

Rachel Hughs, City Clerk

APPROVED AS TO FORM:

Petria Bengoechea, City Attorney

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 11/17/2020

Report Date: 11/6/2020

Report No: 9.

Submitted By: April Jones

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

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation: Appoint to the Housing Authority Advisory Board.

Background:

Airport Zoning Board - One (1) city vacancy. This vacancy is due to the expired term of David Sword.
Staff Liaison - Cheryl Otero-Baker
No applications received.

Cemetery Board - Two (2) city or county vacancies. Staff Liaison - Tony Gonzales.
No applications received.

Housing Authority Advisory Board. One (1) two year vacancy, and one (1) three year vacancy. Staff Liaison - Marissa Ruiz.

The following individual is interested in being appointed to the three year vacancy.

Thomas Odgers - If appointed this will be his first term.

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

RECEIVED

OCT 28 2020

CITY CLERK

Application to serve on a Board/Committee

First Name	Tom
Last Name	Odgers
Address	809 Shiprock
City	Alamogordo
State	New Mexico
Zip Code	88310
Phone Number	9072507457
Email Address	thomas.odgers@alamogordoschools.org
Is the above address within City Limits?	Yes
Present Employer:	Alamogordo Public Schools
Board/Committee you would like to serve on (1st choice):	Housing Authority Advisory Board
Board/Committee you would like to serve on (2nd choice):	Airport Zoning Board
Are you related to anyone who is presently employed by the City of Alamogordo	No
If so, what is their relation to you?	<i>Field not completed.</i>
Are you related to an Elected Official of the City of Alamogordo?	No
Is so, what is their relation to you?	<i>Field not completed.</i>
Experience and education relating to the Board/Committee:	MBA and leadership/project management experience as related to housing development, land management and resource allocation at the city level.
Please indicate your interest in serving on a City Board/Committee:	I am interested in serving on the Housing Authority Advisory Board as I firmly believe in public service to the city/county you reside. Additionally, I am passionate about housing development, specifically affordable, quality housing for Alamogordo residents.