Alamogordo City Commission

NOTICE OF MEETING

Regular Meeting Agenda

November 30, 2021 - 6:00 PM
City Hall, City Commission Chambers
1376 E. Ninth St.

Richard Boss .... Mayor
Nadia Sikes ....Mayor Pro-Tem, District 2
Vacant .... 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 of 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

COMMISSIONER DISTRICT 1 VACANCY INTERVIEWS AND POSSIBLE APPOINTMENT

1. Commissioner District 1 Vacancy Interviews and Possible Appointment. *(Rachel Hughs, City Clerk)*

PRESENTATIONS

PUBLIC COMMENT

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

CITY MANAGER'S REPORT

REMARKS AND INQUIRIES BY THE CITY COMMISSION

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

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

2. Approve the minutes for the November 9, 2021 Regular meeting. *(Rachel Hughs, City Clerk)*

3. Approve the statements related to the Executive Closed Session held on November 9, 2021. *(Rachel Hughs, City Clerk)*

4. Consider, and act upon, adoption and final publication of Ordinance 1639 to amend sections of Chapter 34 in the Alamogordo Code of Ordinances concerning Marijuana. *(Rachel Hughs, City Clerk and Petria Bengoechea, City Attorney)* **(Roll Call Vote Required)**

5. Consider, and act upon, adoption and final publication of Ordinance 1640 approving the transfer for a Local Economic Development Project for secured financial assistance proposed by Ultra Health, LLC. *(Petria Bengoechea, City Attorney)* **(Roll Call Vote Required)**

6. Consider, and act upon, adoption and final publication of Ordinance 1641 authorizing the issuance and sale of the City's debt obligation to refund the joint utility system. *(Evelyn Huff, Finance Director)* **(Roll Call Vote Required)**

7. Consider, and act upon, adoption and final publication of Ordinance 1642 authorizing the issuance and sale of the City's debt obligation to refund the revenue debt issued on December 23, 2011. *(Evelyn Huff, Finance Director)* **(Roll Call Vote Required)**

8. Consider, and act upon, adoption and final publication of Ordinance 1643 authorizing the issuance and sale of the City's debt obligation to refund the revenue debt issued on February 17, 2012. *(Evelyn Huff, Finance Director)* **(Roll Call Vote Required)**

9. Consider, and act upon, approving the award of RFP 2021-07 Attorney Services for Water Law and Water Rights Services to Stein & Brockmann, P. A. *(David Nunnelley, Acting Public Works Director)*

10. Consider, and act upon, accepting the NM State Library Grants-In-Aid to Public Libraries Agreement for the award of $9,712.87 for the Alamogordo Public Library for FY2022 allowable expenditures which include library materials, programming supplies and staff professional development. *(Kim Underwood, Library Manager and Veronica Ortega, Community Services Director)*

11. Consider, and act upon, the Investment Report for the quarter ending September 30, 2021, in accordance with the City of Alamogordo Investment Ordinance. *(Sue Ashe, Accounting Manager)*

12. Consider, and act upon, Aging and Long-term Services Department (ALTSD) severance tax bond funding to be used solely for the purchase and installation of Senior Center kitchen equipment, the total amount budgeted is $25,063.00. *(Magdalena Morales, ASC Manager and Veronica Ortega, Community Services Director)*

13. Consider, and act upon, the award of RFP 2021-08 On-Call HVAC Repairs and Maintenance Services to MGS Refrigeration Heating and Cooling. *(David Nunnelley, Acting Public Works Director)*

ITEMS REMOVED FROM CONSENT AGENDA

NEW BUSINESS

14. Consider, and act upon, canceling the December 28, 2021 Commission meeting. *(Brian Cesar, City Manager)*

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

ADJOURNMENT

AGENDA REPORT
CITY OF ALAMOGORDO
CITY COMMISSION

Meeting Date: 11/30/2021 **Report Date:** 11/16/2021 **Report No:** 1.

Submitted By: Rachel Hughs

Subject: Commissioner District 1 Vacancy Interviews and Possible Appointment. *(Rachel Hughs, City Clerk)*

Fiscal Impact:
Amount Budgeted:
Fund:

Additional Fiscal Impact:

Recommendation: Appoint for District 1.

Background:

On October 12, 2021, Resolution 2021-37 was adopted declaring a vacancy exists on the City Commission for District 1.

The following individuals have filed a Declaration of Candidacy and submitted all the required documents to the City Clerk by November 10, 2021 as required. The following candidates have been certified by the City Clerk as valid candidates for the District 1 vacancy position.

<u>Candidates in alphabetical order</u>
Gerald A. Dodd
Michael Thomas Heisinger
Rebecca Marie Miller
Nicholas Allan Paul
Ronald L. Sanchez Jr
Sara Rebecca Weihausen

After being selected to fill the vacancy, the Candidate will take the Oath of Office. Once the oath is administered, the new Commissioner for District 1 will take their seat on the dais and vote on any items on the agenda.

Commissioner District 1 Candidates

The following individuals have filed a Declaration of Candidacy and submitted all the required documents to the City Clerk by November 10, 2021. The following candidates have been certified by the City Clerk as valid Candidates for the Commissioner District 1 vacancy.

Candidates in alphabetical order.

Candidate	Residency	Declaration of Candidacy	Disclosure Statement	Affidavit of Voter Registration	Letter of Interest	Certified
Gerald A. Dodd	1716 Buena Vista Ct	✓	✓	✓	✓	**Yes**
Michael Thomas Heisinger	2329 Camino Del Rey	✓	✓	✓	✓	**Yes**
Rebecca Marie Miller	1802 Crescent Drive	✓	✓	✓	✓	**Yes**
Nicholas Allan Paul	1401 Plaza Del Prado	✓	✓	✓	✓	**Yes**
Ronald L. Sanchez Jr	1411 Juniper Drive	✓	✓	✓	✓	**Yes**
Sara Rebecca Weihausen	2364 Union Ave	✓	✓	✓	✓	**Yes**

CITY OF ALAMOGORDO NEW MEXICO SEAL

Date of Certification November 15, 2021.

Rachel Hughs

Rachel Hughs, CMC, City Clerk

This notice was posted on November 15, 2021.

DISTRICT 1

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

RECEIVED
NOV 05 2021
CITY CLERK

CITY OF ALAMOGORDO
DECLARATION OF CANDIDACY

I, Gerald A. Dodd, being first duly sworn upon my oath, do
(Candidate's Name exactly as shown on Affidavit of Registration)
hereby state for my affidavit that:

I, Gerald A. Dodd, hereby declare that I am a candidate for the
(Candidate's Name exactly as shown on Affidavit of Registration)
office of District 1 (One) City Commissioner, a term to expire on December 31, 2023.

I affirm that I currently reside at 1716 Buena Vista CT, located within the City Limits of Alamogordo, New Mexico, and within the boundaries of District 1 (One). I have been a resident of Alamogordo, New Mexico, at the above stated address, since September of 2019.

- I affirm that my name and resident address as stated in this Declaration of Candidacy are identical to my name and resident address as stated in my affidavit of registration on file with the Otero County Clerk.
- I affirm that I am eligible and legally qualified to hold the office for which I have declared my candidacy.
- I affirm that I have not been convicted of a felony; however, if I have been convicted of a felony, I affirm that my elective franchise has been restored and that I have been granted a pardon or a certificate by the Governor restoring my full rights of citizenship.
- I affirm that I, or my authorized representative, shall personally contact the office of the City Clerk during normal business hours (8:00 a.m.-12:00 p.m. and 1:00 p.m.-5:00 p.m.) on Monday, November 15, 2021, to ascertain whether the City Clerk has certified my Declaration of Candidacy as valid.
- I affirm that I, or my authorized representative, can be reached at the following telephone number(s) for purposes of receiving telephone notice 575-415-6197 or —, or by email at gdoddunm70@yahoo.com

I affirm that this Declaration of Candidacy is an affidavit under oath and that any false statement knowingly made herein constitutes a fourth-degree felony under the laws of New Mexico.

Gerald A Dodd
Signature of Candidate

SUBSCRIBED AND SWORN TO BEFORE ME THIS 5th DAY OF November, 2021.

MY COMMISSION EXPIRES:

April 6, 2025

Notary Public

STATE OF NEW MEXICO NOTARY PUBLIC SARAH L. CRAWFORD

Received in the office of the City Clerk on the 5th *day of* November *,2021*   *at* 8:15 *a.m./p.m.*   *Rachel Hugh, CMC, City Clerk*

RECEIVED
NOV 05 2021
CITY CLERK

State of New Mexico)
) ss.
County of Otero)

CITY OF ALAMOGORDO
DISCLOSURE STATEMENT

I, Gerald A. Dodd, candidate for the office of District 1 (One) City Commissioner, a term to expire on December 31, 2023, do hereby state for my affidavit that:

I, Gerald A. Dodd, hereby disclose the following real property and businesses in New Mexico in which I have a financial interest:

List all real property and businesses below.

1716 Buena Vista Ct, Alamogordo, NM 88310
132 Bookout N.E, Tularosa, NM 88352
—

Signature of Candidate [signature]

SUBSCRIBED AND SWORN TO BEFORE ME THIS 5th DAY OF November, 2021.

MY COMMISSION EXPIRES: April 6, 2025 [signature]
Notary Public

SARAH L. CRAWFORD NOTARY PUBLIC STATE OF NEW MEXICO

Received in the office of the City Clerk on the 5th day of November, 2021 at 8:15 a.m./p.m.

[signature]
Rachel Hugh, CMC, City Clerk

[illegible]

SARAH L. CRAWFORD
NOTARY PUBLIC
STATE OF NEW MEXICO

[illegible]

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NOV 0 5 2021
CITY CLERK

City of Alamogordo

1376 E. 9TH Street

Alamogordo, NM 88310

Attn: City Commissioners – Mayor, Districts 2,3,4,5,6

Letter of Interest

Dear Sirs:

Thank you for the opportunity to be considered for filling the position of City District 1 Commissioner for the City of Alamogordo, NM. I am a conscientious, conservative individual who adheres to the United States Constitution, the Constitution of the State of New Mexico, and upholding the City of Alamogordo, NM Codes and Ordnances. I strongly support transparency and accountability in local government. I am committed to supporting our community's military partners, advancing the retirement potential of our city and promoting a favorable business environment to keep Alamogordo a vibrant, progressive city.

Education:

Graduate – Alamogordo High School, Alamogordo, NM – 1965

Graduate – University of New Mexico, Bachelor of Science in Mechanical Engineering (BSME) – 1970

Graduate – University of South Carolina Municipal Government Institute - 1986

Experience:

Veteran- United States Navy, Submarine Officer

Member – City of Hanahan, SC Planning and Zoning Commission – 1981-1982

City Councilman – City of Hanahan, SC- 1982-1994

Population – bedroom community of 16,000 (Bedroom Suburb of Charleston, SC}

Retired – United States Civil Service – Nuclear Engineer- 28 years

Member – City of Alamogordo, NM Planning and Zoning Commission-2020 – present

Civic:

Member – Bethel Baptist Church

Member –Properties and Space Committee

Volunteer – Flickinger Center for the Arts Guild

Former volunteer Gerald Champion Hospital Auxiliary

Former volunteer – Alamogordo Search and Rescue Unit (affiliated with the New Mexico State Police)

Employment:

Desert Sun Motors, Alamogordo, NM – courtesy shuttle driver, part-time

New Mexico School for the Blind and Visually Impaired, Alamogordo, NM – driver/care giver, part-time

Suggested City Goals to BEAUTIFY ALAMOGORDO:

Restripe cross walks, center lines, bicycle lanes on all major city streets

Actively pursue/correct city code violations (about 600 active cases as of 10/12/2021)

Remove UNLICENSED vehicles from city streets (automobiles, trucks), and unhitched trailers and unhitched trailers from alleys

Repave residential streets that are in disrepair

Update the Sign Ordnance to place restrictions on digital signs

FOR SAFETY – convert New York Ave to a one-way street (going North) between 10th and 12th Streets

Develop a plan to accommodate homeless residents

Thank You, Gerald A Dodd

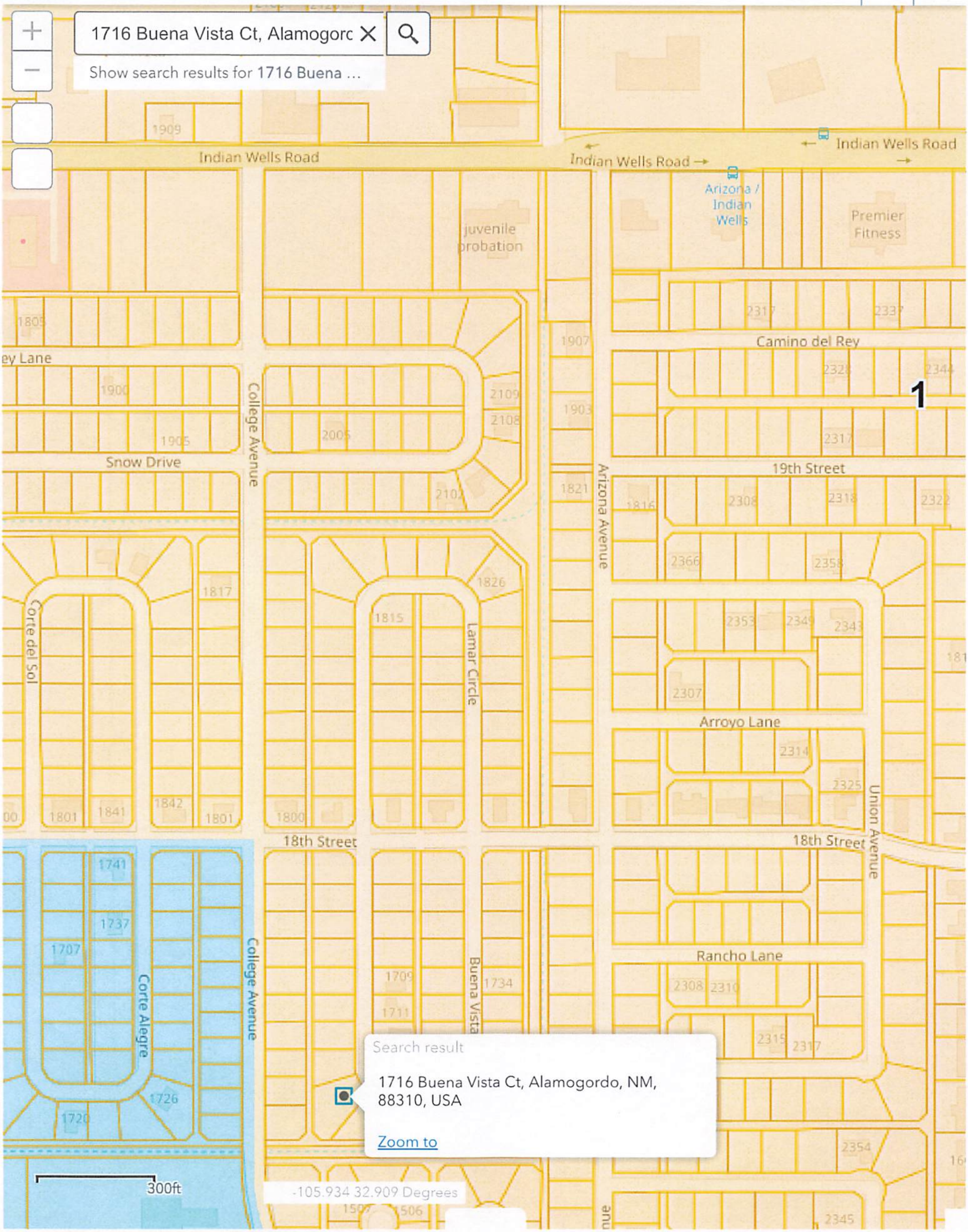
Gerald A. Dodd

1716 Buena Vista CT

Alamogordo, NM 88310

Commission District Map

Click on a district to see Commissioner contact informati



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

DISTRICT 1

RECEIVED
OCT 20 2021
CITY CLERK

CITY OF ALAMOGORDO
DECLARATION OF CANDIDACY

I, Michael Thomas Heisinger, being first duly sworn upon my oath, do
(Candidate's Name exactly as shown on Affidavit of Registration)
hereby state for my affidavit that:

I, Michael Thomas Heisinger, hereby declare that I am a candidate for the
(Candidate's Name exactly as shown on Affidavit of Registration)
office of District 1 (One) City Commissioner, a term to expire on December 31, 2023.

I affirm that I currently reside at 2329 Camino Del Rey, located within the City Limits of Alamogordo, New Mexico, and within the boundaries of District 1 (One). I have been a resident of Alamogordo, New Mexico, at the above stated address, since October 15th of 2021.

- I affirm that my name and resident address as stated in this Declaration of Candidacy are identical to my name and resident address as stated in my affidavit of registration on file with the Otero County Clerk.
- I affirm that I am eligible and legally qualified to hold the office for which I have declared my candidacy.
- I affirm that I have not been convicted of a felony; however, if I have been convicted of a felony, I affirm that my elective franchise has been restored and that I have been granted a pardon or a certificate by the Governor restoring my full rights of citizenship.
- I affirm that I, or my authorized representative, shall personally contact the office of the City Clerk during normal business hours (8:00 a.m.-12:00 p.m. and 1:00 p.m.-5:00 p.m.) on Monday, November 15, 2021, to ascertain whether the City Clerk has certified my Declaration of Candidacy as valid.
- I affirm that I, or my authorized representative, can be reached at the following telephone number(s) for purposes of receiving telephone notice 317-445-6957 or 575-446-2569, or by email at mheisinger23@gmail.com.

I affirm that this Declaration of Candidacy is an affidavit under oath and that any false statement knowingly made herein constitutes a fourth-degree felony under the laws of New Mexico.

NOTARY PUBLIC STATE OF NEW MEXICO

[signature]
Signature of Candidate

SUBSCRIBED AND SWORN TO BEFORE ME THIS 14th DAY OF October, 20 21.

MY COMMISSION EXPIRES:
August 2, 2025

Diadra M. Duff
Notary Public

Received in the office of the City Clerk on the 20th day of October, 2021 at 2:35 a.m./p.m.

Rachel Hugh
Rachel Hugh, CMC, City Clerk

State of New Mexico)
) ss.
County of Otero)

RECEIVED
OCT 20 2021
CITY CLERK

CITY OF ALAMOGORDO
DISCLOSURE STATEMENT

I, Michael Thomas Heisinger, candidate for the office of District 1 (One) City Commissioner, a term to expire on December 31, 2023, do hereby state for my affidavit that:

I, Michael Thomas Heisinger, hereby disclose the following real property and businesses in New Mexico in which I have a financial interest:

List all real property and businesses below.

I do not own any real property or have a business

Signature of Candidate ______

SUBSCRIBED AND SWORN TO BEFORE ME THIS 14th DAY OF October, 2021.
MY COMMISSION EXPIRES: 8-2-25 ______
Notary Public

Received in the office of the City Clerk on the 20th *day of* October *,2021*
at 2:35 *a.m./p.m.*

______
Rachel Hugh, CMC, City Clerk

RECEIVED
OCT 20 2021
CITY CLERK

Mayor, Board of Commissioners, City Clerk,

I am writing you to inform you of my interest to fill the vacant position for Alamogordo City Commissioner District 1 (One).

A little about me, I was born and raised in Alamogordo until I was 11 years old. During my time away from New Mexico and Alamogordo I lived in Ohio, Indiana, and Tennessee. While in Indiana I joined the Johnson County Sheriff's Office where I work as a deputy, narcotics detective, and a motorcycle officer before retiring in 2017. I went to work for a short time at the University of Indianapolis Police Department and then was fortunate to get the opportunity to move back home to Alamogordo. I worked for the Alamogordo Police Department for two years and was then hired by the Village of Tularosa to be the Chief of Police where I am continuing my employment. I also teach classes for a company called The Public Training Agency out of Plainfield, Indiana. The classes I teach are Law Enforcement based and consist of Filed Training Officer Certification, Supervising and Managing the Field Training Officer Unit, and Field Training Leadership.

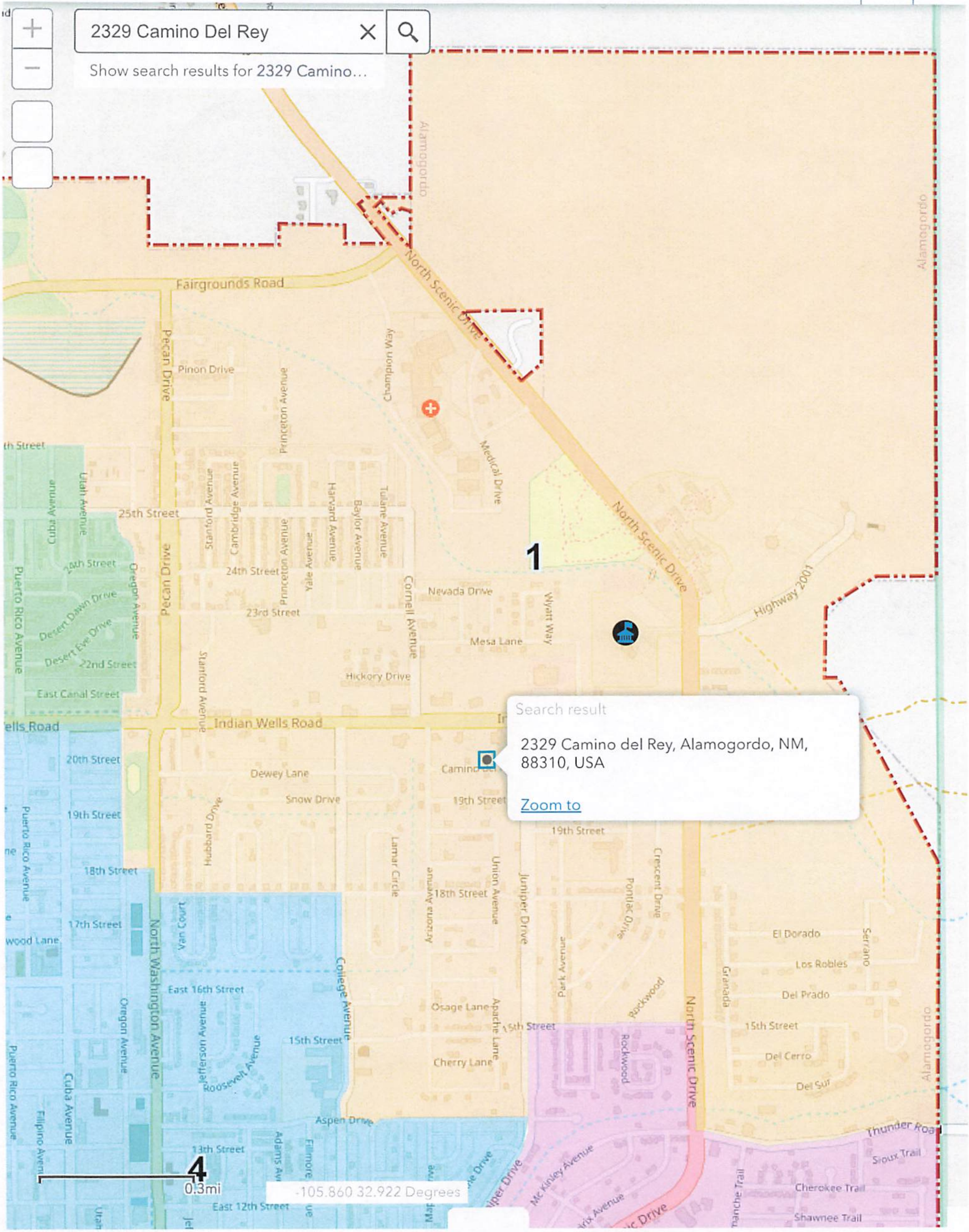
Alamogordo is my home and has always had a place in my heart. I thankful for the opportunity to be able to come home and serve the community in the compacity I did as Law Enforcement Officer and hopefully as a City Commissioner. Thank you for you time and consideration in this process, I hope to be working with you all and for the City of Alamogordo again soon.

Very Respectfully,

Michael T. Heisinger

Commission District Map

Click on a district to see Commissioner contact informati



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

DISTRICT 1

RECEIVED
NOV 03 2021
CITY CLERK

CITY OF ALAMOGORDO
DECLARATION OF CANDIDACY

I, Rebecca Marie Miller, being first duly sworn upon my oath, do
(Candidate's Name exactly as shown on Affidavit of Registration)
hereby state for my affidavit that:

I, Rebecca Marie Miller, hereby declare that I am a candidate for the
(Candidate's Name exactly as shown on Affidavit of Registration)
office of District 1 (One) City Commissioner, a term to expire on December 31, 2023.

I affirm that I currently reside at 1802 Crescent Dr., located within the City Limits of Alamogordo, New Mexico, and within the boundaries of District 1 (One). I have been a resident of Alamogordo, New Mexico, at the above stated address, since June of 2019.

- I affirm that my name and resident address as stated in this Declaration of Candidacy are identical to my name and resident address as stated in my affidavit of registration on file with the Otero County Clerk.
- I affirm that I am eligible and legally qualified to hold the office for which I have declared my candidacy.
- I affirm that I have not been convicted of a felony; however, if I have been convicted of a felony, I affirm that my elective franchise has been restored and that I have been granted a pardon or a certificate by the Governor restoring my full rights of citizenship.
- I affirm that I, or my authorized representative, shall personally contact the office of the City Clerk during normal business hours (8:00 a.m.-12:00 p.m. and 1:00 p.m.-5:00 p.m.) on Monday, November 15, 2021, to ascertain whether the City Clerk has certified my Declaration of Candidacy as valid.
- I affirm that I, or my authorized representative, can be reached at the following telephone number(s) for purposes of receiving telephone notice 575-415-8636 or ____________, or by email at rmm1802@gmail.com

I affirm that this Declaration of Candidacy is an affidavit under oath and that any false statement knowingly made herein constitutes a fourth-degree felony under the laws of New Mexico.

RMM
Signature of Candidate
RMM

SUBSCRIBED AND SWORN TO BEFORE ME THIS 3rd DAY OF November, 2021.

MY COMMISSION EXPIRES:

April 6, 2025

Notary Public

OFFICIAL SEAL SARAH L. CRAWFORD NOTARY PUBLIC STATE OF NEW MEXICO

Received in the office of the City Clerk on the 3rd *day of* November *,2021 at* 4:45 *a.m./p.m.*

Rachel Hugh

Rachel Hugh, CMC, City Clerk

State of New Mexico)
) ss.
County of Otero)

CITY OF ALAMOGORDO
DISCLOSURE STATEMENT

I, Rebecca Miller, candidate for the office of District 1 (One) City Commissioner, a term to expire on December 31, 2023, do hereby state for my affidavit that:

I, Rebecca Miller, hereby disclose the following real property and businesses in New Mexico in which I have a financial interest:

List all real property and businesses below.

1802 Crescent Dr. Alamogordo, NM

Signature of Candidate RMiller

SUBSCRIBED AND SWORN TO BEFORE ME THIS 3rd DAY OF November, 2021.

MY COMMISSION EXPIRES: April 6, 2025

Sarah Crawford
Notary Public

Received in the office of the City Clerk on the 3rd *day of* November *, 2021*
at 4:45 *a.m./p.m.*

Rachel Hughs
Rachel Hugh, CMC, City Clerk

RECEIVED
NOV 03 2021
CITY CLERK

November 3, 2021

Commission Chambers

1376 E Ninth Street

Alamogordo, NM 88310

RE: Vacancy District 1 City Commission

LETTER OF INTERST

Dear Commissioners:

I would like to express my interest in filling the vacancy in District 1 for City Commissioner.

I moved to Alamogordo in 1992 and started my education here at Buena Vista Elementary and I lived in District 1 until I graduated High School in 1999. The military moved my family to the San Antonio, TX area for a few years but I felt called back to Alamogordo. I have been here ever since, living in District 1 for the most part.

I have a Bachelor of Human and Community Services from NMSU. I have worked for over 10 years with people affected with intellectual and developmental disabilities in an advocacy/case manager position. I now work as a Care Coordinator with Medicaid/Medicare recipients to help them meet various needs. I also attend and volunteer at Christ Community Church.

I am a mother of 4 and have every intention of raising my children here. All my children have gone to Buena Vista Elementary, Chaparral Middle School and Alamogordo High School, and I still have one child who has yet to start kindergarten. My interests range from the health and safety of our children to the seniors in our community. I have a vested interest in making Alamogordo a safe and prosperous place to live and work and I would love the opportunity to do so as a City Commissioner.

Sincerely,

Rebecca Miller

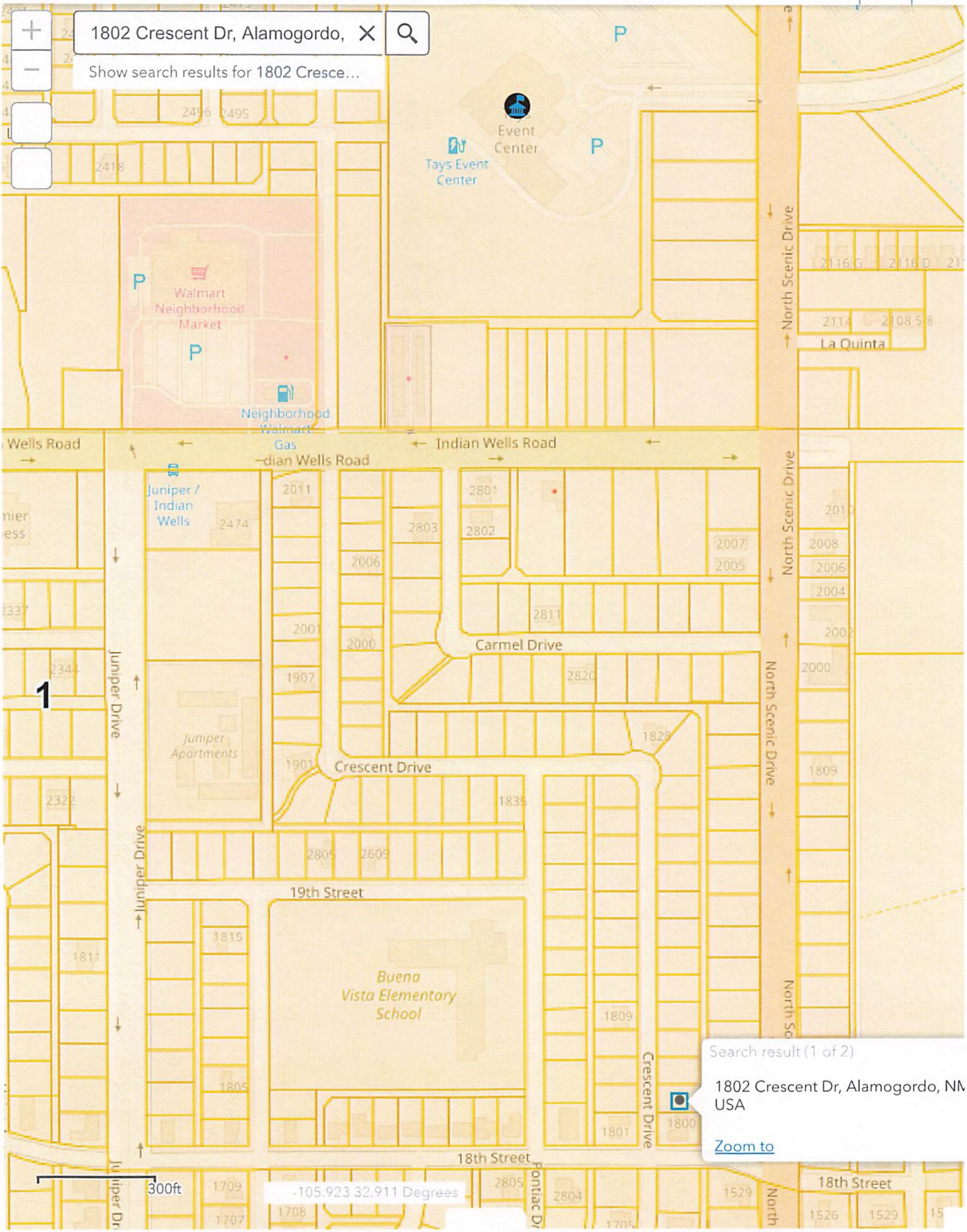
RMiller

575-415-8636

rmm1802@gmail.com

Commission District Map

Click on a district to see Commissioner contact informati



DISTRICT 1

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

RECEIVED
NOV 09 2021
CITY CLERK

CITY OF ALAMOGORDO
DECLARATION OF CANDIDACY

I, Nicholas Allan Paul, being first duly sworn upon my oath, do hereby state for my affidavit that:
(Candidate's Name exactly as shown on Affidavit of Registration)

I, Nicholas Allan Paul, hereby declare that I am a candidate for the office of District 1 (One) City Commissioner, a term to expire on December 31, 2023.
(Candidate's Name exactly as shown on Affidavit of Registration)

I affirm that I currently reside at 1401 Plaza Del Prado, located within the City Limits of Alamogordo, New Mexico, and within the boundaries of District 1 (One). I have been a resident of Alamogordo, New Mexico, at the above stated address, since July of 2019.

- I affirm that my name and resident address as stated in this Declaration of Candidacy are identical to my name and resident address as stated in my affidavit of registration on file with the Otero County Clerk.
- I affirm that I am eligible and legally qualified to hold the office for which I have declared my candidacy.
- I affirm that I have not been convicted of a felony; however, if I have been convicted of a felony, I affirm that my elective franchise has been restored and that I have been granted a pardon or a certificate by the Governor restoring my full rights of citizenship.
- I affirm that I, or my authorized representative, shall personally contact the office of the City Clerk during normal business hours (8:00 a.m.-12:00 p.m. and 1:00 p.m.-5:00 p.m.) on Monday, November 15, 2021, to ascertain whether the City Clerk has certified my Declaration of Candidacy as valid.
- I affirm that I, or my authorized representative, can be reached at the following telephone number(s) for purposes of receiving telephone notice 805-728-5715 or ______________, or by email at Nick@SelfStorageAlamogordo.com

I affirm that this Declaration of Candidacy is an affidavit under oath and that any false statement knowingly made herein constitutes a fourth-degree felony under the laws of New Mexico.

____
Signature of Candidate

SUBSCRIBED AND SWORN TO BEFORE ME THIS 9th DAY OF November, 2021.

MY COMMISSION EXPIRES:

April 6, 2025

Notary Public

SARAH L. CRAWFORD
NOTARY PUBLIC
STATE OF NEW MEXICO

Received in the office of the City Clerk on the 9th *day of* November *,2021*
at 11:15 *a.m./p.m.*

Rachel Hugh, CMC, City Clerk

RECEIVED
NOV 09 2021
CITY CLERK

State of New Mexico)
) ss.
County of Otero)

CITY OF ALAMOGORDO
DISCLOSURE STATEMENT

I, Nicholas Paul, candidate for the office of District 1 (One) City Commissioner, a term to expire on December 31, 2023, do hereby state for my affidavit that:

I, Nicholas Paul, hereby disclose the following real property and businesses in New Mexico in which I have a financial interest:

List all real property and businesses below.

See Attached

Signature of Candidate ____________________

SUBSCRIBED AND SWORN TO BEFORE ME THIS 9th DAY OF November, 2021.

MY COMMISSION EXPIRES: April 6, 2025 ____________________
Notary Public

SARAH L. CRAWFORD
NOTARY PUBLIC
STATE OF NEW MEXICO

Received in the office of the City Clerk on the 9th day of November, 2021 at 11:15 a.m./p.m.

Rachel Hugh, CMC, City Clerk

STATE OF NEW MEXICO
NOTARY PUBLIC
SARAH L. CRAWFORD

RECEIVED
NOV 09 2021
CITY CLERK

Nicholas A. Paul

1401 Plaza Del Prado
Alamogordo, NM 88311
Cell: (805) 728-5715
Email: Nick@SelfStorageAlamogordo.com

November 8, 2021

RE: List of All Real Property and Businesses in New Mexico

- **1401 Plaza Del Prado – Alamogordo, NM 88310**
- **805 & 807 College Avenue – Alamogordo, NM 88310**
- **809 College Avenue – Alamogordo, NM 88310**
- **1902 Ninth Street – Alamogordo, NM 88310**
- **1323 Cuba Avenue – Alamogordo, NM 88310**
- **2050 E. 1st Street – Alamogordo, NM 88310**
- **2090 E. 1st Street – Alamogordo, NM 88310**
- **2801 Indian Wells Road – Alamogordo, NM 88310**
- **5126A N. Prince Street – Clovis, NM 88101**
- **3400 W. 7th Street – Clovis, NM 88101 (In contract to purchase, Closing 11/30/2021)**
- **3613 Sheridan – Clovis, NM 88101 (In contract to purchase, Closing 11/30/2021)**

N. Paul

Nick Paul

NICHOLAS A. PAUL

1401 Plaza Del Prado – Alamogordo, NM | 805-728-5715 | Nick@SelfStorageAlamogordo.com

November 8, 2021

Mayor and City Commissioners
City of Alamogordo
1376 E. 9th Street
Alamogordo, NM 88310

Dear Mayor and City Commissioners:

As a resident of Alamogordo in District 1, I submit this letter to express my interest in serving my hometown through the District 1 City Commissioner seat.

I am a proud resident of Alamogordo, having called this city home for the better part of my life. I grew up in Alamogordo, attending Buena Vista and Heights Elementary Schools, during which time I learned the importance of community involvement as a volunteer on the community build of "Kids Kingdom"—where I recall spending many hours soaping screws, and to this day I still cannot tell you why that was important, but it kept us busy, and it taught me being involved in one's community is how to make things happen. I was a 2001 graduate from Alamogordo High School, and a 4-year member of the Alamogordo Tiger Basketball team. Upon graduating high school, I attended and graduated college at California Lutheran University and resided in the greater Los Angeles, CA area for 10 years. It was in 2012 that I returned to Alamogordo, to enjoy all that this hidden gem of a city has to offer.

By trade I am an experienced real estate investor and licensed real estate broker. I've held a real estate broker's license in California since 2006 and in New Mexico since 2010. I also possess a GB98 General Building License in New Mexico. My current focus is the management, operations, and acquisitions for our portfolio of Self-Storage facilities in New Mexico, along with brokering commercial real estate transactions in Otero County.

Over the past 5 years I've had the pleasure of being involved in our local community, fostering a deep-rooted desire to see it continue to thrive and flourish for residents and local businesses. I currently serve on the board of directors for the Otero County Association of Realtors and held the position of president in 2019. I am also an active board member with the Alamogordo Center of Commerce, serving on the executive board as the Vice Chair. In addition to these positions, I've also been active with MainGate United and presently serve on their executive committee. I was an active board member at Mountain View Church, having served in that capacity in 2018 and 2019. While taking an active approach to involvement in my community, my beautiful wife and I also thoroughly enjoy volunteering for the Sertoma Club of Alamogordo and her many school related ventures, where we experience and see first-hand what a blessing this community has been to ourselves and so many others.

It is through my experience and involvement with local community organizations, my business background, and my deep love for and desire to see our community continue the strong path it's currently on, that I believe the knowledge and experience I possess would be the ideal fit for the constituents of District 1 and the City of Alamogordo. The current City Commission has done a superb job of guiding our community in a positive direction, I applaud them for their dedication, and I would consider it an honor to be a part of that leadership.

Alamogordo is our home and I look forward to the opportunity to serve in the capacity of City Commissioner for District 1.

Sincerely,

N. Paul

Nicholas A. Paul

NICHOLAS PAUL

Alamogordo, NM | (805) 728-5715 | Nick@SelfStorageAlamogordo.com

EXPERIENCE

Storage Rebel LLC
Co-Owner **May 2021 - Present**
Source, Underwrite and Secure Self-Storage investment opportunities in eastern New Mexico markets
Currently own a 175-unit Self Storage and RV/Boat Storage Facility in Clovis, NM
Under contract to purchase an additional 70-unit Self Storage Facility in Clovis, NM with plans to expand the site to 126-units

Self Storage New Mexico, LLC
Co-Owner **Nov. 2019 - Present**
Source, Underwrite and Secure Self-Storage Investment opportunities in New Mexico
Own/Operate two self-storage facilities in Alamogordo, NM totaling 305 units
Under contract to purchase an additional 130 unit Self Storage facility in Alamogordo

Dei Gratia Investments
Owner **2013 - Present**
Own/Operate single family rental units in Alamogordo, NM
Purchased, Renovated and Sold 28 Single Family Properties from 2014-2019

Future Real Estate
Real Estate Broker **Jan. 2020 – Present**
Specialize in Commercial Real Estate sales in Otero County, NM

Dei Gratia Real Estate
Owner/Qualifying Broker **2013 – Jan. 2020**
Owned/Managed boutique real estate brokerage firm in Alamogordo, NM

Estes Apartment LLC
Co-Owner **2011 – 2014**
Owned/Operated two (2) 8-plex apartment properties in Midland, TX
Sourced, Financed, Renovated and Repositioned properties for maximum value
Increased value of assets four-fold over 3-year period

EDUCATION & CERTIFICATIONS

California Lutheran University **2001 – 2005**
Bachelor's in Business Management & Finance

Licensed Real Estate Broker – New Mexico **2009 – Present**

Licensed Real Estate Broker – California **2006 – Present**

GB98 General Building License – New Mexico **2016 - Present**

COMMUNITY INVOLVEMENT

Alamogordo Chamber of Commerce
Board of Directors/Executive Committee – Vice Chair **2019 – Present**

MainGate United
Executive Committee Board Member **2020 – Present**

Otero County Association of Realtors
Board Member and Past-President of Association **2018 – Present**

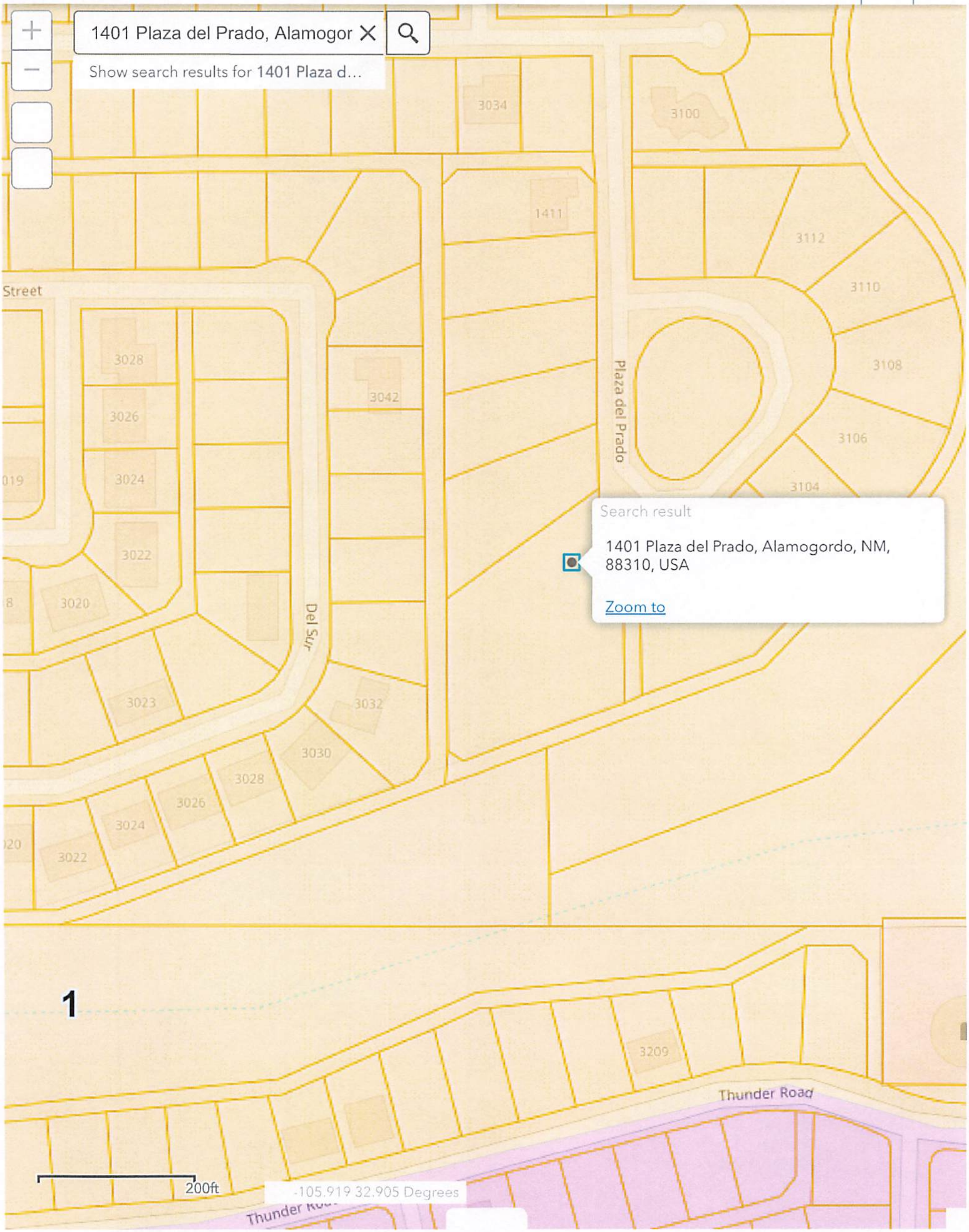
Mountain View Church
Board Member **2018 - 2019**

SELF-STORAGE CONTINUING EDUCATION/TRAINING

The Storage Rebellion Insiders Mastermind
Member **2019 – Present**
Mastermind group for high level self-storage investors with a focus on education/training/ building relationships with other successful investors/owners/operators in the self-storage space

Commission District Map

Click on a district to see Commissioner contact informati



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

DISTRICT 1

RECEIVED
OCT 28 2021
CITY CLERK

CITY OF ALAMOGORDO
DECLARATION OF CANDIDACY

I, RONALD L SANCHEZ JR, being first duly sworn upon my oath, do
(Candidate's Name exactly as shown on Affidavit of Registration)
hereby state for my affidavit that:

I, RONALD L SANCHEZ JR, hereby declare that I am a candidate for the
(Candidate's Name exactly as shown on Affidavit of Registration)
office of District 1 (One) City Commissioner, a term to expire on December 31, 2023.

I affirm that I currently reside at 1411 JUNIPER DRIVE, located within the City Limits of Alamogordo, New Mexico, and within the boundaries of District 1 (One). I have been a resident of Alamogordo, New Mexico, at the above stated address, since ______________ of ______________.

- I affirm that my name and resident address as stated in this Declaration of Candidacy are identical to my name and resident address as stated in my affidavit of registration on file with the Otero County Clerk.
- I affirm that I am eligible and legally qualified to hold the office for which I have declared my candidacy.
- I affirm that I have not been convicted of a felony; however, if I have been convicted of a felony, I affirm that my elective franchise has been restored and that I have been granted a pardon or a certificate by the Governor restoring my full rights of citizenship.
- I affirm that I, or my authorized representative, shall personally contact the office of the City Clerk during normal business hours (8:00 a.m.-12:00 p.m. and 1:00 p.m.-5:00 p.m.) on Monday, November 15, 2021, to ascertain whether the City Clerk has certified my Declaration of Candidacy as valid.
- I affirm that I, or my authorized representative, can be reached at the following telephone number(s) for purposes of receiving telephone notice 575 442 0619 or ________________________, or by email at rsanchez071372@gmail.com

I affirm that this Declaration of Candidacy is an affidavit under oath and that any false statement knowingly made herein constitutes a fourth-degree felony under the laws of New Mexico.

____
Signature of Candidate

SUBSCRIBED AND SWORN TO BEFORE ME THIS 28th DAY OF October, 20 21.

MY COMMISSION EXPIRES:

April 6, 2025

Notary Public

SARAH L. CRAWFORD
NOTARY PUBLIC
STATE OF NEW MEXICO

Received in the office of the City Clerk on the 28th *day of* October *,2021*
at 8:34 *a.m./p.m.*

Rachel Hugh, CMC, City Clerk

RECEIVED
OCT 28 2021
CITY CLERK

State of New Mexico)
) ss.
County of Otero)

CITY OF ALAMOGORDO
DISCLOSURE STATEMENT

I, RONALD L SANCHEZ JR, candidate for the office of District 1 (One) City Commissioner, a term to expire on December 31, 2023, do hereby state for my affidavit that:

I, RONALD L SANCHEZ JR., hereby disclose the following real property and businesses in New Mexico in which I have a financial interest:

List all real property and businesses below.

1411 JUNIPER DRIVE, ALAMOGORDO, NM., 88310

Signature of Candidate ____________________

SUBSCRIBED AND SWORN TO BEFORE ME THIS 28th DAY OF October, 2021.

MY COMMISSION EXPIRES: April 6, 2025 ____________________
Notary Public

STATE OF NEW MEXICO NOTARY PUBLIC SARAH L. CRAWFORD

Received in the office of the City Clerk on the 28th day of October, 2021 at 8:34 a.m./p.m.

Rachel Hugh, CMC, City Clerk

RECEIVED
OCT 28 2021
CITY CLERK

October 27, 2021

This letter is to express my interest in the 1st District City Commission seat vacancy. The following is a brief introduction and why I would make a good appointment for commissioner.

Progress with Purpose and Pride has always been one of my feelings about the local happenings. I love it here and consider Alamogordo my hometown. Alamogordo has a lot to offer and while each district commissioner should be concerned with their home areas, it is my opinion they also represent the whole area of our great city, therefore should communicate and get to know not only the commissioners, but the areas themselves so as to make intelligent decisions regarding the best possible approach to move our city forward in a fiscally responsible and appropriate manner. Communication with the citizens, department heads and other involved governmental agencies would be one of my important concerns.

I currently work for the 704th Test Group out at Holloman AFB. I am a Program manager that support the Air Force mission. I work with several fellow Alamogordian's and folks from the surrounding communities. I will bring as much pride to my position as District 1 City Commissioner as I do at work as a civil servant employee. I look forward to sharing my views with you and/or the commission and can be available at any time.

Ron Sanchez Jr.

1411 Juniper Drive

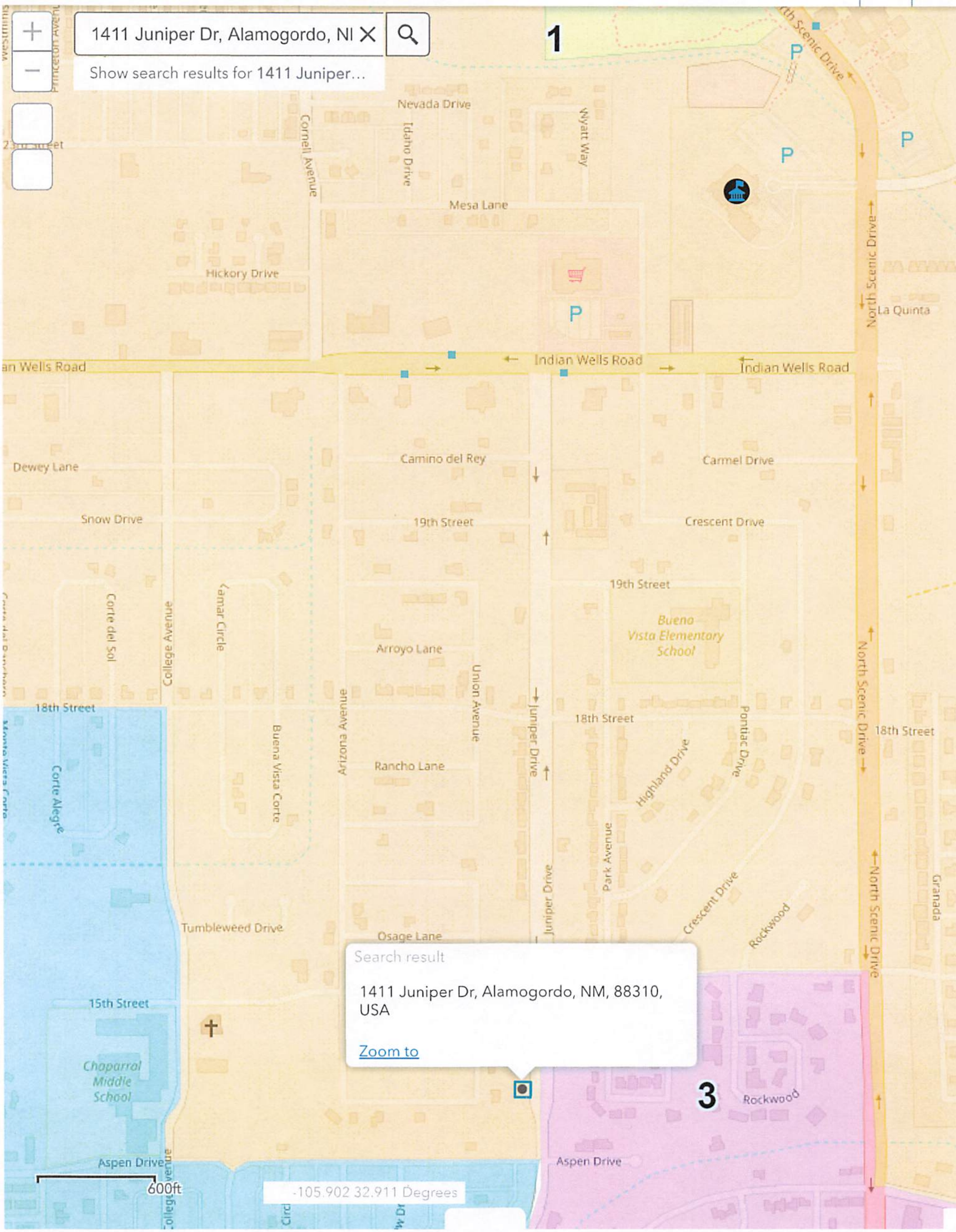
Alamogordo, NM 88310

rsanchez071372@gmail.com

575-442-0619 Cell

Commission District Map

Click on a district to see Commissioner contact informati



DISTRICT 1

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

RECEIVED
NOV 10 2021
CITY CLERK

CITY OF ALAMOGORDO
DECLARATION OF CANDIDACY

I, Sara Rebecca Weihausen, being first duly sworn upon my oath, do
(Candidate's Name exactly as shown on Affidavit of Registration)
hereby state for my affidavit that:

I, Sara Rebecca Weihausen, hereby declare that I am a candidate for the
(Candidate's Name exactly as shown on Affidavit of Registration)
office of District 1 (One) City Commissioner, a term to expire on December 31, 2023.

I affirm that I currently reside at 2364 Union Ave, located within the City Limits of Alamogordo, New Mexico, and within the boundaries of District 1 (One). I have been a resident of Alamogordo, New Mexico, at the above stated address, since Sept 28 of 2018.

- I affirm that my name and resident address as stated in this Declaration of Candidacy are identical to my name and resident address as stated in my affidavit of registration on file with the Otero County Clerk.
- I affirm that I am eligible and legally qualified to hold the office for which I have declared my candidacy.
- I affirm that I have not been convicted of a felony; however, if I have been convicted of a felony, I affirm that my elective franchise has been restored and that I have been granted a pardon or a certificate by the Governor restoring my full rights of citizenship.
- I affirm that I, or my authorized representative, shall personally contact the office of the City Clerk during normal business hours (8:00 a.m.-12:00 p.m. and 1:00 p.m.-5:00 p.m.) on Monday, November 15, 2021, to ascertain whether the City Clerk has certified my Declaration of Candidacy as valid.
- I affirm that I, or my authorized representative, can be reached at the following telephone number(s) for purposes of receiving telephone notice 512-574-6212 or ____________, or by email at srs2905@yahoo.com

I affirm that this Declaration of Candidacy is an affidavit under oath and that any false statement knowingly made herein constitutes a fourth-degree felony under the laws of New Mexico.

Sara Weihausen
Signature of Candidate

SUBSCRIBED AND SWORN TO BEFORE ME THIS 10th DAY OF November, 2021.

MY COMMISSION EXPIRES:

April 6, 2025

Notary Public

SARAH L. CRAWFORD
NOTARY PUBLIC
STATE OF NEW MEXICO

Received in the office of the City Clerk on the 10th *day of* November *,2021*
at 2:33 *a.m./p.m.*

Rachel Hugh, CMC, City Clerk

STATE OF NEW MEXICO
NOTARY PUBLIC
SARAH L. CRAWFORD

State of New Mexico)
) ss.
County of Otero)

RECEIVED
NOV 10 2021
CITY CLERK

CITY OF ALAMOGORDO
DISCLOSURE STATEMENT

I, Sara Weihausen, candidate for the office of District 1 (One) City Commissioner, a term to expire on December 31, 2023, do hereby state for my affidavit that:

I, Sara Weihausen, hereby disclose the following real property and businesses in New Mexico in which I have a financial interest:

List all real property and businesses below.

2364 Union Ave

Signature of Candidate Sara Weihausen

SUBSCRIBED AND SWORN TO BEFORE ME THIS 10th DAY OF November, 2021.

MY COMMISSION EXPIRES: April 6, 2025

Notary Public

STATE OF NEW MEXICO NOTARY PUBLIC SARAH L. CRAWFORD

Received in the office of the City Clerk on the 10th day of November, 2021 at 2:33 a.m./p.m.

Rachel Hughs
Rachel Hugh, CMC, City Clerk

RECEIVED
NOV 10 2021
CITY CLERK

November 9, 2021

Dear Mr. Mayor and City Commission,

I am interested in the City Commissioner position for District 1. I reside within the district, and I want to be sure that you have a conservative choice because local government is more important now than ever for ensuring that the rights and freedom of the people of Alamogordo are protected from the current overreach by the state and federal government.

I moved back to Alamogordo with my family three years ago, after having spent half of my childhood here. God has given me a heart for this city, and I want to see it thrive and be restored. I want to serve God and this community in whatever capacity He chooses, and it would be an honor to serve on this Commission.

Every job that I have had has been service oriented because I enjoy helping people. My experience includes teaching, food service, retail management, tax preparation, directing an art gallery and real estate. I also hold a B.A. in Psychology. Currently I homeschool our daughter and recently ran for the Alamogordo School Board.

I appreciate the opportunity to be considered as a Nominee for District 1 and look forward to the interview process at the next Commission meeting.

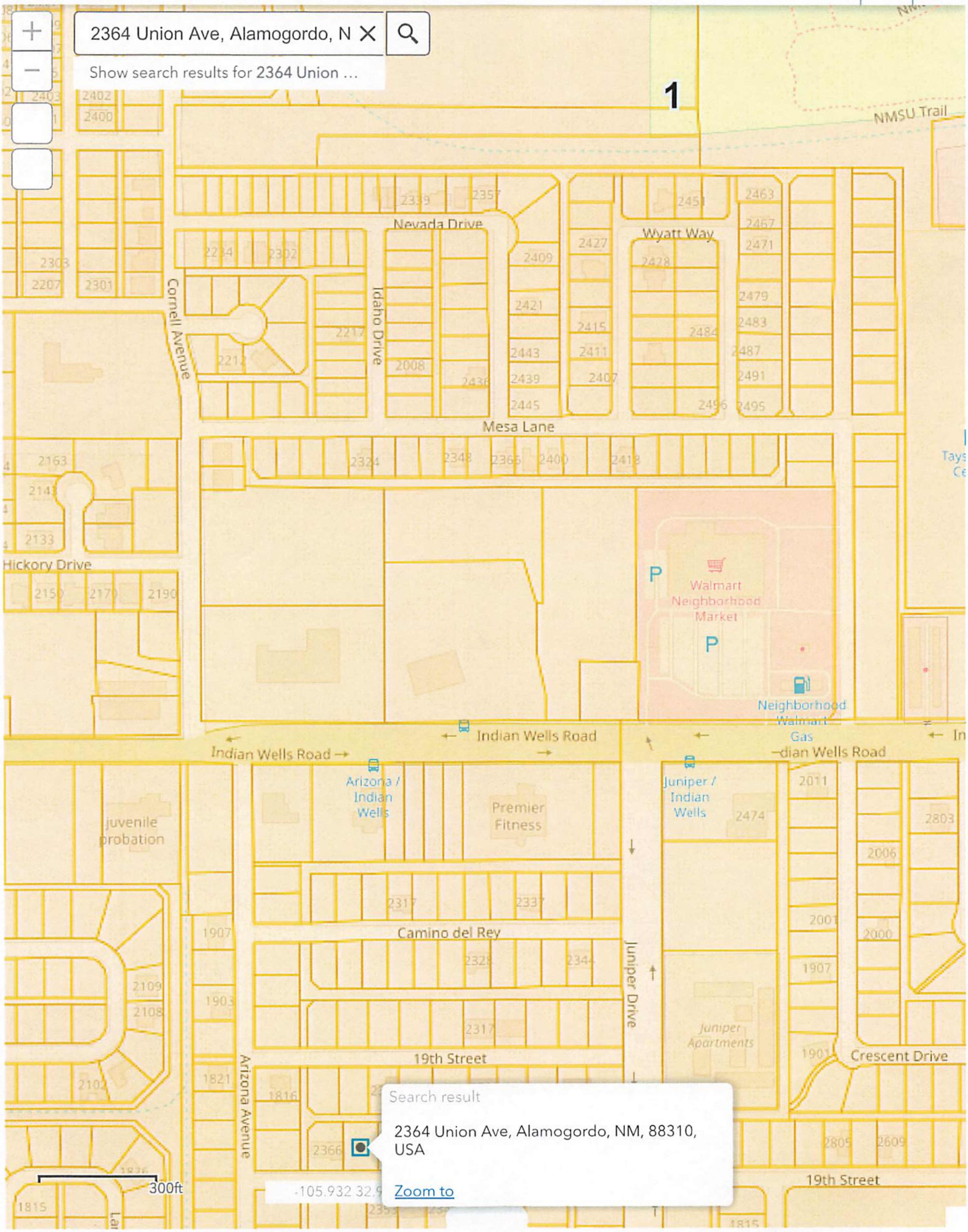
Thank you,

Sara Weihausen

Sara Weihausen

Commission District Map

Click on a district to see Commissioner contact informati



AGENDA REPORT
CITY OF ALAMOGORDO
CITY COMMISSION

Meeting Date: 11/30/2021 **Report Date:** 11/17/2021 **Report No:** 2.

Submitted By: Rachel Hughs

Subject: Approve the minutes for the November 9, 2021 Regular meeting. *(Rachel Hughs, City Clerk)*

Fiscal Impact:
Amount Budgeted:
Fund:

Additional Fiscal Impact:

Recommendation: Approve the minutes.

Background: This is required by the Open Meetings Act.

CITY OF ALAMOGORDO, NEW MEXICO
CITY COMMISSION REGULAR MEETING MINUTES
6:00 P.M., COMMISSION CHAMBERS
NOVEMBER 9, 2021

RICHARD BOSS, MAYOR
SHARON McDONALD, COMMISSIONER
JOSH RARDIN, COMMISSIONER
DUSTY WRIGHT, COMMISSIONER
SUSAN PAYNE, COMMISSIONER
NADIA SIKES, MAYOR PRO-TEM
BRIAN CESAR, CITY MANAGER
PETRIA BENGOECHEA, CITY ATTORNEY
RACHEL HUGHS, CITY CLERK

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

Mayor Boss called the meeting to order at 6:00 p.m. Roll Call was taken by the City Clerk. City Clerk Hughs announced there was a quorum present. Invocation was given by Pastor Timothy Green and the Pledge of Allegiance was led by Commissioner Rardin.

APPROVAL OF AGENDA

Commissioner Wright moved to approve the agenda.
Commissioner Rardin seconded the motion.
Motion carried with a vote of 6-0-0.

PRESENTATIONS

1. Lung Cancer Awareness Month Proclamation. ***(Richard Boss, Mayor)***

Mayor Boss read the Proclamation which recognized the month of November as “Lung Cancer Awareness Month” in Alamogordo.

2. Presentation regarding "Dangerous Intersection Created at Buena Vista Ct. and 18th Street". ***(Gerald A. Dodd, Resident)***

Mr. Dodd said he would like to speak about the dangerous intersection which had been created at the corner of Buena Vista Ct. and 18th Street. For approximately the last 60 years they enjoyed a safe intersection, until 2019 when the owners of the corner lot decided they wanted to expand and build a wall. It created a dangerous intersection, even though he knew of no accidents or deaths that had occurred there since the wall had gone up.

Mr. Dodd presented several pictures which displayed the wall protruding right up against the sidewalk on 18th Street. He wished to point out the location of the wall with respect to the roof line in the center of the three gables, and it was west toward the street from the center gable. The speed on that street was 30 mph, which didn’t allow much of a chance to avoid traffic when coming into that blind corner. He also presented a picture of a property where the fence was back and there was a space for the highway right-of-way. The plat he presented showed the right-of-way on 18th Street was 60 feet wide, which was different than the 45 feet on Buena Vista Ct. The section from the Code of Ordinances which he provided basically addressed invoking the clear site triangle on the corner lots and addressed the maintaining of trees and shrubs to not obstruct the view. This wall he was addressing tonight did obstruct the view. The City’s clear site triangle requirements were for 30 feet in each direction from the corner. It was very important to keep that area clear. The Building Permit form he submitted was from July 2019 which conformed to the

Code requirements. The block wall was depicted as 30 feet from the street line, but that block wall was behind the gable he'd pointed out earlier. The graph showed the distance from the center line of 18th Street to the block wall was 30 feet, which was half the width of the right-of-way.

Mr. Dodd said they had to realize that the City did not have a Building Inspector, so when building began there was no one to keep an eye on it. Also, the CID Inspector for the State did not inspect walls and fences. Therefore, the property owners here had pulled a slick one. They built the wall five feet outside of their property line up against the sidewalk. While it was under construction, he'd brought it up to the City Planner, and she had stated that she would look into it. The construction of the wall was completed, and he filed a complaint on the proper form such that it would be investigated. He had spoken several times with the Planner and also with the City Attorney. In each case they basically thanked him for his comments and said they would have to discuss further with the City Manager. The City Manager was busy, and he had not spoken with him. However, in May 2021 the City Planner told him that there was zero priority for handling complaints about walls and fences. So basically, his complaint had gone to the dead letter office.

Mr. Dodd said he was present tonight to ask for the Commission's help. It was a dangerous intersection. He showed a picture of the back wall, which clearly showed the extra five feet of wall built when they didn't follow the Building Permit and took the extra feet for their backyard onto the highway right-of-way. His suggestion for solving the problem was 1) to direct the City Manager to remove the wall at 1742 Buena Vista Ct. to the street right-of-way; 2) direct the City Manager, City Attorney, and City Planner to honor City street right-of-way property lines; 3) direct the City Manager and City Planner to adhere and enforce Code 29-03-080 (R-1 Fences and Vision Clearance); and 4) direct the City Manager to require a permit for constructing, repairing, and modifying walls and fences such that street rights-of-way are not built upon. If this was done, it would bring to the property owner the realization that we were not going to allow that anymore.

Mayor Boss asked how many accidents had occurred at that intersection. Mr. Dodd said since the wall was built, he knew of none. But for damage to vehicles or danger to life, there was not a criterion to say a dollar amount could be put on it or a certain number of lives. Because a blind intersection had been created there, every time someone went through the intersection there was the possibility of an accident. Commissioner Payne said according to her research, there had not been any accidents there over the past five to ten years. Mayor Boss said he went out and drove through that intersection when this item came up a few years back, and quite honestly, he did not see the danger. Mr. Dodd said they had created a blind intersection. Mayor Boss said it was not really blind because he could safely see by moving up. Also, he wondered if there were other areas of town where we had this same situation or encroachment on the actual City rights-of-way.

City Manager Cesar said to answer their questions, in the past ten years there had not been any accidents at the intersection of 18th Street and Buena Vista Ct., nor at the intersection of Lamar Circle, which was the horseshoe to the north side. There had been two accidents on Lamar Circle down the road a ways, but they were either backing accidents or a side swipe. There was a big difference between right-of-way and an easement. Easements were normally reserved by the City which had to be obtained from property owners or from State and Federal agencies and were normally for utility line installation. Normally rights-of-way were for expansion of a roadway. Both 18th Street and Buena Vista Ct. would not be expanding. He had driven the intersection many times, and you did not need to pull six feet out into the middle of the intersection to see clearly up the street. Off the top of his head, at the intersection of 10th Street and Juniper Avenue on the south side, that block wall was well beyond the 30 feet. Because of the curvature of the roadway, you had to creep out to the curb line to see traffic coming down 10th Street. On the opposite side of that intersection on the Juniper side there was a similar situation with another block wall. Regarding the situation with residents and businesses building out to the right-of-way, that was all over the City and had gone on since Alamogordo was founded. If this became the priority for the Commission, staff would enforce it and there would be a lot of stuff torn down in Alamogordo. Staff did not see this wall as an issue. It was not necessarily that the block wall had to come down. The homeowners could apply for a variance. If at some time in the future the City wanted to widen 18th Street to four lanes, we had reserved the right-of-way and could. As had been done at times in the past, we required people to move their walls, fences, landscaping, sprinkler systems, etc. For the right-of-way on Buena Vista Ct., that was a 45-foot right-of-way. The Utility Construction Manager had gone out a couple weeks ago and measured back of sidewalk to back of sidewalk. As you went through Buena Vista Ct., it varied from 41 feet to 43 feet. Without having a surveyor go out, which was what we would have to do throughout the City, with that variance of two to four feet, you would divide that by two which meant for some portions of that street there was an additional one foot of right-of-way and an additional two feet for other portions of the street.

Mayor Boss asked if the City had approved permits for people building on that area they shouldn't be building on. If someone couldn't build up to the sidewalk and they put a fence up, that meant they would have that space there and that space was usually full of tumbleweeds, etc. City Planner Rael said in 2008 we lost our Building Department and the State's Construction Industries Division (CID) took over. From that point on we had been doing Ordinance reviews. We did not approve Ordinance reviews for any type of permitting for any encroachment. However, we did approve for them to build right out to their property line. We also made sure that they were the required heights, depending on the location of the home. Mayor Boss asked if this fence was put up illegally. City Planner Rael said prior to Mr. and Mrs. Padilla purchasing this home, that block wall on the 18th Street side at the rear of the property had always been right up to the sidewalk. When construction was done, staff did approve an Ordinance review in June 2018 for a 20 by 20 addition to the home, and that was when the wall was raised and brought closer to Buena Vista Ct. Because CID didn't require permits for fences and walls, a permit was not issued. However, CID did keep an eye on these things and made sure they knew what our requirements were. There was a permit issued for the addition, but not for the wall because CID did not issue them for walls.

Mr. Dodd said what the City Planner said was basically true. He didn't know when the last 30 feet of the backyard wall was put up. A permit was not required, there was no Building Inspector, and the people did whatever they wanted to do. In this particular case they submitted a permit which appeared to him to be fraudulent in the fact that they built that wall outside of their property line. He felt it was absolutely wrong because it created the danger at the intersection.

Commissioner Payne asked Mr. Dodd where he lived in relation to this house. Mr. Dodd said he lived at 1716 Buena Vista Ct. Commissioner Payne asked if it was on the same side of the street as the subject property, or on the other side. Mr. Dodd said it was basically at the bottom of the horseshoe. Commissioner Payne asked if we'd had any other residents in this area put in a similar complaint. City Attorney Bengoechea said not that she was aware of. Commissioner Payne clarified that the neighbors had not filed a complaint, not the neighbors next to them, two doors down, three doors down, etc. Nobody had said a word about this wall. Mr. Dodd said that did not mean it was right. Commissioner Payne said she was just asking the question and she wanted to be clear about it. Therefore, the only person who had an issue with this was Mr. Dodd. Her issue with this was that the wall was there, and she was sure the owners had spent lots and lots of money on it, and she would never support tearing down a wall that improved the look of a home, especially when we had so many homes in our City that people did not take care of. She respectfully disagreed with Mr. Dodd. Mr. Dodd asked if she was saying that it was perfectly okay to build on City rights-of-way. Commissioner Payne said there had not been one single complaint in this neighborhood except for him, and he lived far enough away that he could go either way down Buena Vista Ct. and pull out onto 18th Street. She found it curious that he was going that way and that he was complaining about what she felt was a beautiful home. In full disclosure, her daughter lived on the corner of 18th Street and Lamar Circle, so she saw this house all the time. She felt it was a beautiful home and they had made incredible improvements to it. Mr. Dodd said when you created a dangerous intersection, you were going to be very cautious entering it. You would also try to avoid a pothole, but that didn't mean that it wasn't a problem. Did they need 20 residents on Buena Vista Ct. to object to this intersection. Commissioner Payne said no; what she was saying was that in the last ten years there had not been one accident, so it was not a dangerous intersection. She was not going to go back and forth on this. She had simply asked how many other residents in that area had filed a complaint about this wall, and the answer was zero. He was the only one, and there had been no accidents in the last ten years. There had been zero accidents since the wall was put up. She disagreed that it was a dangerous intersection. If they had data to back it up such as accidents, then it would be a different story. But that was not what they had, and so she questioned why this wall was such an issue. She drove down that street and pulled out of that intersection, and she did not have a problem with it. So, she questioned this.

Commissioner Rardin clarified that Mr. Dodd lived on the lower section of Buena Vista Ct. If this intersection was so dangerous, why did he choose to go this way. He could just go down the lower section of Buena Vista Ct. and then he would not even have to enter this intersection. Mr. Dodd said he parked on the street, and he was headed in the southern direction and to the loop around to the intersection. Commissioner Rardin asked why he did not utilize his driveway. Mr. Dodd said there was a camper and a truck in his driveway. Commissioner Rardin said he also did not see the issue on this. He had driven this street many times. He had shingled that particular house 22 years ago, and that fence had been there 22 years that he knew of. Mr. Dodd said the wall had been extended out front into the clear site triangle. It was 20 feet to the wall now, and 30 feet was what was required on the clear site triangle. Commissioner Rardin said he would have to verify those dimensions, but he honestly didn't see an issue here. It was late last year when Mr. Dodd had come in for the property across the street for a very similar issue, and it seemed like it was one thing after another right here at this intersection. If it was that dangerous, then why didn't he just avoid it. Mr. Dodd wondered why the City didn't just correct it. Commissioner Rardin said because it would be opening a can of worms in Alamogordo. The other day he'd pulled up to the intersection of Hawaii Avenue and Dewey Avenue, and when he looked both directions before he proceeded, he saw seven properties within his field of site that were in violation of this same exact thing. So, if we went in and did that to Mr. and Mrs. Padilla, in just going down 18th Street, probably almost every single corner house had this exact same issue in some form. Back in the 1980's and 1990's, people would add onto their homes, they would build fences, and they wouldn't get permits. If and when the City decided that it needed to widen that road, then we would address this. We had done that several times before. But he did not see the problem or the danger here.

Mr. Dodd asked about the blatant disregard for the Building Permit. Commissioner Rardin said on fences and walls under a certain amount, they did not require a Building Permit. Mr. Dodd said he was talking about the Building Permit which showed the wall on the property line. That was what was intended when it was submitted for a plan. Commissioner Rardin said it was on the property line. Mr. Dodd said yes, but it was not built that way. Commissioner Rardin said without going up there and verifying setbacks and dimensions, he couldn't say. Mr. Dodd said before making a decision, please do that. Have staff take the measurements and rough out a sketch before they made an analysis. Commissioner Rardin said there was an intersection at the Bypass and 1st Street which scared the death out of him. So rather than going through that intersection and feeling scared, he would just go to the next one down. It was very simple, and he just didn't understand why Mr. Dodd continued to use that intersection if he felt it was that dangerous.

Mayor Pro-Tem Sikes said Mr. Dodd had gone through a lot of detail and trouble for his presentation, and she appreciated that. Were the property owners, the Padilla's, present tonight. She did believe when we talked about them doing things that almost sounded disparaging that it would be better if they were here. She noted that the City Manager had said something which was of particular interest. People all over town had built in the easements, but she felt they did it with the understanding that should the City need that property, then they would be willing to knock down the wall or do what they needed to do. She felt they understood that was City property. As the City Manager had mentioned, we'd done that in the past when we determined that we needed part of the property; we either sold the property to the people who had encroached, or we asked that they remove what was there. Wasn't Mr. Dodd on the Planning & Zoning Commission. Mr. Dodd said he was. Mayor Pro-Tem Sikes asked if he had brought this information before them and were they aware of this. Mr. Dodd said no, the Planning Commission had not reviewed this complaint that he was aware of. He had not initiated a discussion as a member of the Planning Commission with respect to this complaint. He pointed out, though, that he did make a complaint about the height of the wall, location of the wall, and the fence at 1741 Buena Vista Ct., and they basically did the same thing. He was advised by the City Manager that he could not vote on that particular variance because he was the one who initiated the complaint. Mayor Pro-Tem Sikes said that was correct because it would be a conflict of interest.

Mr. Dodd said if a wall was built on City property, then the City owned it and not the person who put up the wall. If there was an accident at that intersection and it was determined that the intersection was a blind intersection created by that wall, who had deep pockets – the City or the homeowner, especially since the City was aware of it or they were allowing it. He got the gist that no action was going to be taken, and no direction given to the City Manager from his suggestions.

PUBLIC COMMENT

There were none.

CITY MANAGER'S REPORT

City Manager Cesar made the following remarks:

1. City Manager Cesar said regarding the striping project which the Commission had approved for this year, it had been postponed once again due to materials shortages. San Bar Construction, Corp. expected delivery of the crosswalks on December 17th, and they did not know when the symbols would be shipped. They did expect to start the striping portion of the project on November 29th. So, unless there was a weather delay, the striping portion would begin and then they would have to come back at a later date to do the stop bars, crosswalks, and symbols.

2. City Manager Cesar said regarding the swimming pool question Commissioner McDonald had brought up at the last meeting, he had briefly touched on the Community Service projects the

Community Services Director, Finance Department, and Assistant City Manager were working on for a potential tourism grant from the State of New Mexico. The Tourism Department was giving over $300 million for grants throughout the State. He had the list the City had for consideration, and the No. 1 project on that list was the Bonito Lake Renovation, which was for the campgrounds. Since the Little Bear fire in 2012, the campgrounds and all the building facilities had not been used. Renovation of that, as well as the road from the bottom of the dam up to the West Lake Campground, had all been put in for a grant. Staff felt that would stand a much better chance of being approved because it not only benefited Alamogordo, but also Ruidoso, Ruidoso Downs, and Lincoln County. The project cost was estimated at $5 million. After that, the second project we were asking for money on was the construction of a new pool and a cover for $4 million. The third project was for the Alameda Park Zoo Exhibit Expansion Improvements at $450,000. Park and Cultural Facility Signage was No. 4 at $120,000, and Median Xeriscaping was No. 5 at $100,000. Items below No. 5 probably would not even be looked at, but we were hopeful to perhaps see one or more of the first five projects approved by the State.

REMARKS AND INQUIRIES BY THE CITY COMMISSION

None.

CONSENT AGENDA

3. Approve the minutes for the October 26, 2021 Regular meeting. *(Rachel Hughs, City Clerk)*

4. Approve the award of RFP 2021-06 Water & Wastewater Analytical Services to Aqua Environmental Testing Laboratory. *(David Nunnelley, Acting Public Works Director)*

5. Consider, and act upon, Resolution 2021-42 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 November 9, 2021. *(Evelyn Huff, Finance Director)* (Roll Call Vote Required)

6. Consider, and act upon, approval of CDBG Amendment No. 1, to extend the grant agreement and reallocate funds. *(Debbie Osborne, Grant Coordinator)*

Commissioner Payne moved to approve the Consent Agenda.
Commissioner McDonald seconded the motion.
Roll Call Vote was taken.
Motion carried with a vote of 6-0-0.

NEW BUSINESS

7. Consider, and act upon, Ordinance 1639 for first publication to amend sections of Chapter 34 in the Alamogordo Code of Ordinances concerning Marijuana. *(Rachel Hughs, City Clerk and Petria Bengoechea, City Attorney)* (Roll Call Vote Required)

City Clerk Hughs said as the State continued to make changes to the cannabis regulations, more amendments would probably come before us. For now, these were the proposed changes.

Commissioner Payne said regarding removal of the public hearings, what exactly did that mean. City Attorney Bengoechea said it meant there were no public hearings like those required for the liquor licenses. Commissioner Payne said that meant they could just pop up anywhere. City Attorney Bengoechea said the State was blocking them from happening. They were putting out new laws faster than staff could keep up with. Commissioner Payne clarified that we still had to have hearings for liquor licenses, but not for someone wishing to open up a cannabis store. City Clerk Hughs said that was correct. Commissioner Payne said she would like to protest that.

Commissioner Rardin asked if the $500 manufacturer's license fee was our fee, or the State's fee. City Clerk Hughs said it was our fee. Commissioner Rardin asked what we were going to use that money for, as it seemed a little high. City Attorney Bengoechea said the concern with the manufacturing part was that it would tax our infrastructure system. They used a lot of water and power, and there was flushing of things. The idea was that if you were going to manufacture and require that of us, then we were going to charge for it. She believed there was one requesting to use our water supply right now and they were looking for a lot of water. We could do it, but it was a tax on our system.

Mayor Boss asked what was meant by "a lot of water". City Manager Cesar said if he remembered correctly, the request was for 100,000 gallons per month. Obviously, they would be charged for that water as well.

City Clerk Hughs pointed out that the State said the manufacturers also used a lot of flammables and combustibles, so it was more dangerous.

Commissioner Rardin said he was generally anti-fees and anti-permits, and $500 seemed kind of high to him. They were purchasing water from us, and we were going to bill them for that water, and they would be on the tiered system. City Manager Cesar said they would be billed on the tiered system at the commercial rate which was a lot more water at a lower rate. Commissioner Rardin clarified that we would also have a way to charge sewer consumption. City Manager Cesar said it was based off their water consumption. Commissioner Rardin said if they were using 100,000 gallons per month, we were going to charge accordingly and were kind of making up the extra money there based off of the rates. City Manager Cesar clarified that this would be coming back before the Commission many more times as the State continued to come up with the rules. Commissioner Rardin said for normal businesses, their fee was $35 per year, and this was $500 which seemed high. City Manager Cesar said that was in addition to the Business License. Commissioner Rardin asked what the liquor license fees were per year. City Clerk Hughs said there were different types, but the most expensive one was $250. The two other types of cannabis licenses, other than the manufacturer license, were each $250.

Mayor Boss asked if we'd looked at what other communities were doing. City Attorney Bengoechea said the State had not given us a lot of guidance and they quickly passed this in the Special Session. Even after we did the first Ordinance, they put out new rules and they were putting out new rules all of the time. When she talked to other attorneys, their communities were scrambling to do the same. They told her they were trying to match liquor laws as that was the idea. This was unchartered territory, so if the Commission didn't want it at $500, then tell staff what they wanted it at. The Municipal League was in the same place we were, and really what the State was hammering was that we couldn't stop it. It was not a secret that the Governor was saying that we were going to be the "Green State" – green chili and green pot.

Mayor Pro-Tem Sikes asked if the $500 was not what the State recommended, but what we came up with arbitrarily. City Attorney Bengoechea said we doubled what we were charging for the liquor, and so we matched the Liquor Control Act. If the Commission wanted a different fee, please tell staff what they wanted it to be. Mayor Pro-Tem Sikes asked if there was only one manufacturing facility in Alamogordo. City Attorney Bengoechea said we were aware of one that was in business today, but she had heard that more were looking to move into the area. Mayor Pro-Tem Sikes asked what they would be manufacturing exactly. City Attorney Bengoechea said she did not know because she was not familiar with marijuana. Mayor Pro-Tem Sikes said she would suspect that if anyone was going to be manufacturing something, that they would be preparing to manufacture now. She knew that Ultra Health was going to be manufacturing out of the old Cookie Factory. But as far as she knew, that was the only manufacturing location that would be in Alamogordo. City Attorney Bengoechea said she understood a lot of what they were going to be manufacturing was hemp. Mayor Pro-Tem Sikes said she believed currently that they were just going to have a medical dispensary and then a retail dispensary when it became legal to sell.

Commissioner Rardin said the reason he questioned the amount was because he had some people contact him about it, and they were going to be smaller micro-dispensers. He felt Alamogordo needed to be business friendly and this was a business that was going to boom whether we wanted it or not. He felt the $500 per year seemed a little excessive. Mayor Pro-Tem Sikes said they probably wouldn't even blink an eye at that fee. Commissioner Rardin said the bigger guys probably would not, but for the smaller guys trying to get in as a micro-dispenser, grower, or producer, then that fee might be a little excessive. City Clerk Hughs clarified that the producer and retailer fees were each $250, and the manufacturer fee was $500. Commissioner Rardin asked exactly what it meant to manufacture. City Attorney Bengoechea said it was in the Ordinance. It meant to compound, blend, extract, infuse or otherwise make or prepare a marijuana product. Producer was a business that grows, harvests, dries, trims, cures, or packages cannabis for sale to a wholesaler or retailer. They may also produce and sell cannabis plants, seeds, plant tissue culture and other immature plants or parts of cannabis plants to other cannabis producer licensees. Manufacturers were not going to grow it. The growers were producers. Commissioner Rardin said like he had stated before, he was anti-fee, and he didn't like when fees were charged like this that he felt were high.

Mayor Boss moved to approve.
Mayor Pro-Tem Sikes seconded the motion.
Roll Call Vote was taken.
Motion carried with a vote of 6-0-0.

8. Consider, and act upon, Ordinance 1641 for first publication authorizing the issuance and sale of the City's debt obligation to refund the joint utility system. *(Evelyn Huff, Finance Director)* (Roll Call Vote Required)

Assistant City Manager Hernandez explained this was one of the three (proposed) Ordinances that Chris Muirhead and John Archuleta had brought before the Commission at the last meeting. Ordinance 1641 was for the refunding of the water and sewage system revenue. On this one, we would have net savings of approximately $660,000, or 11 percent. It was originally funded in November 2011 at $9.8 million, and we were refinancing $5.5 million

Commissioner Rardin asked if we'd had Mr. Muirhead and Mr. Archuleta look into the potential to use some of these proceeds and refinance the whole amount for water and infrastructure. Assistant City Manager Hernandez said what was decided was that because we were at the ten-year mark, that we proceed with these. After the Ordinances were passed, they would then put together another bond proposal for us because this would be opening up our bonding capacity. We did not want to go to the New Mexico Finance Authority (NMFA) with no plan and we did not want to miss the boat on these three. If we decided to bond further, staff would discuss it and decide what our plan was, get the engineering done, and then request a new bond from NMFA.

City Manager Cesar said one example was the natatorium which a previous Rec Center Manager had proposed a number on. We obviously did not have the funds for that, just like we needed more money for street utilities. So, we would be asking during the next budgetary cycle for architectural services for those types of projects in order to get the geotechnical work done. We would then have a solid number for projects like the natatorium. The expanded street maintenance program would need to be phased. Once we got those types of plans and numbers, we could go to NMFA with solid numbers. Commissioner Rardin said he was afraid we were going to tie our hands because of the timing. City Manager Cesar felt that timewise it would work out because the Commission would not approve the preliminary budget until late April or May. A majority of the projects we had approved for this fiscal year were on hold until after the new year due to a lack of materials availability. We had some very large projects on the books that we were waiting to move forward on. The engineering alone on any of these projects would take about a year if not longer.

Assistant City Manager Hernandez said we were not tying our hands but were actually helping ourselves by having a larger bonding capacity. Once these were refinanced, there was a long-term savings on them. The next bonds up for refinancing were the Family Fun Center and the streets project which were both funded in 2014. Therefore, the next bonds they would be looking at refinancing would be in 2024. We could go out for a new bond at that time and look at refinancing. Commissioner Rardin felt on those two particular bonds we were limited on what we could use them for, unlike a couple of these tonight. He did not want to tie our hands for two or three years to where we could not do a new bond.

Commissioner Rardin moved to approve.
Commissioner Wright seconded the motion.
Roll Call Vote was taken.
Motion carried with a vote of 6-0-0.

9. Consider, and act upon, Ordinance 1642 for first publication authorizing the issuance and sale of the City's debt obligation to refund the revenue debt issued on December 23, 2011. *(Evelyn Huff, Finance Director)* (Roll Call Vote Required)

Assistant City Manager Hernandez said this issue was for the various street projects. The original funding amount was $7.6 million. We were now refunding $4.3 million, with a savings of approximately $531,000.

Commissioner Payne moved to approve.
Commissioner Wright seconded the motion.
Roll Call Vote was taken.
Motion carried with a vote of 6-0-0.

10. Consider, and act upon, Ordinance 1643 for first publication authorizing the issuance and sale of the City's debt obligation to refund the revenue debt issued on February 17, 2012. *(Evelyn Huff, Finance Director)* (Roll Call Vote Required)

Assistant City Manager Hernandez said this one was a smaller issue we were refinancing with a savings of $187,000. It was still allowable under NMFA rules because it had a five percent savings. The original amount was for $8.13 million, and we were refinancing $3.5 million. This was for various public projects, 2012 Series.

Mayor Pro-Tem Sikes moved to approve.
Commissioner Wright seconded the motion.
Roll Call Vote was taken.
Motion carried with a vote of 6-0-0.

Commissioner Payne asked how much they were saving on each bond. Assistant City Manager Hernandez said $662,000 on the first bond, $531,000 on the second bond, and $187,000 on the third one. At the November 30th meeting, Mr. Muirhead and Mr. Archuleta would be back, and the rates would be tied in then. At that time, they would be able to tell exactly what we would be saving.

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

Mayor Boss read the openings and reappointed Lance Grace to the Airport Advisory Board; reappointed Lee Scholes to the Airport Zoning Board; appointed Christina Hastings, Chandi Bankston Rajnicek, and Racquel Morris to the Alamogordo Disability Council; appointed Jessica Meyer to the Alamogordo Public Library Board; appointed Mark A. Brown to the Cemetery Board; reappointed Sue Kent and appointed Karen LeComte to the Mayor's Committee on Aging; and reappointed Chris Ward to the Senior Volunteer Programs Advisory Council. No one was opposed.

EXECUTIVE SESSION

12. Adjourn into Executive Session in compliance with 10-15-1(H)(2) NMSA (as amended) to discuss limited personnel matters: City Manager Evaluation. (Roll Call Required)

Commissioner Payne moved to adjourn at 7:17 p.m.
Commissioner Wright seconded the motion.
Roll Call Vote was taken.
Motion carried with a vote of 6-0-0.

ADJOURNMENT

Mayor Richard Boss

ATTEST:

____
City Clerk Rachel Hughs

(Prepared by Teresa Gutierrez, Deputy Clerk)
Approved at the Regular Meeting held on November 30, 2021.

AGENDA REPORT
CITY OF ALAMOGORDO
CITY COMMISSION

Meeting Date: 11/30/2021 **Report Date:** 11/15/2021 **Report No:** 3.

Submitted By: Rachel Hughs

Subject: Approve the statements related to the Executive Closed Session held on November 9, 2021. *(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 30, 2021: “The Governing Body of the City of Alamogordo, New Mexico, hereby states that on November 9, 2021, a Closed Executive Session was held and matters discussed in the closed meeting were limited only to: limited personnel matters: City Manager Evaluation.

AGENDA REPORT
CITY OF ALAMOGORDO
CITY COMMISSION

Meeting Date: 11/30/2021 **Report Date:** 11/10/2021 **Report No:** 4.

Submitted By: Rachel Hughs

Subject: Consider, and act upon, adoption and final publication of Ordinance 1639 to amend sections of Chapter 34 in the Alamogordo Code of Ordinances concerning Marijuana. *(Rachel Hughs, City Clerk and Petria Bengoechea, City Attorney)* **(Roll Call Vote Required)**

Fiscal Impact:
Amount Budgeted:
Fund:

Additional Fiscal Impact:

Recommendation: Approve Ordinance 1639 for adoption and final publication.

Background:

The Commission approved Ordinance 1639 for first publication during the commission meeting of November 9, 2021 by a vote of 6-0.

<u>Proposed changes to the current Marijuana Ordinance</u>

- Added “Producer” and “Retail" to definitions
- Removed “Dispenser” from the title of Article 34.02 as there are 3 types of licenses
- Added “city” to clerk as there are different types of clerks in our city government (Utility Clerk, Court Clerk)
- Added Cannabis Control Division name
- Removed "Hearing" as the New Mexico Cannabis Control Division does not require a Public Hearing from the Local Governing Body concerning cannabis
- Added “per location” since an applicant may have more than one location
- Removed “Dispenser” and "Producer" from the license fee section to coincide with Cannabis Control Division language
- Added Manufacturer license per annum $500.00
- Changed the issuance date of licenses

ORDINANCE NO. 1639

AN ORDINANCE AMENDING CERTAIN SECTIONS OF *THE ALAMOGORDO* CODE OF ORDINANCES CONCERNING MARIJUANA

WHEREAS, the New Mexico Legislature Legalized Marijuana through the Cannabis Regulation Act during the 2021 Special Session; and,

WHEREAS, the State of New Mexico continues to make changes to regulations concerning cannabis; and,

WHEREAS, the New Mexico Cannabis Control Division does not require a Public Hearing regulation from the Local Governing Body concerning cannabis; and,

THEREFORE, BE IT ORDAINED by the City Commission of the City of Alamogordo that the following sections of the *Code of Ordinances* be amended to read as follows:

34-01-010. Definitions.

The words and phrases below, wherever used in this article, shall be construed as defined in this section unless, clearly from the context, a different meaning is intended. Words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number.

A. "Consume," "Consuming," and "Consumption" mean the act of ingesting, inhaling or otherwise introducing marijuana into the human body.

B. "Consumer" means an individual who is at least twenty-one years of age and who purchases marijuana or marijuana products.

C. "Cultivate" and "Cultivation" mean to propagate, breed, grow, prepare and package marijuana.

D. "Department" means the State of New Mexico Department of Health Services or its successor agency.

E. "Manufacture" and "Manufacturing" means to compound, blend, extract, infuse or otherwise make or prepare a marijuana product.

F. "Marijuana"
   1. Means all parts of the plant of the genus cannabis, whether growing or not, as well as the seeds from the plant, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture or preparation of the plant or its seeds or resin.
   2. Includes cannabis as defined in N.M.R.S. §26-2B-4, §26-2B-53. Does not include industrial hemp, the fiber produced from the stalks of the plant of the genus cannabis,

oil or cake made from the seeds of the plant, sterilized seeds of the marijuana to prepare topical or oral administrations, food, drink or other products.

G. “Marijuana Establishment” means an entity licensed by the Department to operate all of the following:

1. A single retail location at which the licensee may sell marijuana and marijuana products to consumers, cultivate marijuana and manufacture marijuana products.
2. A single off-site cultivation location at which the licensee may cultivate marijuana, process marijuana and manufacture marijuana products, but from which marijuana and marijuana products may not be transferred or sold to consumers.
3. A single off-site location at which the licensee may manufacture marijuana and marijuana products and package and store marijuana and marijuana products, but from which marijuana and marijuana products may not be transferred or sold to consumers.

H. “Marijuana Products” means marijuana concentrate and products that are composed of marijuana and other ingredients and that are intended for use or consumption, including edible products, ointments, and tinctures.

I. “Marijuana Testing Facility” means the Department or another entity that is licensed by the Department to analyze the potency of marijuana and test marijuana for harmful contaminants.

J. “Open Space” means a public park, public sidewalk, public walkway or public pedestrian thoroughfare.

K. “Person” means an individual, partnership, corporation, association, or any other entity of whatever kind or nature.

L. “Process” and “Processing” means to harvest, dry, cure, trim or separate parts of the marijuana plant.

M. “Producer” is a business that grows, harvests, dries, trims, cures or packages cannabis for sale to a wholesaler or retailer. They may also produce and sell cannabis plants, seeds, plant tissue culture and other immature plants or parts of cannabis plants to other cannabis producer licensees.

N. “Public Place” has the same meaning prescribed in the Dee Johnson Clean Indoor Air Act, N.M.R.S. §24-16-3.

O. “Retailer” is a business that typically buys goods from a manufacturer, wholesaler, producer, or other distributor and resell them to the public.

P. “Smoke” means to inhale, exhale, burn, carry, or possess any lighted marijuana or lighted marijuana products, whether natural or synthetic.

ARTICLE 34-02. MARIJUANA ~~DISPENSERS~~ LICENSES

34-02-020. Application.

Applications for a license to sell marijuana within the city shall be made to the city clerk on a form prescribed by the clerk. Each application shall include a copy of the ~~application to the state department of cannabis control~~ cannabis license for the location from the New Mexico Cannabis Control Division and shall be accompanied by a fee of fifty dollars ($50.00) to cover the expense of investigations. ~~Upon receipt of the application, the clerk shall determine if preliminary approval of the issuance or transfer of the license has been made pursuant to the Cannabis Control Act. Upon determining that such preliminary approval has been made, the clerk shall set the application for hearing.~~ An investigation shall be made of the applicant, the matters stated in the application, and for compliance by the applicant and the proposed location of the licensed premises for compliance with all applicable codes.

34-02-030. License Fee.

The fee for licenses ~~to sell marijuana~~ per location is as follows:

Retailer~~'s/Dispensers~~ license, per annum:	$250.00
~~Growers~~ Producer license, per annum:	$250.00
Manufacturer license, per annum:	$500.00

All licenses shall be issued for the period ~~July 1 to the following June 30~~ January 1 to December 31. The license fee shall not be refunded or prorated. The above does not include business registration fees.

PASSED, APPROVED AND ADOPTED this _______ day of ____________, 2021.

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: 11/30/2021 **Report Date:** 11/15/2021 **Report No:** 5.

Submitted By: Petria Bengoechea

Subject: Consider, and act upon, adoption and final publication of Ordinance 1640 approving the transfer for a Local Economic Development Project for secured financial assistance proposed by Ultra Health, LLC. *(Petria Bengoechea, City Attorney)* **(Roll Call Vote Required)**

Fiscal Impact:
Amount Budgeted:
Fund:

Additional Fiscal Impact:

Recommendation: Approve Ordinance 1640 for adoption and final publication.

Background: This Ordinance came before the City Commission at the Regular Meeting of October 26, 2021 for approval of first publication. The Commission voted 6-0-0 to approve, and it is now before the Commission for adoption and final publication.

Ultra Health, LLC has purchased what has been known for many years as the "Cookie Factory" at 1301 LaVelle Rd, Alamogordo, NM 88310. At the time of purchase, there was still an outstanding LEDA obligation from the original cookie factory. Ultra Health, LLC has agreed to assume this obligation, and asks for no further investment from the City. They agree that they will pay off the agreement using job creation, and hope to have that completed within 24 months, if not sooner. The current outstanding obligation is $346,449.07, which was through August of 2020, so that number will decrease slightly in the next few weeks.

PROJECT PARTICIPATION AGREEMENT

This Project Participation Agreement is entered into the __ day of ____________, 2021, between the City of Alamogordo, a New Mexico municipal corporation (the "City"), on the one hand, and Ultra Health, LLC, on the other hand ("Participant").

I. Recitals

A. Ultra Health LLC owns the property located at 1301 La Velle Rd., Alamogordo, New Mexico, including the building located on the property.
B. Ultra Health LLC owns approximately 69 acres of vacant land surrounding 1301 La Velle, comprising the addresses 1101 and 1201 La Velle Rd., Alamogordo, New Mexico.
C. Ultra Health LLC is a single-member LLC so organized under the laws of Arizona.
D. The purpose of this Agreement is to assist and encourage Participant to improve and operate a cannabis cultivation, processing, and manufacturing center in Otero County, New Mexico. Completion of the Project is in the best interests of the City and the health, safety, and welfare of the residents and the taxpayers of the City of Alamogordo, and is in accord with the public purposes and provisions of applicable state and local laws.
E. The City previously entered into Local Economic Development agreements with previous owner/operators of 1301 La Velle Rd., including Sunbaked Biscuits, Marietta Biscuit Company, and/or Western Baking Corporation.
F. Through the previous Local Economic Development agreements, the City provided monetary assistance and investment to upgrade the 1301 La Velle facility.
G. The City asserts that the outstanding obligation owed by Sunbaked Biscuits, Marietta Biscuit Company, and/or Western Baking Corporation is $346,449.07.
H. In consideration of the mutual obligations set out herein, Participant has agreed to voluntarily assume the outstanding obligation of $346,449.07, which may be satisfied by the creation of jobs, hiring of employees, and payment of dues to the Otero County Economic Development Council as outlined herein.
I. Participant's assumption of the obligation is entirely voluntarily.
J. By Ordinance No. 983, adopted August 13, 1996, the City has adopted an ordinance pursuant to the statutory authority conferred upon municipalities to allow public support of economic projects to foster, promote and enhance local economic development efforts (N.M. Stat. Ann. Section 5-10-1 through Section 5-10-13-1978). The Ordinance was adopted as part of the City's Economic Development Plan.
K. By Ordinance No. 1640, adopted ________, 2021 ("Approval Date"), the City has adopted an Ordinance which establishes that Participant meets the requirements of the Local Economic Development Act and that Participant has provided information pertaining to its intent to make improvements and purchase equipment needed to operate a 1) a cannabis cultivation, manufacturing, and processing site, at 1101, 1201, and 1301 La Velle Rd., Alamogordo, New Mexico, 88310. Collectively, these operations will create a minimum of fifty (50) new jobs with an hourly wage of at least thirteen ($13.00) dollars per hour, and will thereafter maintain fifty (50) jobs and create sufficient additional new jobs necessary to satisfy the obligation to fulfill the Economic Development Incentive during the term of this Agreement (the "Project"),

all of which qualifies for assistance under the City's Economic Development Ordinance.

L. Material inducements for the City's participation in this Agreement with Participant are:
    1. Participant creating and maintaining jobs in accordance with the provisions of this Agreement by -
        a. Between January 1, 2022 and June 30, 2023, hiring no fewer than fifty (50) new full-time employees at an hourly wage of at least $13.
        b. Between January 1, 2022 and June 30, 2023, hiring at least one new executive-level employee at a yearly salary of at least $50,000.
    2. Begin hiring employees within the calendar year of 2022.

M. Location of Participant's business operations in Otero County will provide additional jobs and substantially improve economic conditions in accordance with the purposes and goals of the City's Economic Development Plan.

N. As a condition precedent to any receipt of public assistance, Participant is required to execute this Project Participation Agreement.

II. Definitions

For all purposes of this Agreement, except as otherwise expressly provided or unless the context clearly requires otherwise, the following terms have the meanings assigned to them:

A. "Approval Date" means _____________.

B. "Economic Development Incentive" means financial or other assistance provided to Participant by the City of Alamogordo through the Local Economic Development Act.

C. "Eligible Project Costs" means the costs and expenditures directly related to the various infrastructure upgrades needed to operate 1101, 1201, and1301 La Velle as a cannabis cultivation, manufacturing, processing facility. There is anticipated to be no eligible project costs during this project, as Participant is voluntarily assuming a previous obligation on the property from Western Baking Corporation and/or any other previous occupant.

D. "Facility" shall mean Participant's manufacturing building located at 1301 La Velle Rd, Alamogordo, NM 88310; and the vacant land located at 1101 and 1201 La Velle Road, Alamogordo, New Mexico 88310.

E. "Job Credit" is a performance measurement figure. A job credit is annually:
    1. Twenty-seven thousand, forty dollars ($27,040), yearly, for each cultivation or manufacturing job created ($13 per hour x 2080 yearly hours);
    2. Thirty-five thousand, three hundred sixty dollars ($35,360), yearly for each manager equivalent job created ($17 per hour x 2080 yearly hours);
    3. Fifty-eight thousand two hundred forty dollars ($58,240) yearly, for each site director fulltime equivalent job created ($28 per hour x 2080 yearly hours).

F. "Job Period" means every twelve (12) month period from the Approval Date through the Term of Agreement during which the Qualified Entity is obligated to create and maintain New Jobs.

G. "New Job" shall mean 2,080 hours of paid employment over 365 days.

Example 2 people, each working 1,040 hours, over 365 days, is one New Job. 1 person working 2,600 hours over 365 days is 1.25 New Jobs.

III. Agreements

The Parties agree as follows:

A. Authority. The City's execution of this Agreement is authorized by
   1. The Local Economic Development Act, NMSA 1978 §5-10-1 through §5-10-13 (2007) (LEDA), Ordinance No. 983, which established the Alamogordo Economic Development Strategic Plan that promotes economic development projects in the City of Alamogordo; and
   2. Ordinance No. 1640, which approved the Project.

B. Participant's execution and performance of this Agreement constitutes a valid and binding obligation of Participant in the event Participant proceeds with the Project. Participant has full power and authority to execute, deliver, and perform, as applicable, this Project Agreement.

C. "New Jobs Payroll" shall mean all monies paid annually to all persons holding New Jobs, whether paid by the hour, day, week, semi-monthly, monthly, or yearly, and includes, but is not limited to, overtime, bonuses, and piecework.

IV. Participant's Obligations

Per the purpose of the Agreement recited in paragraph I(I), above, Participant will meet the City's job creation expectation in paragraph I(I) by the following means:

A. Employment Opportunities: Participant shall:
   1. Between January 1, 2022 and June 30, 2023,, hire no fewer than fifty (50) new full-time employees at an hourly wage of at least $13.
   2. Between January 1, 2022 and June 30, 2023, hire at least one new executive-level employee at a yearly salary of at least $50,000

B. Participant shall only be credited for the creation of jobs performed within Otero County, New Mexico.

C. Local Preferences: Though not required, Participant shall use its best efforts to contract with local contractors in order for the City to receive gross receipts tax revenue.

V. The City's Obligations

The City acknowledges that Participant's ability to operate a cannabis cultivation, processing, and manufacturing center in Otero County is dependent on state and local licensing. Therefore, as consideration for Participant's obligations herein, the City agrees to the following obligations:

A. The City shall, within ten days of the execution of this agreement, provide documentation, addressed to the State of New Mexico Regulation and Licensing Department, stating that Ultra Health LLC are authorized to use the municipal water supply of the City of Alamogordo for cannabis processing, manufacturing, and cultivation of up to 5,000 cannabis plants at 1101, 1201, and 1301 La Velle Rd., Alamogordo, New Mexico, and that the use of water from cannabis production, processing, and manufacturing is compliant with provider's rules. This documentation relates to state regulation 16.8.2.22(A)(5) NMAC and 16.8.2.30(A)(5) NMAC.

B. The City shall, upon submission by Participant of state-issued licensing documentation, issue the City "Retailer/dispenser license" and the City "Grower's license," as articulated in City Ordinance 1636.

C. Participant shall pay the applicable fee for the City-issued licenses. The City shall issue the licenses within ten days of submission by Participant.

VI. The City's Limitations

A. This Agreement shall not be construed as a commitment, issue, or obligation of any specific funds other than those funds to be received by the City from its Municipal Infrastructure Gross Receipts Tax.
B. The functions and duties assumed by the City include only those described in this Agreement, and the City is not obligated to act except in accordance with the terms and conditions of this Agreement.
C. The obligations of Participant shall not be affected by any dispute Participant may have with any manufacturer, distributor, contractor or supplier.
D. Participant will not assert any claim or defense which it may have against any manufacturer, distributor, supplier or contractor against the City.
E. The City is under no duty to supervise or inspect the installation or construction contemplated by this Agreement.
F. Any inspection or examination by the City is for the sole purpose of preserving the City's rights under this Agreement.
G. No default of Participant will be waived by any inspection by the City.
H. In no event will any inspection by the City be a representation that the installation or construction is free from defective materials or workmanship.

VII. Disbursement of Economic Development Incentive

A. No funds will be distributed from this agreement, as Participant is voluntarily assuming a debt from the previous company that had possession of the building.

VIII. Obligation to Repay the Economic Development Incentive

A. Participant understands and agrees that the failure of Participant to perform its obligations will result in a forfeiture of the Economic Development Incentive. In the event of a forfeiture, or upon termination of this Agreement, Participant agrees to pay to the City the balance of the Economic Development Incentive not otherwise repaid through the creation of jobs.

IX. Insurance.

A. Participant, at its sole cost and expense, shall procure and maintain, with financially sound and reputable insurers authorized to do business in the State of New Mexico:

   1. Insurance policy which covers damage to, or the destruction of, the Facility.

B. Participant will furnish to the City, upon its written request, the insurance certificates with respect to such insurance.

X. Evidence of Job Creation

A. **Job Audits.** The City shall, by February 28, 2023, perform a Job Audit to determine the number and value of jobs hired/created by Participant in 2022. The City shall perform a second job audit by August 30, 2023 to determine the number and value of jobs hired/created by Participant in the first six months of 2023. Participant shall produce the necessary records to allow the City to perform its Job Audit.

B. **Job Credit.** Participant shall receive a credit against the balance of the obligation for each new job that is created/maintained during the job period.

C. **Pro-rated Credit.** In the event the Participant falls short of meeting annual creation/maintenance obligation for any Period, Participant receives a partial credit. The amount of the partial credit shall be calculated using the above described formula.

D. **Term.** The parties anticipate it will take eighteen months to fulfill the goal of obtaining sufficient job credits to repay the Economic Development Incentive (EDI) balance of $346,499.07.

E. **Damages.** In the event the EDI balance of $346,499.07 has not been fully repaid through job credits/job creation by August 30, 2023, Participant shall pay the remaining balance to the City.

XI. Termination and Recovery of Incentive

A. **Events of Default.** The following events shall constitute events of default under this Agreement:

   1. Failure of Participant to fulfill, in whole or in part, any obligation required by this Agreement.
   2. Cessation by Participant of its Otero County operations, or reduction of those operations to a level below the performance measures set forth of this Agreement.
   3. Filing by Participant of a petition, case, proceeding, or other action against the City as a debtor under any debtor relief law or seeking appointment of a receiver, trustee, custodian, or liquidator of the Participant.
   4. The abandonment by Participant of all or a portion of the Facility.
   5. The discovery by the City that any representation, warranty, or covenant made by the Participant in connection with this Agreement was or has become false, materially misleading, erroneous, or breached in any material respect.

6. Participant assigns, sells, or transfers a majority interest in its business entity, whether in a single transaction or a series of transactions. If Participant desires to assign, sell, or transfer a majority interest in its business entity, whether in a single transaction or a series of transactions, before expiration of this Agreement, the City retains the right to reject any and all assignments, sales, or transfers of any interest in the Participant's business entity until, in the sole discretion of the City, adequate assurances are given that the assignee, buyer, or transferee is Participant under the Alamogordo Economic Development Plan and that terms of this Agreement will be satisfied by the assignee, buyer, or transferee.

B. Participant**'s Response to Default.** Upon the occurrence of an event of default by Participant specified in this Agreement, the City shall notify Participant in writing that an event of default has occurred under this Agreement. Within thirty (30) days of the receipt of such notice, Participant shall:
   1. Cause the default to be cured; or
   2. Furnish a written response indicating:
      a. The factors which caused or contributed, in whole or in part, to the occurrence of default;
      b. The measures Participant has undertaken to avoid the reoccurrence of default in the future;
      c. Whether any performance measure not achieved can still be achieved in a timeframe acceptable to the City; and
      d. What further action Participant plans to take to achieve the performance measure in a timeframe acceptable to the City.

C. **City's Response to Default.** The City staff shall review the response furnished by Participant and within thirty (30) days from the receipt of such response, recommend to the City Commission whether to modify or terminate this Participation Agreement. Participant shall have an opportunity to make a presentation to the City Commission at any meeting where such recommendation will be acted upon. The decision of the City Commission will be final and binding. Other than the opportunity for Participant to make a presentation to the City Commission, in the event of default nothing herein shall be construed to limit in any way the power and authority of the City Commission to terminate this Agreement and to demand immediate repayment of the Economic Incentive, including all interest both accrued and deferred.

XII. Effect of Termination.

Except for any obligations that accrue prior to such termination or except as otherwise provided in this Agreement, which obligations shall survive the termination of this Agreement, other rights, responsibilities and liabilities of the parties under this Agreement shall be extinguished upon the applicable date of termination of this Project Agreement.

XIII. Facility Closure Clawback.

Should Participant cease operation of the Project prior to fulfilling their financial obligation to the City of Alamogordo, Participant shall, within ninety (90) days of the cessation of operations, pay to the City, in cash, an amount equal to the outstanding balance left under this agreement. In this event, Participant agrees to immediately submit to a job audit within 30 days of closure and will receive any and all credit to which it is entitled. Any clawbacks not paid when due shall bear interest at the rate of prime plus 2% per annum from the due date until paid.

XIV. No Joint Venture.

It is acknowledged and agreed by the parties that the terms of this Agreement are not intended to and shall not be deemed to create a partnership or joint venture among the parties. Neither party shall have any authority to act on behalf of the other party under any circumstances of this Agreement.

XV. Appropriations.

The performance by the City of any of the terms, covenants, or conditions in this Agreement that the City is obligated to perform shall be subject to the availability of appropriated funds that may be lawfully used for such purpose.

XVI. Miscellaneous Provisions.

A. If any legal action should be necessary for the enforcement of this Project Participation Agreement or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provision of this Agreement, the prevailing party shall be entitled to recover reasonable attorney fees and/or other costs incurred in that action or proceeding in addition to any other relief which the prevailing party may be entitled to under the law.
B. The parties agree that in the event of any dispute, venue for such dispute shall be laid and established in the District court of Otero County, New Mexico and no other.
C. City and Participant will do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement, and to aid and assist each other in carrying out such terms and provisions.

IN WITNESS WHEREOF, the Parties hereto have entered into this Agreement as of this ____ day of ______________, 2021.

CITY OF ALAMOGORDO, NEW MEXICO
a New Mexico municipal corporation

By:___________________________________
Brian Cesar, City Manager

ULTRA HEALTH, LLC

By:__________________________________
Duke Rodriguez, President

ATTEST:

____
Rachel Hughs, City Clerk

APPROVED AS TO FORM:

____
Petria Bengoechea, City Attorney

ORDINANCE NO. 1640

APPROVING THE TRANSFER OF A LOCAL ECONOMIC DEVELOPMENT PROJECT FOR SECURED FINANCIAL ASSISTANCE PROPOSED BY ULTRA HEALTH, LLC

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

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

The City Commission finds as follows:

1. The Company is an entity as defined in NMSA 1978, Section 5-10-3(G);

2. Under the Agreement, the Company will provide a substantive contribution for the proposed project as described in NMSA 1978 Section 5-10-10(B);

3. The Agreement complies with the requirements of the Act and Ordinance No. 983;

4. The benefit of the proposed project to the City of Alamogordo is repayment of the financial assistance through the creation of jobs and other benefits arising from employment and economic activity under the project which exceeds the cost to the City of providing to the Company the assistance specified in the agreement, and,

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

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

PASSED APPROVED AND ADOPTED this ______ day of ___________, 2021.

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: 11/30/2021 **Report Date:** 11/15/2021 **Report No:** 6.

Submitted By: Evelyn Huff

Subject: Consider, and act upon, adoption and final publication of Ordinance 1641 authorizing the issuance and sale of the City's debt obligation to refund the joint utility system. *(Evelyn Huff, Finance Director)* **(Roll Call Vote Required)**

Fiscal Impact:
Amount Budgeted:
Fund:

Additional Fiscal Impact:

Recommendation: Approve Ordinance No. 1641 for adoption and final publication.

Background: This Ordinance came before the City Commission at the Regular Meeting of November 9, 2021 for approval of first publication. The Commission voted 6-0-0 to approve, and it is now before the Commission for adoption and final publication.

Chris Muirhead from Modrall, Sperling, Roehl, Harris & Sisk,PA and John Archuleta from Stifel, Nicolaus & Company, Inc. presented three refunding opportunities for the current City held debt at the 10/26/2021 Commission Meeting. Attached is the Ordinance being presented for refunding of the joint utility system.

CITY OF ALAMOGORDO, NEW MEXICO
ORDINANCE NO. 1641

AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT BY AND BETWEEN THE CITY OF ALAMOGORDO, NEW MEXICO (THE "GOVERNMENTAL UNIT") AND THE NEW MEXICO FINANCE AUTHORITY (THE "FINANCE AUTHORITY"), EVIDENCING A SPECIAL, LIMITED OBLIGATION OF THE GOVERNMENTAL UNIT TO PAY A PRINCIPAL AMOUNT NOT TO EXCEED $6,000,000, TOGETHER WITH INTEREST THEREON, FOR THE PURPOSE OF (1) REFINANCING, PAYING AND DISCHARGING THE GOVERNMENTAL UNIT'S OUTSTANDING JOINT UTILITY SYSTEM REVENUE DEBT ISSUED ON NOVEMBER 18, 2011, (2) FUNDING A LOAN AGREEMENT RESERVE ACCOUNT; AND (3) PAYING EXPENSES; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE LOAN AGREEMENT SOLELY FROM THE NET REVENUES FROM THE GOVERNMENTAL UNIT'S JOINT UTILIITY SYSTEM; APPROVING THE DELEGATION OF AUTHORITY TO MAKE CERTAIN DETERMINATIONS REGARDING THE LOAN AGREEMENT PURSUANT TO THE SUPPLEMENTAL PUBLIC SECURITIES ACT; RATIFYING ACTIONS HERETOFORE TAKEN; APPROVING THE FORMS OF THE LOAN AGREEMENT AND OTHER DETAILS CONCERNING THE LOAN AGREEMENT; REPEALING ALL ACTION INCONSISTENT WITH THIS ORDINANCE; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE LOAN AGREEMENT

Capitalized terms used in the following recitals have the same meaning as defined in Section 1 of this Ordinance unless the context requires otherwise.

WHEREAS, the Governmental Unit is a legally and regularly created, established, organized and existing municipality under the general laws of the State; and

WHEREAS, the Governing Body has determined and hereby determines that the Refunding Project may be financed with amounts borrowed under the Loan Agreement and that it is in the best interest of the Governmental Unit and its residents that the Loan Agreement be executed and delivered and that the financing of the Refunding Project take place by executing and delivering the Loan Agreement; and

WHEREAS, the Governmental Unit may use the Net Revenues to finance the Refunding Project and the Refunding Project will provide for the public health, peace and safety of the Governmental Unit and its residents; and

WHEREAS, The Governmental Unit now owns, operates and maintains water and sewer facilities, which the Governmental Unit hereby declares shall be continued to be operated as a joint public utility; and

WHEREAS, the Governmental Unit has heretofore provided for the imposition of rates and charges against users of the System; and

WHEREAS, the Governing Body has determined that it may lawfully pledge the Net Revenues for the payment of amounts due under the Loan Agreement; and

WHEREAS, except as described in the Term Sheet, the Net Revenues have not heretofore been pledged to secure the payment of any obligation which is currently outstanding; and

WHEREAS, the Loan Agreement shall be a special, limited obligation of the Governmental Unit, payable solely from the Net Revenues and shall not constitute a general obligation of the Governmental Unit, or a debt or pledge of the faith and credit of the Governmental Unit or the State; and

WHEREAS, the Loan Agreement shall be executed and delivered pursuant to the Act, and with an irrevocable first lien, but not necessarily an exclusive first lien, on the Net Revenues; and

WHEREAS, the Governing Body intends by this Ordinance to authorize the execution and delivery of the Loan Agreement in the amount and for the purposes set forth herein; and

WHEREAS, there have been presented to the Governing Body and there presently are on file with the City Clerk this Ordinance and the form of the Loan Agreement, which are incorporated by reference and considered to be a part hereof; and

WHEREAS, the Governing Body hereby determines that the Refunding Project to be financed with the Loan is to be used for governmental purposes of the Governmental Unit and will not be used for purposes which would cause the Loan Agreement to be deemed a "private activity bond" as defined by the Internal Revenue Code of 1986, as amended; and

WHEREAS, the Governmental Unit previously entered into a loan agreement with the New Mexico Finance Authority on November 18, 2011 pursuant to Ordinance No. 1405 adopted on October 11, 2011, in the original aggregate principal amount of $9,812,674, of which there is presently outstanding a principal amount of $5,591,632; and

WHEREAS, the payments due on the 2011 NMFA Loan Agreement are subject to redemption at the option of the Governmental Unit at 100% of the principal amount then outstanding, plus accrued interest to the date of redemption; and

WHEREAS, the Governmental Unit hereby determines that the execution and delivery of the Loan Agreement, under current market conditions, for the purpose of the Refunding Project will result in an over-all reduction of debt service payments to be made by the Governmental Unit from Net Revenues to the benefit of the Governmental Unit, and consequently will provide for the public health, safety and welfare of the Governmental Unit and its residents; and

WHEREAS, pursuant to Sections 6-14-8 through 6-14-12 NMSA 1978, as amended (the "Supplemental Public Securities Act"), the Governing Body is authorized to adopt a Ordinance delegating to one or more of its members, officers, or employees the authority to sign a pricing certificate setting forth the terms of the Loan so long as such terms are within the parameters established by an authorizing ordinance or Ordinance adopted in conformity with the Supplemental Public Securities Act; and

WHEREAS, in order to allow the Governmental Unit flexibility, the Governing Body desires to grant to the Mayor and the City Clerk or any other employee of the Governmental Unit when designated by a certificate signed by the Mayor (collectively, the "Designated Officers"), the authority (a) to determine any or all of the following terms of the Loan: (i) the interest and principal payment dates, (ii) the principal amounts, denominations, and maturity dates, (iii) the sale prices, (iv) the interest rates, (v) the interest payment periods, and (vi) the amount of underwriting discount, if any; and (b) to make any changes with respect thereto from those terms which were before the Governing Body at the time of adoption of this Ordinance, provided such terms do not exceed the parameters set forth for such terms in this Ordinance; and

WHEREAS, the Governmental Unit will approve the specific terms of the Loan and authorize execution of the Loan Agreement in a certification of the Designated Officers pursuant to the terms of this Ordinance as set forth in the Pricing Certificate; and

WHEREAS, all required authorizations, consents and approvals in connection with (i) the use and pledge of the Net Revenues to the Finance Authority (or its assigns) for the payment of amounts due under the Loan Agreement, (ii) the use of the proceeds of the Loan Agreement to finance the Refunding Project, and (iii) the authorization, execution and delivery of the Loan Agreement which are required to have been obtained by the date of this Ordinance, have been obtained or are reasonably expected to be obtained.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF ALAMOGORDO THAT:

Section 1. <u>Definitions</u>. As used in the Ordinance, the following terms shall, for all purposes, have the meanings herein specified, unless the context clearly requires otherwise (such meanings to be equally applicable to both the singular and the plural forms of the terms defined):

"2011 NMFA Loan Agreement" means the Governmental Unit's outstanding loan agreement with the Finance Authority dated November 18, 2011 in the original aggregate par amount of $9,812,674 and presently outstanding in the principal amount of $5,591,632.

"Act" means the general laws of the State, including Sections 3-31-1 through 3-31-12 and Sections 6-21-1 through 6-21-31, NMSA 1978, as amended, and enactments of the Governing Body relating to the Loan Agreement, including this Ordinance.

"Aggregate Annual Debt Service Requirement" means the total principal and interest payments due and payable pursuant to the Loan Agreement and on all Parity Obligations secured by a pledge of any of the Net Revenues for any one Fiscal Year.

"Authorized Officers" means, in the case of the Governmental Unit, the Mayor and Finance Director, and in the case of the Finance Authority the Chairman, Vice-Chairman and Secretary of the Board of Directors and the Chief Executive Officer or any other officer or employee of the Finance Authority designated in writing by an Authorized Officer.

“Bonds” means public project revolving fund revenue bonds, if any, issued hereafter by the Finance Authority to fund or reimburse the Loan Agreement.

“Closing Date” means the date of execution, delivery and funding of the Loan Agreement.

“Code” means the Internal Revenue Code of 1986, as amended, and the applicable regulations thereunder.

“Completion Date” means the date of final payment of the cost of the Refunding Project.

“Expenses” means the cost of issuance of the Loan Agreement and the Bonds, if any, and the periodic and regular fees and expenses incurred by the Finance Authority in administering the Loan Agreement, including legal fees.

“Finance Authority” means the New Mexico Finance Authority.

“Finance Authority Debt Service Account” means the debt service account in the name of the Governmental Unit within the Debt Service Fund as defined in the Indenture held and administered by the Finance Authority to pay principal and interest on the Loan Agreement as the same become due.

“Fiscal Year” means the period commencing on July 1 in each calendar year and ending on the last day of June of the next succeeding calendar year, or any other twelve-month period which any appropriate authority may hereafter establish for the Governmental Unit as its fiscal year.

“Governing Body” means the City Commission of the Governmental Unit, and any future successor governing body of the Governmental Unit.

“Governmental Unit” means the City of Alamogordo, New Mexico.

“Herein,” “hereby,” “hereunder,” “hereof,” “hereinabove” and “hereafter” refer to the entire Ordinance and not solely to the particular section or paragraph of the Ordinance in which such word is used.

“Indenture” means the General Indenture of Trust and Pledge dated as of June 1, 1995, as amended and supplemented, by and between the Finance Authority and the Trustee, as successor trustee, or the Subordinated General Indenture of Trust and Pledge dated as of March 1, 2005, as supplemented, by and between the Finance Authority and the Trustee, as successor trustee, as determined by the Finance Authority pursuant to a Pledge Notification or Supplemental Indenture (as defined in the Indenture).

“Joint Water and Sewer System,” “Joint System,” “System,” or “Utility” means the municipally owned public utility designated as the Governmental Unit's water system and sanitary sewer system (continued as a joint system) consisting of all properties, real, personal, mixed or otherwise, now owned or hereafter acquired by the Governmental Unity through purchase, construction or otherwise, and used in connection with said water system and sanitary sewer system of the Governmental Unit and in any way appertaining thereto, whether situated within or without the limits of the Governmental Unit.

“Loan” means the funds in the Loan Agreement Principal Amount to be loaned to the Governmental Unit by the Finance Authority pursuant to the Loan Agreement.

“Loan Agreement” means the Loan Agreement dated the Closing Date between the Finance Authority and the Governmental Unit which provides for the financing of the Refunding Project and requires payments by or on behalf of the Governmental Unit to the Finance Authority and/or the Trustee and any amendments or supplements thereto, and including the exhibits attached to the Loan Agreement.

“Loan Agreement Principal Amount” means the original principal amount of the Loan Agreement as shown on the Term Sheet and approved in the Pricing Certificate.

“Loan Agreement Reserve Account” means the loan agreement reserve account in the name of the Governmental Unit established under the Indenture, funded from the proceeds of the Loan Agreement, and administered by the Trustee pursuant to the Indenture.

“Loan Agreement Reserve Requirement” means, with respect to the Loan, the amount shown as the Loan Agreement Reserve Account Deposit on the Term Sheet, which amount shall not to exceed the least of (i) ten percent (10%) of the Loan Agreement Principal Amount, (ii) 125% of the average annual principal and interest requirements under the Loan Agreement, or (iii) the maximum annual principal and interest requirements under the Loan Agreement.

“Net Revenues” means the revenues of the System after deducting Operation and Maintenance Expenses of the System that are pledged to payment of the Loan Agreement Payments pursuant to the Ordinance and described on the Term Sheet.

“NMSA 1978” means the New Mexico Statutes Annotated, 1978 compilation, as amended and supplemented.

“Operation and Maintenance Expenses” (or a phrase of similar import) means all reasonable and necessary current expenses of the Governmental Unit, paid or accrued, of operating, maintaining and repairing the System, and shall include, without limiting the generality of the foregoing, legal and overhead expense of the various Governmental Unit departments directly related and reasonably allocable to the administration of the System, insurance premiums, the reasonable charges of depositary banks and paying agents, contractual services, professional services required by this ordinance, salaries and administrative expenses, labor, the cost of materials and supplies used for current operation, but shall not include any allowance for depreciation, liabilities incurred by the Governmental Unit as the result of its negligence in the operation of the System, extensions, enlargements or betterments, or any charges for the accumulation of reserves for capital replacements.

“Ordinance” means this Ordinance as adopted by the Governing Body on November 30, 2021, approving the Loan Agreement and pledging the Net Revenues to the payment of the Loan Agreement, as amended from time to time.

“Parity Obligations” means the Loan Agreement and any other obligations, now outstanding or hereafter issued or incurred, payable from or secured by a lien or pledge of the Net Revenues and issued with a lien on the Net Revenues on parity with the Loan Agreement, including those obligations described on the Term Sheet, if any.

"Pricing Certificate" means one or more certificates executed by the Mayor or Finance Director, pursuant to and as authorized by Section 6-14-10.2, NMSA 1978, setting forth the final terms of the Loan.

"Program Account" means the account in the name of the Governmental Unit established pursuant to the Indenture and held by the Trustee for the deposit of the net proceeds of the Loan Agreement for disbursal to the Governmental Unit for payment of the costs of the Refunding Project.

"Refunding Project" means refunding, paying and discharging the Governmental Unit's outstanding 2011 NMFA Loan Agreement maturing on and after November 18, 2021, on the date of execution and delivery of the Loan Agreement.

"Revenues" or "gross revenues" from the System means all income and revenues derived by the Governmental Unit from the operation of the System, or any part thereof, whether resulting from extensions, enlargements or betterments to the System, or otherwise, and includes all revenues received by the Governmental Unit or any municipal corporation succeeding to the rights of the Governmental Unit from the System and from the sale and use of water, water service and facilities, sanitary sewer service and facilities, or any combination thereof to the inhabitants of the Governmental Unit (including all territorial annexations which may be made while the Loan Agreement is outstanding), or from the sale and use of water, water service and facilities, sanitary sewer service and sewer facilities, and facilities or any combination thereof, by means of the System owned and operated by the Governmental Unit as the same may at any time exist to serve customers outside the Governmental Unit limits as well as customers within the Governmental Unit limits, and also means income derived from the investment of any money in any of the funds established herein or contained herein (but excluding such income from investments in the Rebate Fund) even though such investment income is to be credited to the particular fund from which such investment is made.

"State" means the State of New Mexico.

"Term Sheet" means Exhibit "A" to the Loan Agreement.

"Trustee" means BOKF, NA, Albuquerque, New Mexico, or any successor trust company, national or state banking association or financial institution at the time appointed the Trustee by the Finance Authority.

Section 2. Ratification. All action heretofore taken (not inconsistent with the provisions of this Ordinance) by the Governing Body and officers of the Governmental Unit directed toward the Refunding Project and the execution and delivery of the Loan Agreement be, and the same hereby are, ratified, approved and confirmed.

Section 3. Authorization of the Refunding Project and the Loan Agreement. The Refunding Project and the method of financing the Refunding Project through execution and delivery of the Loan Agreement are hereby authorized and ordered. The Refunding Project is for the benefit of the Governmental Unit.

Section 4. Findings. The Governmental Unit hereby declares that it has considered all relevant information and data and hereby makes the following findings:

A. The Refunding Project is needed to meet the needs of the Governmental Unit and its residents and the execution and delivery of the Loan Agreement is necessary and advisable.

B. Moneys available and on hand for the Refunding Project from all sources other than the Loan are not sufficient to defray the cost of the Refunding Project.

C. The Net Revenues may lawfully be pledged to secure the payment of amounts due under the Loan Agreement.

D. It is economically feasible to defray, in whole or in part, the costs of the Refunding Project by the execution and delivery of the Loan Agreement.

E. The Refunding Project and the execution and delivery of the Loan Agreement pursuant to the Act to provide funds for the financing of the Refunding Project are necessary and in the interest of the public health, safety, and welfare of the residents of the Governmental Unit.

F. The Governmental Unit will complete the Refunding Project, in whole or in part, with the net proceeds of the Loan.

G. Other than as described in the Term Sheet, the Governmental Unit does not have any outstanding obligations payable from Net Revenues which it has incurred or will incur prior to the initial execution and delivery of the Loan Agreement.

H. The net effective interest rate on the Loan shall not exceed twelve percent (12.0%) per annum, which is the maximum rate permitted by State law.

I. The Refunding Project will result in debt service savings for the Governmental Unit in the amount of at least 3% present value savings.

Section 5. Loan Agreement - Authorization and Detail.

A. Authorization. This Ordinance has been adopted by the affirmative vote of a majority of all of the members of the Governing Body. For the purpose of protecting the public health, conserving the property, protecting the general welfare and prosperity of the residents of the Governmental Unit and completing the Refunding Project, it is hereby declared necessary that the Governmental Unit, pursuant to the Act, execute and deliver the Loan Agreement evidencing a special, limited obligation of the Governmental Unit to pay a principal amount not to exceed $6,000,000, plus interest, and the execution and delivery of the Loan Agreement are hereby authorized. The Governmental Unit shall use the proceeds of the Loan to (i) finance the Refunding Project, (ii) fund the Loan Agreement Reserve Account, and (iii) pay Expenses.

B. Detail. The Loan Agreement shall be in substantially the form presented at the meeting of the Governing Body at which this Ordinance was adopted. The Loan shall be in an aggregate principal amount not to exceed $6,000,000, shall be payable in installments of principal due on May 1 of the years designated in Exhibit "B" to the Loan Agreement and bear interest payable on May 1 and November 1 of each year, commencing on May 1, 2022 at the rates designated in Exhibit "B" to the Loan Agreement, all as approved in the Pricing Certificate. The

Loan shall be placed in a private sale at par and shall have a maximum term of 10 years. The underwriter's discount for the Loan shall not exceed 2% of the par amount of the Loan.

Section 6. Approval of Loan Agreement. The form of the Loan Agreement as presented at the meeting of the Governing Body at which this Ordinance was adopted is hereby approved. Authorized Officers are hereby individually authorized to execute, acknowledge and deliver the Loan Agreement with such changes, insertions and omissions as are consistent with this Ordinance and as may be approved by such individual Authorized Officers, and the City Clerk is hereby authorized to affix the seal of the Governmental Unit on the Loan Agreement and attest the same. The execution of the Loan Agreement by an Authorized Officer shall be conclusive evidence of such approval.

Section 7. Special Limited Obligation. The Loan Agreement shall be secured by the pledge of the Net Revenues as set forth in the Loan Agreement and this Ordinance and shall be payable solely from the Net Revenues. The Loan Agreement, together with interest thereon and other obligations of the Governmental Unit thereunder, shall be a special, limited obligation of the Governmental Unit, payable solely from the Net Revenues as provided in this Ordinance and the Loan Agreement and shall not constitute a general obligation of the Governmental Unit or the State, and the holders of the Loan Agreement may not look to any general or other fund of the Governmental Unit for payment of the obligations thereunder. Nothing contained in this Ordinance or in the Loan Agreement, or any other instruments, shall be construed as obligating the Governmental Unit (except with respect to the application of the Net Revenues), as incurring a pecuniary liability or a charge upon the general credit of the Governmental Unit or against its taxing power, nor shall a breach of any agreement contained in this Ordinance, the Loan Agreement, or any other instrument impose any pecuniary liability upon the Governmental Unit or any charge upon its general credit or against its taxing power. The Loan Agreement shall never constitute an indebtedness of the Governmental Unit within the meaning of any State constitutional provision or statutory limitation and shall never constitute or give rise to a pecuniary liability of the Governmental Unit or a charge against its general credit or taxing power. Nothing herein shall prevent the Governmental Unit from applying other funds of the Governmental Unit legally available therefor to payments required by the Loan Agreement, in its sole and absolute discretion.

Section 8. Disposition of Proceeds: Completion of the Refunding Project.

A. Program Account, Finance Authority Debt Service Account and Loan Agreement Reserve Account. The Governmental Unit hereby consents to creation of the Finance Authority Debt Service Account to be held and maintained by the Finance Authority and to the Program Account and Loan Agreement Reserve Account to be held and maintained by the Trustee pursuant to the Indenture, each in connection with the Loan. The Governmental Unit hereby approves: (i) the deposit of a portion of the proceeds of the Loan Agreement in the Program Account as set forth in the Term Sheet; (ii) the deposit of funds in the amount of the Loan Agreement Reserve Requirement in the Loan Agreement Reserve Account as set forth in the Term Sheet; and (iii) the payment of Expenses, all as set forth in the Term Sheet.

The proceeds derived from the execution and delivery of the Loan Agreement shall be deposited promptly upon the receipt thereof in the Program Account, Finance Authority Debt Service Account and Loan Agreement Reserve Account, all as provided in the Loan Agreement and the Indenture.

The money in the Program Account shall be used and paid out solely for the purpose of completing the Refunding Project in compliance with applicable law and the provisions of the Loan Agreement and the Indenture.

The Governmental Unit will complete the Refunding Project with all due diligence.

B. Completion of the Refunding Project. Upon the Completion Date, the Governmental Unit shall execute and send to the Finance Authority a certificate stating that payment for the Refunding Project has been completed. As soon as practicable after the Completion Date, and, in any event, not more than sixty (60) days from the Completion Date, any balance remaining in the Program Account shall be transferred and deposited into the Finance Authority Debt Service Account, as provided in the Loan Agreement and the Indenture.

C. Finance Authority and Trustee Not Responsible. The Finance Authority and the Trustee shall in no manner be responsible for the application or disposal by the Governmental Unit or by its officers of the funds derived from the Loan Agreement or of any other funds herein designated.

Section 9. Deposit of Net Revenues, Distributions of the Net Revenues and Flow of Funds.

A. Deposit of Net Revenues. Net Revenues shall be paid directly by the Governmental Unit to the Finance Authority for deposit in the Finance Authority Debt Service Account and remittance to the Trustee in an amount sufficient to pay principal, interest, premium, if any, and other amounts due under the Loan Agreement, including sufficient Net Revenues in the Loan Agreement Reserve Account to maintain the Loan Agreement Reserve Requirement.

B. Termination on Deposits to Maturity. No payment shall be made into the Finance Authority Debt Service Account if the amounts in the Finance Authority Debt Service Account and Loan Agreement Reserve Account total a sum at least equal to the entire aggregate amount to become due as to principal and interest on, and any other amounts due under, the Loan Agreement in which case moneys in such accounts in an amount at least equal to such principal and interest requirements shall be used solely to pay such obligations as the same become due, and any moneys in excess thereof in such accounts shall be transferred to the Governmental Unit and used as provided below.

C. Use of Surplus Revenues. After making all the payments hereinabove required to be made by this Section, any moneys remaining in the Finance Authority Debt Service Account shall be transferred to the Governmental Unit on a timely basis and shall be applied to any other lawful purpose, including, but not limited to, the payment of any Parity Obligations or bonds or obligations subordinate and junior to the Loan Agreement, or other purposes authorized by the Governmental Unit, the Constitution and laws of the State, as the Governmental Unit may from time to time determine.

Section 10. Lien on Net Revenues. Pursuant to this Ordinance and the Loan Agreement, the Net Revenues are hereby authorized to be pledged to, and are hereby pledged, and the Governmental Unit grants a security interest therein for, the payment of the principal, interest, and any other amounts due under the Loan Agreement subject to the uses thereof permitted by and the priorities set forth in this Ordinance. The Loan Agreement constitutes an irrevocable and first lien, but not necessarily an exclusive first lien, on the Net Revenues with the lien thereon of the Parity Obligations as set forth herein and in the Loan Agreement. The Governmental Unit shall not create a lien on the Net Revenues superior to that of the Loan Agreement.

Section 11. Authorized Officers; Delegation. Authorized Officers are hereby individually authorized and directed to execute and deliver any and all papers, instruments, opinions, affidavits and other documents and to do and cause to be done any and all acts and things necessary or proper for carrying out this Ordinance, the Loan Agreement, and all other transactions contemplated hereby and thereby. Authorized Officers are hereby individually authorized to do all acts and things required of them by this Ordinance and the Loan Agreement for the full, punctual and complete performance of all the terms, covenants and agreements contained in this Ordinance and the Loan Agreement, including but not limited to, the execution and delivery of closing documents in connection with the execution and delivery of the Loan Agreement, and the publication of the summary of this Ordinance set out in Section 17 of this Ordinance (with such changes, additions and deletions as may be necessary).

Pursuant to the Supplemental Public Securities Act, Section 6-14-8 et seq., NMSA 1978, the Mayor and Finance Director are each hereby delegated authority to accept and to determine any or all of the final terms of the Loan Agreement and to execute the Pricing Certificate, subject to the parameters and conditions contained in this Ordinance. The Mayor or the Finance Director shall present the Pricing Certificate and the final terms of the Loan Agreement to the Governing Body in a timely manner, before or after execution and delivery of the Loan Agreement, at a regularly scheduled public meeting of the Governing Body.

Section 12. Amendment of Ordinance. Prior to the date of the initial delivery of the Loan Agreement to the Finance Authority, the provisions of this Ordinance may be supplemented or amended by ordinance or resolution of the Governing Body with respect to any changes which are not inconsistent with the substantive provisions of this Ordinance. This Ordinance may be amended by ordinance of the Governing Body without receipt by the Governmental Unit of any additional consideration, but only with the prior written consent of the Finance Authority.

Section 13. Ordinance Irrepealable. After the Loan Agreement has been executed and delivered, this Ordinance shall be and remain irrepealable until all obligations due under the Loan Agreement shall be fully paid, canceled and discharged, as provided therein.

Section 14. Severability Clause. If any section, paragraph, clause or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

Section 15. Repealer Clause. All bylaws, orders, resolutions and ordinances, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any bylaw, order, resolution or ordinance, or part thereof, heretofore repealed.

Section 16. Effective Date. Upon due adoption of this Ordinance, it shall be recorded in the book of the Governmental Unit kept for that purpose, authenticated by the signatures of the

Mayor and the City Clerk of the Governmental Unit, and the title and general summary of the subject matter contained in this Ordinance (set out in Section 17 below) shall be published in a newspaper which is of general circulation in the Governmental Unit, or posted in accordance with law, and such Ordinance shall be in full force and effect thereafter, in accordance with law.

Section 17. General Summary for Publication. Pursuant to the general laws of the State, the title and a general summary of the subject matter contained in this Ordinance shall be published in substantially the following form:

(Form of Summary of Ordinance for Publication)

City of Alamogordo, New Mexico
Notice of Adoption of Ordinance

Notice is hereby given of the title and of a general summary of the subject matter contained in Ordinance No. __________ duly adopted and approved by the City Commission of the City of Alamogordo, New Mexico, on November 30, 2021. A complete copy of the Ordinance is available for public inspection during the normal and regular business hours of the City Clerk, 1376 East Ninth Street, Alamogordo, New Mexico.

CITY OF ALAMOGORDO, NEW MEXICO
ORDINANCE NO. __________

AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT BY AND BETWEEN THE CITY OF ALAMOGORDO, NEW MEXICO (THE "GOVERNMENTAL UNIT") AND THE NEW MEXICO FINANCE AUTHORITY (THE "FINANCE AUTHORITY"), EVIDENCING A SPECIAL, LIMITED OBLIGATION OF THE GOVERNMENTAL UNIT TO PAY A PRINCIPAL AMOUNT NOT TO EXCEED $6,000,000, TOGETHER WITH INTEREST THEREON, FOR THE PURPOSE OF (1) REFINANCING, PAYING AND DISCHARGING THE GOVERNMENTAL UNIT'S OUTSTANDING JOINT UTILITY SYSTEM REVENUE DEBT ISSUED ON NOVEMBER 18, 2011, (2) FUNDING A LOAN AGREEMENT RESERVE ACCOUNT; AND (3) PAYING EXPENSES; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE LOAN AGREEMENT SOLELY FROM THE NET REVENUES FROM THE GOVERNMENTAL UNIT'S JOINT UTILIITY SYSTEM; APPROVING THE DELEGATION OF AUTHORITY TO MAKE CERTAIN DETERMINATIONS REGARDING THE LOAN AGREEMENT PURSUANT TO THE SUPPLEMENTAL PUBLIC SECURITIES ACT; RATIFYING ACTIONS HERETOFORE TAKEN; APPROVING THE FORMS OF THE LOAN AGREEMENT AND OTHER DETAILS CONCERNING THE LOAN AGREEMENT; REPEALING ALL ACTION INCONSISTENT WITH THIS ORDINANCE; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE LOAN AGREEMENT

(End of Form of Summary for Publication)

PASSED, APPROVED AND ADOPTED THIS 30th DAY OF NOVEMBER, 2021.

CITY OF ALAMOGORDO, NEW MEXICO

ATTEST:

____

Mayor

____

City Clerk

AGENDA REPORT
CITY OF ALAMOGORDO
CITY COMMISSION

Meeting Date: 11/30/2021 **Report Date:** 11/15/2021 **Report No:** 7.

Submitted By: Evelyn Huff

Subject: Consider, and act upon, adoption and final publication of Ordinance 1642 authorizing the issuance and sale of the City's debt obligation to refund the revenue debt issued on December 23, 2011. *(Evelyn Huff, Finance Director)* **(Roll Call Vote Required)**

Fiscal Impact:
Amount Budgeted:
Fund:

Additional Fiscal Impact:

Recommendation: Approve Ordinance No. 1642 for adoption and final publication.

Background: This Ordinance came before the City Commission at the Regular Meeting of November 9, 2021 for approval of first publication. The Commission voted 6-0-0 to approve, and it is now before the Commission for adoption and final publication.

Chris Muirhead from Modrall, Sperling, Roehl, Harris & Sisk,PA and John Archuleta from Stifel, Nicolaus & Company, Inc. presented three refunding opportunities for the current City held debt at the 10/26/2021 Commission Meeting. Attached is the Ordinance being presented for refunding of the revenue debt issued on December 23, 2011.

CITY OF ALAMOGORDO, NEW MEXICO
ORDINANCE NO. 1642

AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT AND INTERCEPT AGREEMENT BY AND BETWEEN THE CITY OF ALAMOGORDO, NEW MEXICO (THE “GOVERNMENTAL UNIT”) AND THE NEW MEXICO FINANCE AUTHORITY (THE “FINANCE AUTHORITY”), EVIDENCING A SPECIAL, LIMITED OBLIGATION OF THE GOVERNMENTAL UNIT TO PAY A PRINCIPAL AMOUNT OF UP TO $4,750,000, TOGETHER WITH INTEREST THEREON, FOR THE PURPOSE OF FINANCING THE COST OF REFUNDING, PAYING AND DISCHARGING THE GOVERNMENTAL UNIT’S OUTSTANDING GROSS RECEIPTS TAX IMPROVEMENT REVENUE DEBT ISSUED ON DECEMBER 23, 2011; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL AND INTEREST DUE UNDER THE LOAN AGREEMENT SOLELY FROM THE DISTRIBUTIONS OF THE REVENUES RECEIVED BY THE GOVERNMENTAL UNIT PURSUANT TO SECTION 7-1-6.4, NMSA 1978 (THE “STATE-SHARED GROSS RECEIPTS TAX”); PROVIDING FOR THE DISTRIBUTIONS OF THE REVENUES OF THE STATE-SHARED GROSS RECEIPTS TAX FROM THE STATE TAXATION AND REVENUE DEPARTMENT TO BE REDIRECTED TO THE FINANCE AUTHORITY OR ITS ASSIGNS PURSUANT TO THE INTERCEPT AGREEMENT FOR THE PAYMENT OF PRINCIPAL AND INTEREST DUE ON THE LOAN AGREEMENT; DELEGATING AUTHORITY TO MAKE CERTAIN DETERMINATIONS CONCERNING THE TERMS OF THE LOAN AGREEMENT AND THE INTERCEPT AGREEMENT; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS ORDINANCE; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE LOAN AGREEMENT AND THE INTERCEPT AGREEMENT.

Capitalized terms used in the following recitals have the same meaning as defined in Section 1 of this Ordinance unless the context requires otherwise.

WHEREAS, the Governmental Unit is a legally and regularly created, established, organized and existing municipality under the general laws of the State; and

WHEREAS, the Governing Body has determined and hereby determines that the Refunding Project may be financed with amounts borrowed under the Loan Agreement and that it is in the best interest of the Governmental Unit and its residents that the Loan Agreement and Intercept Agreement be executed and delivered and that the financing of the Refunding Project take place by executing and delivering the Loan Agreement; and

WHEREAS, the Governmental Unit may use the Pledged Revenues to finance the Refunding Project and the Refunding Project will provide for the public health, peace and safety of the Governmental Unit and its citizens; and

WHEREAS, pursuant to Section 7-1-6.4 NMSA 1978, as amended, the Governmental Unit now receives monthly from the Distributing State Agency from the gross receipts tax imposed on any person engaging in business in New Mexico, a distribution of the gross receipts tax which is to be in an amount, subject to any increase or decrease made pursuant to Section 7-1-6.15 NMSA, 1978, equal to the product of the quotient of 1.225% divided by the tax rate imposed by Section 7-9-4 NMSA, 1978 (currently 5.125%), times the net receipts (i.e., the total gross receipts tax from business locations within the Governmental Unit and other places designated in Section 7-1-6.4, NMSA 1978), which provides for the Pledged Revenues; and

WHEREAS, the Governing Body has determined that it may lawfully pledge the Pledged Revenues for the payment of amounts due under the Loan Agreement; and

WHEREAS, except as described in the Term Sheet, the Pledged Revenues have not heretofore been pledged to secure the payment of any obligation which is currently outstanding; and

WHEREAS, the Loan Agreement shall be a special, limited obligation of the Governmental Unit, payable solely from the Pledged Revenues and shall not constitute a general obligation of the Governmental Unit, or a debt or pledge of the faith and credit of the Governmental Unit or the State; and

WHEREAS, the Governmental Unit desires to provide that distributions of the Pledged Revenues be redirected to the Finance Authority or its assigns pursuant to the Intercept Agreement between the Governmental Unit and the Finance Authority (the "Intercept Agreement") for the payment of amounts due under the Loan Agreement; and

WHEREAS, the Loan Agreement shall be executed and delivered pursuant to Sections 3-31-1 through 3-31-12, NMSA 1978, as amended, and with an irrevocable first lien, but not necessarily an exclusive first lien, on the Pledged Revenues; and

WHEREAS, the Governing Body intends by this Ordinance to authorize the execution and delivery of the Loan Agreement in the amounts and for the purposes set forth herein; and

WHEREAS, there have been presented to the Governing Body and there presently are on file with the City Clerk this Ordinance and the forms of the Loan Agreement and Intercept Agreement, which are incorporated by reference and considered to be a part hereof; and

WHEREAS, the Governing Body hereby determines that the Refunding Project to be financed with the Loan is to be used for governmental purposes of the Governmental Unit and will not be used for purposes which would cause the Loan Agreement to be deemed a "private activity bond" as defined by the Internal Revenue Code of 1986, as amended; and

WHEREAS, the Governmental Unit previously entered into a loan agreement with the New Mexico Finance Authority on December 23, 2011 pursuant to Ordinance No. 1410 adopted on November 15, 2011, in the original aggregate principal amount of $7,640,000, of which there is presently outstanding a principal amount of $4,385,000; and

WHEREAS, the payments due on the 2011 NMFA Loan Agreement are subject to redemption at the option of the Governmental Unit at 100% of the principal amount then outstanding, plus accrued interest to the date of redemption; and

WHEREAS, all required authorizations, consents and approvals in connection with (i) the use and pledge of the Pledged Revenues to the Finance Authority (or its assigns) for the payment of amounts due under the Loan Agreement, (ii) the use of the proceeds of the Loan Agreement to finance the Refunding Project, and (iii) the authorization, execution and delivery of the Loan Agreement and Intercept Agreement which are required to have been obtained by the date of this Ordinance, have been obtained or are reasonably expected to be obtained.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF ALAMOGORDO THAT:

Section 1. Definitions. As used in the Ordinance, the following terms shall, for all purposes, have the meanings herein specified, unless the context clearly requires otherwise (such meanings to be equally applicable to both the singular and the plural forms of the terms defined):

"2011 NMFA Loan Agreement" means the Governmental Unit's outstanding loan agreement with the Finance Authority dated December 23, 2011 in the original aggregate par amount of $7,640,000 and presently outstanding in the principal amount of $4,385,000.

"Act" means the general laws of the State, including Sections 3-31-1 through 3-31-12, NMSA 1978, as amended, Sections 6-21-1 through 6-21-31, NMSA 1978, as amended and Sections 7-1-6.4, 7-1-6.15 and 7-9-4, NMSA 1978, as amended, and enactments of the Governing Body relating to the Loan Agreement and the Intercept Agreement, including this Ordinance.

"Aggregate Annual Debt Service Requirement" means the total principal and interest payments due and payable pursuant to the Loan Agreement and on all Parity Obligations secured by a pledge of any of the Pledged Revenues for any one Fiscal Year.

"Authorized Officers" means, in the case of the Governmental Unit, the Mayor and Finance Director, and in the case of the Finance Authority the Chairman, Vice-Chairman and Secretary of the Board of Directors and the Chief Executive Officer or any other officer or employee of the Finance Authority designated in writing by an Authorized Officer.

"Bonds" means public Refunding Project revolving fund revenue bonds, if any, issued hereafter by the Finance Authority to fund or reimburse the Loan Agreement.

"Closing Date" means the date of execution, delivery and funding of the Loan Agreement.

"Code" means the Internal Revenue Code of 1986, as amended, and the applicable regulations thereunder.

"Completion Date" means the date of final payment of the cost of the Refunding Project.

"Distributing State Agency" means the department or agency of the State, as described on the Term Sheet, authorized to distribute the Pledged Revenues on behalf of the Governmental Unit.

“Expenses” means the cost of execution of the Loan Agreement and the costs of issuance of the Bonds, if any, and the periodic and regular fees and expenses incurred by the Finance Authority and the Trustee in administering the Loan Agreement, including legal fees.

“Finance Authority” means the New Mexico Finance Authority.

“Finance Authority Debt Service Account” means the debt service account in the name of the Governmental Unit established under the Indenture and held by the Finance Authority to pay principal and interest on the Loan Agreement as the same become due.

“Fiscal Year” means the period commencing on July 1 in each calendar year and ending on the last day of June of the next succeeding calendar year, or any other twelve-month period which any appropriate authority may hereafter establish for the Governmental Unit as its fiscal year.

“Governing Body” means the City Commission of the Governmental Unit, or any future successor governing body of the Governmental Unit.

“Governmental Unit” means the City of Alamogordo, New Mexico.

“Herein,” “hereby,” “hereunder,” “hereof,” “hereinabove” and “hereafter” refer to the entire Ordinance and not solely to the particular section or paragraph of the Ordinance in which such word is used.

“Indenture” means the General Indenture of Trust and Pledge dated as of June 1, 1995, as amended and supplemented, by and between the Finance Authority and the Trustee, or the Subordinated General Indenture of Trust and Pledge dated as of March 1, 2005, as supplemented, by and between the Finance Authority and the Trustee, as determined by the Finance Authority pursuant to a Pledge Notification or Supplemental Indenture (as defined in the Indenture).

“Intercept Agreement” means the Intercept Agreement dated the Closing Date between the Governmental Unit and Finance Authority providing for the direct payment by the Distributing State Agency to the Finance Authority of Pledged Revenues in amounts sufficient to pay principal and interest due on the Loan Agreement, and any amendments or supplements to the Intercept Agreement.

“Loan” means the funds to be loaned to the Governmental Unit by the Finance Authority pursuant to the Loan Agreement.

“Loan Agreement” means the Loan Agreement dated the Closing Date between the Finance Authority and the Governmental Unit which provide for the financing of the Refunding Project and require payments by or on behalf of the Governmental Unit to the Finance Authority and/or the Trustee and any amendments or supplements thereto, and including the exhibits attached to the Loan Agreement.

“Loan Agreement Principal Amount” means the original principal amount of the Loan Agreement as shown on the Term Sheet.

"Loan Agreement Reserve Account" means the loan agreement reserve account established in the name of the Governmental Unit under the Indenture for the Loan funded by the Governmental Unit pursuant to the terms of the Loan Agreement and administered by the Trustee pursuant to the Indenture. The Loan Agreement Reserve Account is to be funded only upon the circumstances provides in Section 5.2(c) of the Loan Agreement.

"Loan Agreement Reserve Requirement" means the amount shown as the Loan Agreement Reserve Account deposit on the Term Sheet which amount does not exceed the least of: (i) ten percent (10%) of the Loan Agreement Principal Amount; (ii) one hundred twenty-five percent (125%) of the average annual principal and interest requirements for each Loan under the Loan Agreement; or (iii) the maximum annual principal and interest requirements for each Loan under the Loan Agreement. The Loan Agreement Reserve Requirement, if any, shall be calculated every year on or about June 1.

"NMSA 1978" means the New Mexico Statutes Annotated, 1978 compilation, as amended and supplemented.

"Ordinance" means this Ordinance No. __________ as adopted by the Governing Body on November 30, 2021, approving the Loan Agreement and pledging the Pledged Revenues to the payment of the Loan Agreement, as amended from time to time.

"Parity Obligations" means the Loan Agreement and any other obligations, now or hereafter issued or incurred, payable from or secured by a lien or pledge of the Pledged Revenues and issued with a lien on the Pledged Revenues on parity with the Loan Agreement, including those obligations described on the Term Sheet, if any.

"Pledged Revenues" means the revenues from the State gross receipts tax derived pursuant to Section 7-9-4, NMSA 1978, imposed on persons engaging in business in the State, which revenues are remitted monthly by the Distributing State Agency to the Governmental Unit as authorized by Sections 7-1-6.1 and 7-1-6.4, NMSA 1978, and which remittances as of the date of adoption of this Ordinance are equal to one and two hundred twenty-five thousandths percent (1.225%) of the taxable gross receipts reported to the Governmental Unit for the month for which such remittance is made; provided that if a greater amount of such gross receipts tax revenues are hereafter provided to be remitted to the Governmental Unit under applicable law, such additional amounts shall be included as revenues pledged pursuant to the Ordinance; and provided further that the amount of revenues pledged pursuant to the Ordinance shall never be less than the greater of: (i) 1.225% of the taxable gross receipts remitted to the Governmental Unit as set forth above, or (ii) the maximum amount at any time provided hereinafter to be remitted to the Governmental Unit under applicable law; and provided further, the Governmental Unit intends that Section 3-31-6(C) NMSA 1978 applies expressly to the amount of revenues pledged pursuant to this Ordinance.

"Pricing Certificate" means one or more certificates executed by the Mayor or Finance Director, pursuant to and as authorized by Section 6-14-10.2, NMSA 1978, setting forth the final terms of the Loan.

"Program Account" means the account in the name of the Governmental Unit established pursuant to the Indenture and held by the Trustee for the deposit of the net proceeds of the Loan

Agreement for disbursal to the Governmental Unit for payment of the costs of the Refunding Project.

"Refunding Project" means refunding, paying and discharging the Governmental Unit's outstanding 2011 NMFA Loan Agreement maturing on and after December 23, 2021, on the date of execution and delivery of the Loan Agreement.

"State" means the State of New Mexico.

"Term Sheet" mean Exhibit "A" to each Loan Agreement.

"Trustee" means BOKF, NA, or any successor trustee company, national or state banking association or financial institution at the time appointed Trustee by the Finance Authority.

Section 2. Ratification. All action heretofore taken (not inconsistent with the provisions of this Ordinance) by the Governing Body and officers of the Governmental Unit directed toward the Refunding Project and the execution and delivery of the Loan Agreement and the Intercept Agreement be, and the same hereby are, ratified, approved and confirmed.

Section 3. Authorization of the Refunding Project, the Loan Agreement, and the Intercept Agreement. The Refunding Project and the method of financing the Refunding Project through execution and delivery of the Loan Agreement and the Intercept Agreement are hereby authorized and ordered. The Refunding Project is for the benefit of the Governmental Unit.

Section 4. Findings. The Governmental Unit hereby declares that it has considered all relevant information and data and hereby makes the following findings:

A. The Refunding Project is needed to meet the needs of the Governmental Unit and its residents and the issuance, execution and delivery of the Loan Agreement is necessary and advisable.

B. Moneys available and on hand for the Refunding Project from all sources other than the Loan are not sufficient to defray the cost of the Refunding Project.

C. The Pledged Revenues may lawfully be pledged to secure the payment of amounts due under the Loan Agreement.

D. It is economically feasible to defray, in whole or in part, the costs of the Refunding Project by the execution and delivery of the Loan Agreement.

E. The Refunding Project and the execution and delivery of the Loan Agreement and the Intercept Agreement pursuant to the Act to provide funds for the financing of the Refunding Project are necessary and in the interest of the public health, safety, and welfare of the residents of the Governmental Unit.

F. The Governmental Unit will finance the Refunding Project, in whole or in part, with the net proceeds of the Loan.

G. Other than as described in the Term Sheet, the Governmental Unit does not have any outstanding obligations payable from Pledged Revenues which it has incurred or will incur prior to the initial execution and delivery of the Loan Agreement and the Intercept Agreement.

H. The net effective interest rate on the Loan shall not exceed twelve percent (12.0%) per annum, which is the maximum rate permitted by State law.

Section 5. Loan Agreement and Intercept Agreement - Authorization and Detail.

A. Authorization. This Ordinance has been adopted by the affirmative vote of a majority of all of the members of the Governing Body. For the purpose of protecting the public health, conserving the property, protecting the general welfare and prosperity of the residents of the Governmental Unit and completing the Refunding Project, it is hereby declared necessary that the Governmental Unit, pursuant to the Act, execute and deliver the Loan Agreement and the Intercept Agreement evidencing special, limited obligation of the Governmental Unit to pay a combined principal amount of up to $4,750,000, plus interest, and the execution and delivery of the Loan Agreement and the Intercept Agreement are hereby authorized. The Governmental Unit shall use the proceeds of the Loan to (i) finance the Refunding Project, (ii) make a deposit to the Finance Authority Debt Service Account, and (iii) pay Expenses.

B. Detail. The Loan Agreement and Intercept Agreement shall be in substantially the forms presented at the meeting of the Governing Body at which this Ordinance was adopted. The Loan shall be in the aggregate principal amount of up to $4,750,000, shall be payable in installments of principal due on the dates designated in Exhibit "B" to the Loan Agreement and bear interest payable on the dates and at the rates designated in Exhibit "B" to the Loan Agreement, all as approved by the Pricing Certificate. The Loan shall be placed in a private sale at par and shall have a maximum term of ten years. The underwriter's discount for the Loan shall not exceed 2% of the par amount of the Loan.

Section 6. Approval of Loan Agreement and Intercept Agreement. The forms of the Loan Agreement and the Intercept Agreement as presented at the meeting of the Governing Body at which this Ordinance was adopted are hereby approved. Authorized Officers are hereby individually authorized to execute, acknowledge and deliver the Loan Agreement and the Intercept Agreement with such changes, insertions and omissions as are consistent with this Ordinance and as may be approved by such individual Authorized Officers, and the City Clerk is hereby authorized to affix the seal of the Governmental Unit on the Loan Agreement and the Intercept Agreement and attest the same. The execution of the Loan Agreement and the Intercept Agreement by an Authorized Officer shall be conclusive evidence of such approval.

Section 7. Special Limited Obligation. The Loan Agreement shall be secured by the pledge of the Pledged Revenues as set forth in the Loan Agreement and shall be payable solely from the Pledged Revenues. The Loan Agreement, together with interest thereon and other obligations of the Governmental Unit thereunder, shall be a special, limited obligation of the Governmental Unit, payable solely from the Pledged Revenues as provided in this Ordinance and the Loan Agreement and shall not constitute a general obligation of the Governmental Unit or the State, and the holders of the Loan Agreement may not look to any general or other fund of the Governmental Unit for payment of the obligations thereunder. Nothing contained in this Ordinance or in the Loan Agreement, or any other instruments, shall be construed as obligating the Governmental Unit (except with respect to the application of the Pledged Revenues) as incurring a pecuniary liability or a charge upon the general credit of the Governmental Unit or against its taxing power, nor shall a breach of any agreement contained in this Ordinance, the Loan Agreement, or any other instrument impose any pecuniary liability upon the Governmental Unit or any charge upon its general credit or against its taxing power. The Loan Agreement shall never constitute an indebtedness of the Governmental Unit within the meaning of any State constitutional provision or statutory limitation and shall never constitute or give rise to a pecuniary liability of the Governmental Unit or a charge against its general credit or taxing power. Nothing herein shall prevent the Governmental Unit from applying other funds of the Governmental Unit legally available therefor to payments required by the Loan Agreement, in its sole and absolute discretion.

Section 8. Disposition of Proceeds: Completion of the Refunding Project.

A. Program Account, Loan Agreement Reserve Account and Finance Authority Debt Service Account. The Governmental Unit hereby consents to creation of the Finance Authority Debt Service Account to be held and maintained by the Finance Authority and to the Program Account and Loan Agreement Reserve Account to be held and maintained by the Trustee pursuant to the Indenture, each in connection with the Loan. The Governmental Unit hereby approves: (i) the deposit of a portion of the proceeds of each Loan Agreement in the Program Account and the Finance Authority Debt Service Account, all as set forth in the Term Sheet.

The proceeds derived from the execution and delivery of the Loan Agreement shall be deposited promptly upon the receipt thereof in the Finance Authority Debt Service Account and the Program Account, all as provided in the Loan Agreement and the Indenture.

Until the Completion Date, the money in the Program Account shall be used and paid out solely for the Refunding Project in compliance with applicable law and the provisions of the Loan Agreement and the Indenture.

The Governmental Unit will complete the Refunding Project with all due diligence.

B. Completion of the Refunding Project. Upon the Completion Date, the Governmental Unit shall execute and send to the Finance Authority a certificate stating that payment for the Refunding Project has been completed. As soon as practicable after the Completion Date, and, in any event, not more than sixty (60) days from the Completion Date, any balance remaining in the Program Account shall be transferred and deposited into the Finance Authority Debt Service Account, as provided in the Loan Agreement and the Indenture.

C. Finance Authority and Trustee Not Responsible. The Finance Authority and the Trustee shall in no manner be responsible for the application or disposal by the Governmental Unit or by its officers of the funds derived from the Loan Agreement or of any other funds herein designated.

Section 9. Deposit of Pledged Revenues, Distributions of the Pledged Revenues and Flow of Funds.

A. Deposit of Pledged Revenues. Pursuant to the Intercept Agreement, the Pledged Revenues shall be paid directly by the Distributing State Agency to the Finance Authority for deposit in the Finance Authority Debt Service Account and remittance to the Trustee in an amount sufficient to pay principal, interest, premium, if any, and other amounts due under the Loan Agreement.

B. Termination on Deposits to Maturity. No payment shall be made into the Finance Authority Debt Service Account for a Loan if the amount in the Finance Authority Debt Service Account with respect to that Loan totals a sum at least equal to the entire aggregate amount to become due as to principal and interest on, and any other amounts due under, the Loan Agreement in which case moneys in such account in an amount at least equal to such principal and interest requirements shall be used solely to pay such obligations as the same become due, and any moneys in excess thereof in such accounts shall be transferred to the Governmental Unit and used as provided below.

C. Use of Surplus Revenues. After making all the payments hereinabove required to be made by this Section, any moneys remaining in the Finance Authority Debt Service Account shall be transferred to the Governmental Unit on a timely basis and shall be applied to any other lawful purpose, including, but not limited to, the payment of any Parity Obligations or bonds or obligations subordinate and junior to the Loan Agreement, or other purposes authorized by the Governmental Unit, the Constitution and laws of the State, as the Governmental Unit may from time to time determine.

Section 10. Lien on Pledged Revenues. Pursuant to this Ordinance and the Loan Agreement, the Pledged Revenues are hereby authorized to be pledged to, and are hereby pledged, and the Governmental Unit grants a security interest therein for, the payment of the principal, interest, and any other amounts due under the Loan Agreement subject to the uses thereof permitted by and the priorities set forth in this Ordinance. The Loan Agreement constitute an irrevocable and first lien, but not necessarily an exclusive first lien, on the Pledged Revenues with the lien thereon of the Parity Obligations as set forth herein and in the Loan Agreement. The Governmental Unit shall not create a lien on the Pledged Revenues superior to that of the Loan Agreement.

Section 11. Authorized Officers. Authorized Officers are hereby individually authorized and directed to execute and deliver any and all papers, instruments, opinions, affidavits and other documents and to do and cause to be done any and all acts and things necessary or proper for carrying out this Ordinance, the Loan Agreement, the Intercept Agreement and all other transactions contemplated hereby and thereby. Authorized Officers are hereby individually authorized to do all acts and things required of them by this Ordinance, the Loan Agreement and the Intercept Agreement for the full, punctual and complete performance of all the terms, covenants and Agreement contained in this Ordinance, the Loan Agreement and the Intercept Agreement, including but not limited to, the execution and delivery of closing documents in connection with the execution and delivery of the Loan Agreement and the Intercept Agreement, and the publication of the summary of this Ordinance set out in Section 17 of this Ordinance (with such changes, additions and deletions as may be necessary). Pursuant to Section 6-14-10.2, NMSA 1978, the Mayor and Finance Director are each individually hereby delegated authority to execute the Pricing Certificate, and to determine any or all of the final terms of the Loan Agreement, subject to the parameters and conditions contained in this Ordinance. The Mayor or the City Manager shall present the Pricing Certificate to the Governing Body in a timely manner, before or after delivery of the Loan Agreement, at a regularly scheduled public meeting of the Governing Body.

Section 12. Amendment of Ordinance. Prior to the date of the initial delivery of the Loan Agreement to Finance Authority, the provisions of this Ordinance may be supplemented or amended by ordinance or resolution of the Governing Body with respect to any changes which are not inconsistent with the substantive provisions of this Ordinance. This Ordinance may be amended by ordinance of the Governing Body without receipt by the Governmental Unit of any additional consideration, but only with the prior written consent of the Finance Authority.

Section 13. Ordinance Irrepealable. After the Loan Agreement and Intercept Agreement have been executed and delivered, this Ordinance shall be and remain irrepealable until all obligations due under the Loan Agreement shall be fully paid, canceled and discharged, as provided therein.

Section 14. Severability Clause. If any section, paragraph, clause or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

Section 15. Repealer Clause. All bylaws, orders, resolutions and ordinances, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any bylaw, order, resolution or ordinance, or part thereof, heretofore repealed.

Section 16. Effective Date. Upon due adoption of this Ordinance, it shall be recorded in the book of the Governmental Unit kept for that purpose, authenticated by the signatures of the Mayor and the City Clerk of the Governmental Unit, and the title and general summary of the subject matter contained in this Ordinance (set out in Section 17 below) shall be published in a newspaper which maintains an office and is of general circulation in the Governmental Unit, or posted in accordance with law, and such Ordinance shall be in full force and effect thereafter, in accordance with law.

Section 17. General Summary for Publication. Pursuant to the general laws of the State, the title and a general summary of the subject matter contained in this Ordinance shall be published in substantially the following form:

(Form of Summary of Ordinance for Publication)

City of Alamogordo, New Mexico
Notice of Adoption of Ordinance

Notice is hereby given of the title and of a general summary of the subject matter contained in Ordinance No. __________ duly adopted and approved by the City Commission of the City of Alamogordo, New Mexico, on November 30, 2021. A complete copy of the Ordinance is available for public inspection during the normal and regular business hours of the City Clerk, 1376 East Ninth Street, Alamogordo, New Mexico.

The title of the Ordinance is:

CITY OF ALAMOGORDO, NEW MEXICO
ORDINANCE NO. __________

AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT AND INTERCEPT AGREEMENT BY AND BETWEEN THE CITY OF ALAMOGORDO, NEW MEXICO (THE "GOVERNMENTAL UNIT") AND THE NEW MEXICO FINANCE AUTHORITY (THE "FINANCE AUTHORITY"), EVIDENCING A SPECIAL, LIMITED OBLIGATION OF THE GOVERNMENTAL UNIT TO PAY A PRINCIPAL AMOUNT OF UP TO $4,750,000, TOGETHER WITH INTEREST THEREON, FOR THE PURPOSE OF FINANCING THE COST OF REFUNDING, PAYING AND DISCHARGING THE GOVERNMENTAL UNIT'S OUTSTANDING GROSS RECEIPTS TAX IMPROVEMENT REVENUE DEBT ISSUED ON DECEMBER 23, 2011; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL AND INTEREST DUE UNDER THE LOAN AGREEMENT SOLELY FROM THE DISTRIBUTIONS OF THE REVENUES RECEIVED BY THE GOVERNMENTAL UNIT PURSUANT TO SECTION 7-1-6.4, NMSA 1978 (THE "STATE-SHARED GROSS RECEIPTS TAX"); PROVIDING FOR THE DISTRIBUTIONS OF THE REVENUES OF THE STATE-SHARED GROSS RECEIPTS TAX FROM THE STATE TAXATION AND REVENUE DEPARTMENT TO BE REDIRECTED TO THE FINANCE AUTHORITY OR ITS ASSIGNS PURSUANT TO THE INTERCEPT AGREEMENT FOR THE PAYMENT OF PRINCIPAL AND INTEREST DUE ON THE LOAN AGREEMENT; DELEGATING AUTHORITY TO MAKE CERTAIN DETERMINATIONS CONCERNING THE TERMS OF THE LOAN AGREEMENT AND THE INTERCEPT AGREEMENT; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS ORDINANCE; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE LOAN AGREEMENT AND THE INTERCEPT AGREEMENT.

A summary of the subject matter of the Ordinance is contained in its title. This notice constitutes compliance with Section 6-14-6, NMSA 1978.

(End of Form of Summary for Publication)

PASSED, APPROVED AND ADOPTED THIS 30th DAY OF N0VEMBER, 2021.

CITY OF ALAMOGORDO, NEW MEXICO

ATTEST:

____
Mayor

____
City Clerk

AGENDA REPORT
CITY OF ALAMOGORDO
CITY COMMISSION

Meeting Date: 11/30/2021 **Report Date:** 11/15/2021 **Report No:** 8.

Submitted By: Evelyn Huff

Subject: Consider, and act upon, adoption and final publication of Ordinance 1643 authorizing the issuance and sale of the City's debt obligation to refund the revenue debt issued on February 17, 2012. *(Evelyn Huff, Finance Director)* **(Roll Call Vote Required)**

Fiscal Impact:
Amount Budgeted:
Fund:

Additional Fiscal Impact:

Recommendation: Approve Ordinance No. 1643 for adoption and final publication.

Background: This Ordinance came before the City Commission at the Regular Meeting of November 9, 2021 for approval of first publication. The Commission voted 6-0-0 to approve, and it is now before the Commission for adoption and final publication.

Chris Muirhead from Modrall, Sperling, Roehl, Harris & Sisk,PA and John Archuleta from Stifel, Nicolaus & Company, Inc. presented three refunding opportunities for the current City held debt at the 10/26/2021 Commission Meeting. Attached is the Ordinance being presented for refunding of the revenue debt issued on February 17, 2012.

CITY OF ALAMOGORDO, NEW MEXICO
ORDINANCE NO. 1643

AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT AND INTERCEPT AGREEMENT BY AND BETWEEN THE CITY OF ALAMOGORDO, NEW MEXICO (THE “GOVERNMENTAL UNIT”) AND THE NEW MEXICO FINANCE AUTHORITY (THE “FINANCE AUTHORITY”), EVIDENCING A SPECIAL, LIMITED OBLIGATION OF THE GOVERNMENTAL UNIT TO PAY A PRINCIPAL AMOUNT OF UP TO $3,750,000, TOGETHER WITH INTEREST THEREON, FOR THE PURPOSE OF FINANCING THE COST OF REFUNDING, PAYING AND DISCHARGING THE GOVERNMENTAL UNIT’S OUTSTANDING GROSS RECEIPTS TAX IMPROVEMENT REVENUE DEBT ISSUED ON FEBRUARY 17, 2012; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL AND INTEREST DUE UNDER THE LOAN AGREEMENT SOLELY FROM THE DISTRIBUTIONS OF THE REVENUES RECEIVED BY THE GOVERNMENTAL UNIT PURSUANT TO SECTION 7-1-6.4, NMSA 1978 (THE “STATE-SHARED GROSS RECEIPTS TAX”); PROVIDING FOR THE DISTRIBUTIONS OF THE REVENUES OF THE STATE-SHARED GROSS RECEIPTS TAX FROM THE STATE TAXATION AND REVENUE DEPARTMENT TO BE REDIRECTED TO THE FINANCE AUTHORITY OR ITS ASSIGNS PURSUANT TO THE INTERCEPT AGREEMENT FOR THE PAYMENT OF PRINCIPAL AND INTEREST DUE ON THE LOAN AGREEMENT; DELEGATING AUTHORITY TO MAKE CERTAIN DETERMINATIONS CONCERNING THE TERMS OF THE LOAN AGREEMENT AND THE INTERCEPT AGREEMENT; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS ORDINANCE; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE LOAN AGREEMENT AND THE INTERCEPT AGREEMENT.

Capitalized terms used in the following recitals have the same meaning as defined in Section 1 of this Ordinance unless the context requires otherwise.

WHEREAS, the Governmental Unit is a legally and regularly created, established, organized and existing municipality under the general laws of the State; and

WHEREAS, the Governing Body has determined and hereby determines that the Refunding Project may be financed with amounts borrowed under the Loan Agreement and that it is in the best interest of the Governmental Unit and its residents that the Loan Agreement and Intercept Agreement be executed and delivered and that the financing of the Refunding Project take place by executing and delivering the Loan Agreement; and

WHEREAS, the Governmental Unit may use the Pledged Revenues to finance the Refunding Project and the Refunding Project will provide for the public health, peace and safety of the Governmental Unit and its citizens; and

WHEREAS, pursuant to Section 7-1-6.4 NMSA 1978, as amended, the Governmental Unit now receives monthly from the Distributing State Agency from the gross receipts tax imposed on any person engaging in business in New Mexico, a distribution of the gross receipts tax which is to be in an amount, subject to any increase or decrease made pursuant to Section 7-1-6.15 NMSA, 1978, equal to the product of the quotient of 1.225% divided by the tax rate imposed by Section 7-9-4 NMSA, 1978 (currently 5.125%), times the net receipts (i.e., the total gross receipts tax from business locations within the Governmental Unit and other places designated in Section 7-1-6.4, NMSA 1978), which provides for the Pledged Revenues; and

WHEREAS, the Governing Body has determined that it may lawfully pledge the Pledged Revenues for the payment of amounts due under the Loan Agreement; and

WHEREAS, except as described in the Term Sheet, the Pledged Revenues have not heretofore been pledged to secure the payment of any obligation which is currently outstanding; and

WHEREAS, the Loan Agreement shall be a special, limited obligation of the Governmental Unit, payable solely from the Pledged Revenues and shall not constitute a general obligation of the Governmental Unit, or a debt or pledge of the faith and credit of the Governmental Unit or the State; and

WHEREAS, the Governmental Unit desires to provide that distributions of the Pledged Revenues be redirected to the Finance Authority or its assigns pursuant to the Intercept Agreement between the Governmental Unit and the Finance Authority (the "Intercept Agreement") for the payment of amounts due under the Loan Agreement; and

WHEREAS, the Loan Agreement shall be executed and delivered pursuant to Sections 3-31-1 through 3-31-12, NMSA 1978, as amended, and with an irrevocable first lien, but not necessarily an exclusive first lien, on the Pledged Revenues; and

WHEREAS, the Governing Body intends by this Ordinance to authorize the execution and delivery of the Loan Agreement in the amounts and for the purposes set forth herein; and

WHEREAS, there have been presented to the Governing Body and there presently are on file with the City Clerk this Ordinance and the forms of the Loan Agreement and Intercept Agreement, which are incorporated by reference and considered to be a part hereof; and

WHEREAS, the Governing Body hereby determines that the Refunding Project to be financed with the Loan is to be used for governmental purposes of the Governmental Unit and will not be used for purposes which would cause the Loan Agreement to be deemed a "private activity bond" as defined by the Internal Revenue Code of 1986, as amended; and

WHEREAS, the Governmental Unit previously entered into a loan agreement with the New Mexico Finance Authority on February 17, 2012 pursuant to Ordinance No. 1414 adopted on January 10, 2012, in the original aggregate principal amount of $8,130,000, of which there is presently outstanding a principal amount of $3,525,000; and

WHEREAS, the payments due on the 2012 NMFA Loan Agreement are subject to redemption at the option of the Governmental Unit at 100% of the principal amount then outstanding, plus accrued interest to the date of redemption; and

WHEREAS, all required authorizations, consents and approvals in connection with (i) the use and pledge of the Pledged Revenues to the Finance Authority (or its assigns) for the payment of amounts due under the Loan Agreement, (ii) the use of the proceeds of the Loan Agreement to finance the Refunding Project, and (iii) the authorization, execution and delivery of the Loan Agreement and Intercept Agreement which are required to have been obtained by the date of this Ordinance, have been obtained or are reasonably expected to be obtained.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF ALAMOGORDO THAT:

Section 1. Definitions. As used in the Ordinance, the following terms shall, for all purposes, have the meanings herein specified, unless the context clearly requires otherwise (such meanings to be equally applicable to both the singular and the plural forms of the terms defined):

"2012 NMFA Loan Agreement" means the Governmental Unit's outstanding loan agreement with the Finance Authority dated February 17, 2012 in the original aggregate par amount of $8,130,000 and presently outstanding in the principal amount of $3,525,000.

"Act" means the general laws of the State, including Sections 3-31-1 through 3-31-12, NMSA 1978, as amended, Sections 6-21-1 through 6-21-31, NMSA 1978, as amended and Sections 7-1-6.4, 7-1-6.15 and 7-9-4, NMSA 1978, as amended, and enactments of the Governing Body relating to the Loan Agreement and the Intercept Agreement, including this Ordinance.

"Aggregate Annual Debt Service Requirement" means the total principal and interest payments due and payable pursuant to the Loan Agreement and on all Parity Obligations secured by a pledge of any of the Pledged Revenues for any one Fiscal Year.

"Authorized Officers" means, in the case of the Governmental Unit, the Mayor and Finance Director, and in the case of the Finance Authority the Chairman, Vice-Chairman and Secretary of the Board of Directors and the Chief Executive Officer or any other officer or employee of the Finance Authority designated in writing by an Authorized Officer.

"Bonds" means public Refunding Project revolving fund revenue bonds, if any, issued hereafter by the Finance Authority to fund or reimburse the Loan Agreement.

"Closing Date" means the date of execution, delivery and funding of the Loan Agreement.

"Code" means the Internal Revenue Code of 1986, as amended, and the applicable regulations thereunder.

"Completion Date" means the date of final payment of the cost of the Refunding Project.

"Distributing State Agency" means the department or agency of the State, as described on the Term Sheet, authorized to distribute the Pledged Revenues on behalf of the Governmental Unit.

"Expenses" means the cost of execution of the Loan Agreement and the costs of issuance of the Bonds, if any, and the periodic and regular fees and expenses incurred by the Finance Authority and the Trustee in administering the Loan Agreement, including legal fees.

"Finance Authority" means the New Mexico Finance Authority.

"Finance Authority Debt Service Account" means the debt service account in the name of the Governmental Unit established under the Indenture and held by the Finance Authority to pay principal and interest on the Loan Agreement as the same become due.

"Fiscal Year" means the period commencing on July 1 in each calendar year and ending on the last day of June of the next succeeding calendar year, or any other twelve-month period which any appropriate authority may hereafter establish for the Governmental Unit as its fiscal year.

"Governing Body" means the City Commission of the Governmental Unit, or any future successor governing body of the Governmental Unit.

"Governmental Unit" means the City of Alamogordo, New Mexico.

"Herein," "hereby," "hereunder," "hereof," "hereinabove" and "hereafter" refer to the entire Ordinance and not solely to the particular section or paragraph of the Ordinance in which such word is used.

"Indenture" means the General Indenture of Trust and Pledge dated as of June 1, 1995, as amended and supplemented, by and between the Finance Authority and the Trustee, or the Subordinated General Indenture of Trust and Pledge dated as of March 1, 2005, as supplemented, by and between the Finance Authority and the Trustee, as determined by the Finance Authority pursuant to a Pledge Notification or Supplemental Indenture (as defined in the Indenture).

"Intercept Agreement" means the Intercept Agreement dated the Closing Date between the Governmental Unit and Finance Authority providing for the direct payment by the Distributing State Agency to the Finance Authority of Pledged Revenues in amounts sufficient to pay principal and interest due on the Loan Agreement, and any amendments or supplements to the Intercept Agreement.

"Loan" means the funds to be loaned to the Governmental Unit by the Finance Authority pursuant to the Loan Agreement.

"Loan Agreement" means the Loan Agreement dated the Closing Date between the Finance Authority and the Governmental Unit which provide for the financing of the Refunding Project and require payments by or on behalf of the Governmental Unit to the Finance Authority and/or the Trustee and any amendments or supplements thereto, and including the exhibits attached to the Loan Agreement.

"Loan Agreement Principal Amount" means the original principal amount of the Loan Agreement as shown on the Term Sheet.

"Loan Agreement Reserve Account" means the loan agreement reserve account established in the name of the Governmental Unit under the Indenture for the Loan funded by the Governmental Unit pursuant to the terms of the Loan Agreement and administered by the Trustee pursuant to the Indenture. The Loan Agreement Reserve Account is to be funded only upon the circumstances provides in Section 5.2(c) of the Loan Agreement.

"Loan Agreement Reserve Requirement" means the amount shown as the Loan Agreement Reserve Account deposit on the Term Sheet which amount does not exceed the least of: (i) ten percent (10%) of the Loan Agreement Principal Amount; (ii) one hundred twenty-five percent (125%) of the average annual principal and interest requirements for each Loan under the Loan Agreement; or (iii) the maximum annual principal and interest requirements for each Loan under the Loan Agreement. The Loan Agreement Reserve Requirement, if any, shall be calculated every year on or about June 1.

"NMSA 1978" means the New Mexico Statutes Annotated, 1978 compilation, as amended and supplemented.

"Ordinance" means this Ordinance No. __________ as adopted by the Governing Body on November 30, 2021, approving the Loan Agreement and pledging the Pledged Revenues to the payment of the Loan Agreement, as amended from time to time.

"Parity Obligations" means the Loan Agreement and any other obligations, now or hereafter issued or incurred, payable from or secured by a lien or pledge of the Pledged Revenues and issued with a lien on the Pledged Revenues on parity with the Loan Agreement, including those obligations described on the Term Sheet, if any.

"Pledged Revenues" means the revenues from the State gross receipts tax derived pursuant to Section 7-9-4, NMSA 1978, imposed on persons engaging in business in the State, which revenues are remitted monthly by the Distributing State Agency to the Governmental Unit as authorized by Sections 7-1-6.1 and 7-1-6.4, NMSA 1978, and which remittances as of the date of adoption of this Ordinance are equal to one and two hundred twenty-five thousandths percent (1.225%) of the taxable gross receipts reported to the Governmental Unit for the month for which such remittance is made; provided that if a greater amount of such gross receipts tax revenues are hereafter provided to be remitted to the Governmental Unit under applicable law, such additional amounts shall be included as revenues pledged pursuant to the Ordinance; and provided further that the amount of revenues pledged pursuant to the Ordinance shall never be less than the greater of: (i) 1.225% of the taxable gross receipts remitted to the Governmental Unit as set forth above, or (ii) the maximum amount at any time provided hereinafter to be remitted to the Governmental Unit under applicable law; and provided further, the Governmental Unit intends that Section 3-31-6(C) NMSA 1978 applies expressly to the amount of revenues pledged pursuant to this Ordinance.

"Pricing Certificate" means one or more certificates executed by the Mayor or Finance Director, pursuant to and as authorized by Section 6-14-10.2, NMSA 1978, setting forth the final terms of the Loan.

"Program Account" means the account in the name of the Governmental Unit established pursuant to the Indenture and held by the Trustee for the deposit of the net proceeds of the Loan

Agreement for disbursal to the Governmental Unit for payment of the costs of the Refunding Project.

"Refunding Project" means refunding, paying and discharging the Governmental Unit's outstanding 2012 NMFA Loan Agreement maturing on and after February 17, 2022, on the date of execution and delivery of the Loan Agreement.

"State" means the State of New Mexico.

"Term Sheet" mean Exhibit "A" to each Loan Agreement.

"Trustee" means BOKF, NA, or any successor trustee company, national or state banking association or financial institution at the time appointed Trustee by the Finance Authority.

Section 2. Ratification. All action heretofore taken (not inconsistent with the provisions of this Ordinance) by the Governing Body and officers of the Governmental Unit directed toward the Refunding Project and the execution and delivery of the Loan Agreement and the Intercept Agreement be, and the same hereby are, ratified, approved and confirmed.

Section 3. Authorization of the Refunding Project, the Loan Agreement, and the Intercept Agreement. The Refunding Project and the method of financing the Refunding Project through execution and delivery of the Loan Agreement and the Intercept Agreement are hereby authorized and ordered. The Refunding Project is for the benefit of the Governmental Unit.

Section 4. Findings. The Governmental Unit hereby declares that it has considered all relevant information and data and hereby makes the following findings:

A. The Refunding Project is needed to meet the needs of the Governmental Unit and its residents and the issuance, execution and delivery of the Loan Agreement is necessary and advisable.

B. Moneys available and on hand for the Refunding Project from all sources other than the Loan are not sufficient to defray the cost of the Refunding Project.

C. The Pledged Revenues may lawfully be pledged to secure the payment of amounts due under the Loan Agreement.

D. It is economically feasible to defray, in whole or in part, the costs of the Refunding Project by the execution and delivery of the Loan Agreement.

E. The Refunding Project and the execution and delivery of the Loan Agreement and the Intercept Agreement pursuant to the Act to provide funds for the financing of the Refunding Project are necessary and in the interest of the public health, safety, and welfare of the residents of the Governmental Unit.

F. The Governmental Unit will finance the Refunding Project, in whole or in part, with the net proceeds of the Loan.

G. Other than as described in the Term Sheet, the Governmental Unit does not have any outstanding obligations payable from Pledged Revenues which it has incurred or will incur prior to the initial execution and delivery of the Loan Agreement and the Intercept Agreement.

H. The net effective interest rate on the Loan shall not exceed twelve percent (12.0%) per annum, which is the maximum rate permitted by State law.

Section 5. Loan Agreement and Intercept Agreement - Authorization and Detail.

A. Authorization. This Ordinance has been adopted by the affirmative vote of a majority of all of the members of the Governing Body. For the purpose of protecting the public health, conserving the property, protecting the general welfare and prosperity of the residents of the Governmental Unit and completing the Refunding Project, it is hereby declared necessary that the Governmental Unit, pursuant to the Act, execute and deliver the Loan Agreement and the Intercept Agreement evidencing special, limited obligation of the Governmental Unit to pay a combined principal amount of up to $3,750,000, plus interest, and the execution and delivery of the Loan Agreement and the Intercept Agreement are hereby authorized. The Governmental Unit shall use the proceeds of the Loan to (i) finance the Refunding Project, (ii) make a deposit to the Finance Authority Debt Service Account, and (iii) pay Expenses.

B. Detail. The Loan Agreement and Intercept Agreement shall be in substantially the forms presented at the meeting of the Governing Body at which this Ordinance was adopted. The Loan shall be in the aggregate principal amount of up to $3,750,000, shall be payable in installments of principal due on the dates designated in Exhibit "B" to the Loan Agreement and bear interest payable on the dates and at the rates designated in Exhibit "B" to the Loan Agreement, all as approved by the Pricing Certificate. The Loan shall be placed in a private sale at par and shall have a maximum term of ten years. The underwriter's discount for the Loan shall not exceed 2% of the par amount of the Loan.

Section 6. Approval of Loan Agreement and Intercept Agreement. The forms of the Loan Agreement and the Intercept Agreement as presented at the meeting of the Governing Body at which this Ordinance was adopted are hereby approved. Authorized Officers are hereby individually authorized to execute, acknowledge and deliver the Loan Agreement and the Intercept Agreement with such changes, insertions and omissions as are consistent with this Ordinance and as may be approved by such individual Authorized Officers, and the City Clerk is hereby authorized to affix the seal of the Governmental Unit on the Loan Agreement and the Intercept Agreement and attest the same. The execution of the Loan Agreement and the Intercept Agreement by an Authorized Officer shall be conclusive evidence of such approval.

Section 7. Special Limited Obligation. The Loan Agreement shall be secured by the pledge of the Pledged Revenues as set forth in the Loan Agreement and shall be payable solely from the Pledged Revenues. The Loan Agreement, together with interest thereon and other obligations of the Governmental Unit thereunder, shall be a special, limited obligation of the Governmental Unit, payable solely from the Pledged Revenues as provided in this Ordinance and the Loan Agreement and shall not constitute a general obligation of the Governmental Unit or the State, and the holders of the Loan Agreement may not look to any general or other fund of the Governmental Unit for payment of the obligations thereunder. Nothing contained in this Ordinance or in the Loan Agreement, or any other instruments, shall be construed as obligating the Governmental Unit (except with respect to the application of the Pledged Revenues) as incurring a pecuniary liability or a charge upon the general credit of the Governmental Unit or against its taxing power, nor shall a breach of any agreement contained in this Ordinance, the Loan Agreement, or any other instrument impose any pecuniary liability upon the Governmental Unit or any charge upon its general credit or against its taxing power. The Loan Agreement shall never constitute an indebtedness of the Governmental Unit within the meaning of any State constitutional provision or statutory limitation and shall never constitute or give rise to a pecuniary liability of the Governmental Unit or a charge against its general credit or taxing power. Nothing herein shall prevent the Governmental Unit from applying other funds of the Governmental Unit legally available therefor to payments required by the Loan Agreement, in its sole and absolute discretion.

Section 8. Disposition of Proceeds: Completion of the Refunding Project.

A. Program Account, Loan Agreement Reserve Account and Finance Authority Debt Service Account. The Governmental Unit hereby consents to creation of the Finance Authority Debt Service Account to be held and maintained by the Finance Authority and to the Program Account and Loan Agreement Reserve Account to be held and maintained by the Trustee pursuant to the Indenture, each in connection with the Loan. The Governmental Unit hereby approves: (i) the deposit of a portion of the proceeds of each Loan Agreement in the Program Account and the Finance Authority Debt Service Account, all as set forth in the Term Sheet.

The proceeds derived from the execution and delivery of the Loan Agreement shall be deposited promptly upon the receipt thereof in the Finance Authority Debt Service Account and the Program Account, all as provided in the Loan Agreement and the Indenture.

Until the Completion Date, the money in the Program Account shall be used and paid out solely for the Refunding Project in compliance with applicable law and the provisions of the Loan Agreement and the Indenture.

The Governmental Unit will complete the Refunding Project with all due diligence.

B. Completion of the Refunding Project. Upon the Completion Date, the Governmental Unit shall execute and send to the Finance Authority a certificate stating that payment for the Refunding Project has been completed. As soon as practicable after the Completion Date, and, in any event, not more than sixty (60) days from the Completion Date, any balance remaining in the Program Account shall be transferred and deposited into the Finance Authority Debt Service Account, as provided in the Loan Agreement and the Indenture.

C. Finance Authority and Trustee Not Responsible. The Finance Authority and the Trustee shall in no manner be responsible for the application or disposal by the Governmental Unit or by its officers of the funds derived from the Loan Agreement or of any other funds herein designated.

Section 9. Deposit of Pledged Revenues, Distributions of the Pledged Revenues and Flow of Funds.

A. Deposit of Pledged Revenues. Pursuant to the Intercept Agreement, the Pledged Revenues shall be paid directly by the Distributing State Agency to the Finance Authority for deposit in the Finance Authority Debt Service Account and remittance to the Trustee in an amount sufficient to pay principal, interest, premium, if any, and other amounts due under the Loan Agreement.

B. Termination on Deposits to Maturity. No payment shall be made into the Finance Authority Debt Service Account for a Loan if the amount in the Finance Authority Debt Service Account with respect to that Loan totals a sum at least equal to the entire aggregate amount to become due as to principal and interest on, and any other amounts due under, the Loan Agreement in which case moneys in such account in an amount at least equal to such principal and interest requirements shall be used solely to pay such obligations as the same become due, and any moneys in excess thereof in such accounts shall be transferred to the Governmental Unit and used as provided below.

C. Use of Surplus Revenues. After making all the payments hereinabove required to be made by this Section, any moneys remaining in the Finance Authority Debt Service Account shall be transferred to the Governmental Unit on a timely basis and shall be applied to any other lawful purpose, including, but not limited to, the payment of any Parity Obligations or bonds or obligations subordinate and junior to the Loan Agreement, or other purposes authorized by the Governmental Unit, the Constitution and laws of the State, as the Governmental Unit may from time to time determine.

Section 10. Lien on Pledged Revenues. Pursuant to this Ordinance and the Loan Agreement, the Pledged Revenues are hereby authorized to be pledged to, and are hereby pledged, and the Governmental Unit grants a security interest therein for, the payment of the principal, interest, and any other amounts due under the Loan Agreement subject to the uses thereof permitted by and the priorities set forth in this Ordinance. The Loan Agreement constitute an irrevocable and first lien, but not necessarily an exclusive first lien, on the Pledged Revenues with the lien thereon of the Parity Obligations as set forth herein and in the Loan Agreement. The Governmental Unit shall not create a lien on the Pledged Revenues superior to that of the Loan Agreement.

Section 11. Authorized Officers. Authorized Officers are hereby individually authorized and directed to execute and deliver any and all papers, instruments, opinions, affidavits and other documents and to do and cause to be done any and all acts and things necessary or proper for carrying out this Ordinance, the Loan Agreement, the Intercept Agreement and all other transactions contemplated hereby and thereby. Authorized Officers are hereby individually authorized to do all acts and things required of them by this Ordinance, the Loan Agreement and the Intercept Agreement for the full, punctual and complete performance of all the terms, covenants and Agreement contained in this Ordinance, the Loan Agreement and the Intercept Agreement, including but not limited to, the execution and delivery of closing documents in connection with the execution and delivery of the Loan Agreement and the Intercept Agreement, and the publication of the summary of this Ordinance set out in Section 17 of this Ordinance (with such changes, additions and deletions as may be necessary). Pursuant to Section 6-14-10.2, NMSA 1978, the Mayor and Finance Director are each individually hereby delegated authority to execute the Pricing Certificate, and to determine any or all of the final terms of the Loan Agreement, subject to the parameters and conditions contained in this Ordinance. The Mayor or the City Manager shall present the Pricing Certificate to the Governing Body in a timely manner, before or after delivery of the Loan Agreement, at a regularly scheduled public meeting of the Governing Body.

Section 12. Amendment of Ordinance. Prior to the date of the initial delivery of the Loan Agreement to Finance Authority, the provisions of this Ordinance may be supplemented or amended by ordinance or resolution of the Governing Body with respect to any changes which are not inconsistent with the substantive provisions of this Ordinance. This Ordinance may be amended by ordinance of the Governing Body without receipt by the Governmental Unit of any additional consideration, but only with the prior written consent of the Finance Authority.

Section 13. Ordinance Irrepealable. After the Loan Agreement and Intercept Agreement have been executed and delivered, this Ordinance shall be and remain irrepealable until all obligations due under the Loan Agreement shall be fully paid, canceled and discharged, as provided therein.

Section 14. Severability Clause. If any section, paragraph, clause or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

Section 15. Repealer Clause. All bylaws, orders, resolutions and ordinances, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any bylaw, order, resolution or ordinance, or part thereof, heretofore repealed.

Section 16. Effective Date. Upon due adoption of this Ordinance, it shall be recorded in the book of the Governmental Unit kept for that purpose, authenticated by the signatures of the Mayor and the City Clerk of the Governmental Unit, and the title and general summary of the subject matter contained in this Ordinance (set out in Section 17 below) shall be published in a newspaper which maintains an office and is of general circulation in the Governmental Unit, or posted in accordance with law, and such Ordinance shall be in full force and effect thereafter, in accordance with law.

Section 17. General Summary for Publication. Pursuant to the general laws of the State, the title and a general summary of the subject matter contained in this Ordinance shall be published in substantially the following form:

(Form of Summary of Ordinance for Publication)

City of Alamogordo, New Mexico
Notice of Adoption of Ordinance

Notice is hereby given of the title and of a general summary of the subject matter contained in Ordinance No. ___________ duly adopted and approved by the City Commission of the City of Alamogordo, New Mexico, on November 30, 2021. A complete copy of the Ordinance is available for public inspection during the normal and regular business hours of the City Clerk, 1376 East Ninth Street, Alamogordo, New Mexico.

The title of the Ordinance is:

CITY OF ALAMOGORDO, NEW MEXICO
ORDINANCE NO. __________

AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT AND INTERCEPT AGREEMENT BY AND BETWEEN THE CITY OF ALAMOGORDO, NEW MEXICO (THE "GOVERNMENTAL UNIT") AND THE NEW MEXICO FINANCE AUTHORITY (THE "FINANCE AUTHORITY"), EVIDENCING A SPECIAL, LIMITED OBLIGATION OF THE GOVERNMENTAL UNIT TO PAY A PRINCIPAL AMOUNT OF UP TO $3,750,000, TOGETHER WITH INTEREST THEREON, FOR THE PURPOSE OF FINANCING THE COST OF REFUNDING, PAYING AND DISCHARGING THE GOVERNMENTAL UNIT'S OUTSTANDING GROSS RECEIPTS TAX IMPROVEMENT REVENUE DEBT ISSUED ON FEBRUARY 17, 2012; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL AND INTEREST DUE UNDER THE LOAN AGREEMENT SOLELY FROM THE DISTRIBUTIONS OF THE REVENUES RECEIVED BY THE GOVERNMENTAL UNIT PURSUANT TO SECTION 7-1-6.4, NMSA 1978 (THE "STATE-SHARED GROSS RECEIPTS TAX"); PROVIDING FOR THE DISTRIBUTIONS OF THE REVENUES OF THE STATE-SHARED GROSS RECEIPTS TAX FROM THE STATE TAXATION AND REVENUE DEPARTMENT TO BE REDIRECTED TO THE FINANCE AUTHORITY OR ITS ASSIGNS PURSUANT TO THE INTERCEPT AGREEMENT FOR THE PAYMENT OF PRINCIPAL AND INTEREST DUE ON THE LOAN AGREEMENT; DELEGATING AUTHORITY TO MAKE CERTAIN DETERMINATIONS CONCERNING THE TERMS OF THE LOAN AGREEMENT AND THE INTERCEPT AGREEMENT; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS ORDINANCE; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE LOAN AGREEMENT AND THE INTERCEPT AGREEMENT.

A summary of the subject matter of the Ordinance is contained in its title. This notice constitutes compliance with Section 6-14-6, NMSA 1978.

(End of Form of Summary for Publication)

PASSED, APPROVED AND ADOPTED THIS 30th DAY OF N0VEMBER, 2021.

CITY OF ALAMOGORDO, NEW MEXICO

ATTEST:

____
Mayor

____
City Clerk

AGENDA REPORT
CITY OF ALAMOGORDO
CITY COMMISSION

Meeting Date: 11/30/2021 **Report Date:** 11/12/2021 **Report No:** 9.

Submitted By: Barbara Pyeatt

Subject: Consider, and act upon, approving the award of RFP 2021-07 Attorney Services for Water Law and Water Rights Services to Stein & Brockmann, P. A. *(David Nunnelley, Acting Public Works Director)*

Fiscal Impact:
Amount Budgeted: $0.00
Fund: 049-1501-415-5734

Additional Fiscal Impact:

Recommendation: Approve the award and authorize staff to proceed with the professional services agreement

Background: RFP 2021-07 scope of work is to provide the City of Alamogordo with legal advice and assistance addressing any water law and water rights legal matters that come before the City including, but not limited to, representation of the City in cases before the New Mexico Office of the State Engineer, Courts, Boards and Commissions dealing with all aspects of water rights law, acquisition or transfer of water rights, consumption, crediting, preparation of contracts, reviewing contracts, plans, and agreements, assistance with ordinance and resolutions, drafting of documents related to water issues and other aspects of water usage, and other legal and administrative matters involving the City's interests in water rights.

RFP was advertised on October 3, 2021 in both the Alamogordo Daily News and the Albuquerque Journal. One response was received on October 27, 2021. Stein & Brockmann, PA.

The proposal was reviewed and determined to be acceptable and in compliance with the terms and conditions of the RFP

Copies of the proposal from Stien and Brockmann are available the Purchasing Department.

AGENDA REPORT
CITY OF ALAMOGORDO
CITY COMMISSION

Meeting Date: 11/30/2021 **Report Date:** 11/15/2021 **Report No:** 10.

Submitted By: Kimberly Underwood

Subject: Consider, and act upon, accepting the NM State Library Grants-In-Aid to Public Libraries Agreement for the award of $9,712.87 for the Alamogordo Public Library for FY2022 allowable expenditures which include library materials, programming supplies and staff professional development. *(Kim Underwood, Library Manager and Veronica Ortega, Community Services Director)*

Fiscal Impact:
Amount Budgeted:
Fund:

Additional Fiscal Impact: Amount Budgeted: $7,000.00
Fund: 032-7101-317.16-01
Additional Fiscal Impact: $2,712.87. The total amount for State Grants-in-Aid in FY22 will be $9,712.87.
Actions: Sign the State Grants-In-Aid to Public Libraries Agreement for FY2022.

Recommendation: Accept the grant award of $9,712.87 for fiscal year 2022, and sign the agreement of the NM State Library for the Alamogordo Public Library.

Background: Annually the New Mexico State Library allocates Grants-In-Aid funding to public libraries within the state to aid in the provision of library materials, programming and staff professional development. The allocations are based on the previous end of year annual report submitted to the State Library in July-August of the previous fiscal year.

State Grants-in-Aid to Public Libraries Agreement
For FY2022

This Agreement is entered into on the date of last signature, below, by and between the **New Mexico State Library**, hereinafter called **NMSL**, and **Alamogordo Public Library**, located in **Alamogordo, NM**, hereinafter called the **Recipient**.

WHEREAS, the State Librarian, the division director of NMSL, is required to administer grants-in-aid and encourage local library service and generally promote an effective statewide library system under NMSA 1978, Section 18-2-4;

WHEREAS, Section 18-2-4 also requires the State Librarian to make rules and regulations necessary to administer NMSL statutory provisions and the State Librarian has adopted such rules for distributing state grants-in-aid to public libraries, codified as 4.5.2 NMAC; and

WHEREAS, NMSL has determined that Recipient qualifies for a state grant-in-aid under 4.5.2 NMAC.

THEREFORE, the Parties agree to the following terms and conditions:

I. NMSL agrees to pay the Recipient a grant in an amount not to exceed **Nine Thousand Seven Hundred Twelve Dollars and Eighty Seven Cents** ($**9,712.87**) to support Recipient's library collections; library staff salaries; library staff professional development; library equipment; or other operational expenditures associated with delivery of *library services* as defined in Section 4.5.2.7(B) NMAC.

II. The Recipient agrees to:

1. Use the grant only for library collections; library staff salaries; library staff professional development; library equipment; or other operational expenditures associated with delivery of *library services*, as those services are defined in 4.5.2.7(B) NMAC;
2. Continue to comply with 4.5.2 NMAC and other statutes and rules applicable to developing libraries or public libraries;
3. Engage in good communication and the exchange of information with NMSL regarding library activities and the grant's use;
4. Expend the grant according to the rules outlined in 4.5.2 NMAC, attached hereto as Attachment A;
5. No later than August 15, 2022, provide NMSL with a report on how the grant was spent as part of the Recipient's annual report for the fiscal year; and
6. Sign and return this Agreement to NMSL ***within 60*** days from receipt of the Agreement, which shall be calculated from the date of postmark or electronic postmark. **If Recipient does not submit this Agreement within the required time period, Recipient forfeits the grant award.**

III. If the parties dispute the terms of this Agreement, the Recipient and NMSL hereby agree to and consent to New Mexico state court jurisdiction to address the dispute.

IV. The Laws of New Mexico shall govern this Agreement.

V. Termination for Lack of Appropriations. The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, this Agreement shall terminate immediately upon written notice being given by NMSL to the Recipient. NMSL's decision as to whether sufficient appropriations are available shall be accepted by the Recipient and shall be final.

The Recipient by its signature certifies that the Recipient will use the grant money only for the uses specified in this Agreement and will comply with all other applicable requirements of this Agreement.

Signed: ____ **Date:** _____________________

By (print name and title): ____________________________________ Authorized Agent of Recipient

☐ I verify that I am an authorized agent who has authority to enter into a legal contract with the State of New Mexico

Signed: ____ **Date:** _____________________

By: Eli Guinnee, New Mexico State Librarian

AGENDA REPORT
CITY OF ALAMOGORDO
CITY COMMISSION

Meeting Date: 11/30/2021 **Report Date:** 11/15/2021 **Report No:** 11.

Submitted By: Diane Malone

Subject: Consider, and act upon, the Investment Report for the quarter ending September 30, 2021, in accordance with the City of Alamogordo Investment Ordinance. *(Sue Ashe, Accounting Manager)*

Fiscal Impact:
Amount Budgeted:
Fund:

Additional Fiscal Impact: no additional fiscal impact

Recommendation: Accept the Quarterly Investment Report for the period ending September 30, 2021

Background: The City of Alamogordo ended the quarter with an investment portfolio totaling $47,977,183. The portfolio was made up of:

State Investment Pool	$ 5,609	or	0.01%
Short Term Investments	$ 1,583,856	or	2.52%
US Treasury Notes/Agency Bonds	$ 14,192,552	or	22.59%
Certificates of Deposits	$ 47,039,174	or	74.88%
Total Investments:	**$ 62,821,191**	**or**	**100.00%**

Total gains (losses) for the quarter ended September 30, 2021, on maturities and/or called agency notes were $0. Interest earned during the quarter on a cash basis was $131,842 .

Interest Income Budget Comparison for all Funds is as follows:

Interest Earned Budget	$ 520,654	
Interest Received to Date	$ 131,842	25.32% of budget

INSTITUTION INVESTED IN	INV TYPE	CUSIP	INVESTMENT AMOUNT BOOK VALUE	MARKET VALUE	MARKET GAIN (LOSS)	RATE OF RETURN	MATURITY DATE	PURCHASE DATE	FY 21 - 22 Y-T-D EARNINGS
ST. INVESTMENT POOL - COA	ST. INVEST POOL-COA		$5,608.67	$5,608.67	0	1.907%	DAILY	N/A	0.89
First Savings Bank (CD# 81186796)	CD		$277,738.74	277,738.74	0	1.250%	02/07/23	02/07/18	865.36
First Savings Bank (CD# 81186944)	CD		$831,641.04	831,641.04	0	1.250%	03/22/23	03/22/18	2,591.18
First Savings Bank (CD# 81187231)	CD		$567,825.80	567,825.80	0	0.800%	02/10/24	02/10/19	2,422.71
First Savings Bank (CD# 81187926)	CD		$277,766.97	277,766.97	0	1.250%	03/15/23	03/12/18	865.45
First Savings Bank (CD#13312297)	CD		$275,432.20	275,432.20	0	1.000%	02/07/23	02/07/18	692.49
First Savings Bank (CD# 13401520)	CD		$1,088,705.69	1,088,705.69	0	1.000%	03/12/23	03/12/18	2,737.24
Bank '34 (CD#0101004984)	CD		$250,000.00	250,000.00	0	1.650%	02/08/23	02/08/18	1,035.54
Pioneer Bank (CD#30100640)	CD		$278,482.82	278,482.82	0	1.600%	02/12/23	02/12/18	1,118.57
Bank of the West (CD#029771907)	CD		$277,682.49	277,682.49	0	1.600%	03/20/23	03/20/18	1,132.32
Washington Federal (CD# 172-200282-9)	CD		$289,985.71	289,985.71	0	2.050%	03/22/23	03/22/18	1,479.94
Washington Federal (CD# 172-200283-7)	CD		$1,144,782.46	1,144,782.46	0	1.250%	04/09/23	04/09/18	6,043.32
Moreton (State Bk India New York NY)	CD	8562846E9	$250,000.00	$251,970.00	1,970	2.250%	02/09/22	02/09/17	2,789.38
Moreton (Wells Fargo Bank Natl Assn)	CD	949763FX9	$250,000.00	$252,857.50	2,858	2.400%	03/29/22	03/20/17	1,512.33
Moreton (American Express Centurion Bk)	CD	02587DN38	$250,000.00	$253,020.00	3,020	2.450%	04/05/22	03/27/17	-
Moreton (Capital One Natl Assn)	CD	14042RFL0	$250,000.00	$253,397.50	3,398	2.300%	05/10/22	05/10/17	-
Moreton (Barclays Bk)	CD	06740KKJ5	$250,109.59	$254,285.00	4,175	2.200%	07/19/22	07/21/17	2,727.43
Moreton (KS Statebank Manhattan KS)	CD	50116CAQ2	$249,922.03	$250,272.50	350	1.631%	10/29/21	08/21/17	1,023.55
Moreton (Verus Bk Comm Ft Collins Colo)	CD	92535LBU7	$249,821.02	$250,272.50	451	1.656%	10/29/21	08/21/17	1,037.32
Moreton (American Express Fed Svgs Bk)	CD	02587CFU9	$250,104.54	$255,327.50	5,223	2.400%	08/29/22	08/25/17	3,024.66
Moreton (East Boston Svgs Bk MA)	CD	27113PCC3	$250,000.00	$254,830.00	4,830	2.050%	09/28/22	09/28/17	1,291.77
Moreton (South Ottumwa Svgs Bk Iowa)	CD	839145AA7	$250,000.00	$254,842.50	4,843	2.050%	09/29/22	09/29/17	1,291.77
Moreton (Stearns Bk NA St Cloud MN)	CD	857894UN7	$250,000.00	$254,842.50	4,843	2.050%	09/29/22	09/29/17	1,291.77
Moreton (First KY Bk Inc Mayfield)	CD	32065TAW1	$250,000.00	$255,052.50	5,053	2.100%	10/06/22	10/06/17	1,323.29
Moreton (Marlin Business Bk Salt Lake)	CD	57116APV4	$249,707.36	$250,172.50	465	2.000%	10/13/21	10/13/17	1,260.28
Moreton (Beneficial BK Philadelphia PA)	CD	08173QBX3	$250,000.00	$255,325.00	5,325	2.150%	10/18/22	10/18/17	-
Moreton (Continental Bk Utah)	CD	211163GS3	$250,000.00	$250,242.50	243	1.850%	10/20/21	10/20/17	-
Moreton (Morgan Stanley Bk)	CD	61747MF63	$250,000.00	$257,930.00	7,930	2.650%	01/11/23	01/11/18	3,285.27
Moreton (BMW Bk North Amer Salt Lake	CD	05580ANM2	$250,171.76	$263,130.00	12,958	3.250%	07/13/23	07/13/18	4,200.87
Moreton (Morgan Stanley Bk)	CD	061760AH51	$246,785.70	$253,878.80	7,093	2.400%	06/20/23	06/28/19	-
Moreton (Synchrony Bk)	CD	87164WZD3	$246,508.31	$248,946.95	2,439	2.350%	06/14/22	08/14/19	-
Moreton (EnerBank USA Salt Lake City)	CD	29278TKP4	$250,000.00	$259,515.00	9,515	1.950%	08/15/24	08/15/19	1,228.76
Moreton (Cit Bank NA)	CD	12556LBA3	$250,000.00	$254,090.00	4,090	1.900%	08/23/22	08/23/19	2,355.48
Moreton (Ally Bk Midvale Utah)	CD	02007GLF8	$250,000.00	$254,077.50	4,078	1.900%	08/22/22	08/22/19	2,355.48
Moreton (Encore BK Little Rock ARK)	CD	29260MAN5	$250,000.00	$257,030.00	7,030	1.750%	10/23/23	10/23/19	1,102.75
Moreton (Medallion BK Salt Lake City)	CD	58404DFV8	$245,000.00	$245,695.80	696	1.650%	12/06/21	12/06/19	1,018.94
Moreton (Live Oak BKG CO NC)	CD	538036HC1	$250,000.00	$257,542.50	7,543	1.800%	12/11/23	12/11/19	1,134.24
Moreton (Signature BK of ARK)	CD	82669LJM6	$250,000.00	$257,065.00	7,065	1.700%	12/27/23	12/27/19	1,071.24
Moreton (Eaglebank Bethesda, MD)	CD	27002YET9	$248,956.43	$254,910.00	5,954	1.700%	01/17/23	01/17/20	1,071.24
Moreton (Marthas Vineyard Svgs Bk)	CD	573125AF8	$248,529.32	$254,795.00	6,266	1.650%	01/23/23	01/21/20	1,039.72
Moreton (Unity Bk Clinton, NJ)	CD	91330ABX4	$250,000.00	$254,795.00	4,795	1.650%	01/23/23	01/22/20	1,039.72
Moreton (ESSA BK & TR Stoudsburg PA	CD	29667RSK0	$250,000.00	$251,460.00	1,460	1.650%	02/21/23	02/21/20	1,921.58
Moreton (Synovus BK Columbus GA)	CD	87164DQR4	$250,000.00	$254,687.50	4,688	1.550%	02/21/23	02/21/20	1,921.58
Moreton (First COML BK MISS)	CD	31984GFC8	$250,000.00	$251,380.00	1,380	1.500%	02/22/22	02/21/20	945.20
Moreton (Investors BK Short Hills NJ)	CD	46176PMV4	$250,000.00	$251,590.00	1,590	1.600%	02/28/22	02/28/20	1,983.56
Moreton (Central BK Little Rock ARK)	CD	152577AR3	$250,000.00	$250,467.50	468	1.650%	03/13/25	03/13/20	1,039.72
Moreton (UBS BK USA Salt Lake City)	CD	90348JSW1	$250,000.00	$251,005.00	1,005	1.000%	03/11/22	03/11/20	630.14
Moreton (Choice Finl Group Grafton)	CD	17037TEQ6	$250,000.00	$252,822.50	2,823	1.000%	03/13/23	03/13/20	1,260.27
Moreton (Ultima MK Minn Winger)	CD	90385LCY3	$250,000.00	$253,405.00	3,405	1.050%	09/02/23	03/20/20	661.65
Moreton (Cornhusker Bank Lincoln)	CD	219255AJ5	$250,000.00	$253,457.50	3,458	1.100%	03/28/25	03/30/20	693.15
Moreton (Lakeside BK Chicago)	CD	51210SSG3	$250,000.00	$252,682.50	2,683	1.150%	10/14/22	04/14/20	724.66
Moreton (Pacific Westn BK)	CD	69506YRH4	$250,000.00	$254,925.00	4,925	1.300%	04/16/24	04/16/20	-
Moreton (Celtic Bk Salt Lake City Utah)	CD	15118RUW5	$250,000.00	$256,527.50	6,528	1.450%	04/17/25	04/17/20	913.71
Moreton (Flagstar BK Bloomfield)	CD	33847E2Z9	$250,000.00	$253,482.50	3,483	1.150%	04/17/23	04/17/20	-
Moreton (Evergreen BK Group Oak Brook)	CD	300185JL0	$250,000.00	$254,297.50	4,298	1.200%	04/22/24	04/22/20	756.16

INSTITUTION INVESTED IN	INV TYPE	CUSIP	INVESTMENT AMOUNT BOOK VALUE	MARKET VALUE	MARKET GAIN (LOSS)	RATE OF RETURN	MATURITY DATE	PURCHASE DATE	FY 21 - 22 Y-T-D EARNINGS
Moreton (First Natl BK McGregor Tex)	CD	32112UDQ1	$250,000.00	$254,935.00	4,935	1.300%	04/29/24	04/28/20	819.18
Moreton (Luana Savings Bank)	CD	549104PN1	$250,000.00	$250,480.00	480	0.400%	05/09/22	05/08/20	-
Moreton (Apex Bk Camden)	CD	03753XBK5	$250,000.00	$252,132.50	2,133	0.950%	05/08/25	05/08/20	598.63
Moreton (Old MO Bk Springfield)	CD	68002LBU1	$250,000.00	$250,050.00	50	0.550%	05/15/24	05/15/20	346.57
Moreton (Union ST Bk Clay Ctr)	CD	908414BW4	$250,000.00	$250,550.00	550	0.500%	11/09/23	05/12/20	315.06
Moreton (First Carolina Bk Rocky Mout)	CD	31944MAX3	$250,000.00	$251,150.00	1,150	0.550%	05/12/23	05/13/20	346.57
Moreton (Malaga BK Palos Verdes)	CD	56102AAH9	$250,000.00	$249,407.50	(593)	0.650%	05/28/25	05/28/20	409.58
Moreton (Merrick BK South Jordan)	CD	59013KHV1	$250,000.00	$250,760.00	760	0.800%	05/29/25	05/29/20	504.10
Moreton (Financial Fed Svgs Bk)	CD	31749TBJ5	$250,000.00	$249,402.50	(598)	0.650%	05/29/25	05/29/20	409.58
Moreton (Jonesbror ST Bk)	CD	48040PGX7	$250,000.00	$250,145.00	145	0.800%	05/29/25	05/29/20	504.10
Moreton (Profinium Finl Inc.)	CD	74316VEZ4	$250,000.00	$252,545.00	2,545	0.500%	05/29/25	05/29/20	315.06
Moreton (Freedom Finl Bk West Des)	CD	35637RDD6	$250,000.00	$249,317.50	(683)	0.450%	05/29/24	05/29/20	283.57
Moreton (Tri-County TR CO)	CD	89556YAL0	$250,000.00	$250,425.00	425	3.500%	11/29/23	05/29/20	252.05
Moreton (United FID Bk FSB Evansvile)	CD	910286DN0	$250,000.00	$250,335.00	335	0.250%	06/29/22	05/29/20	157.53
Moreton (Freedom Bk of VA Vienna)	CD	35633MAV4	$250,000.00	$250,215.00	215	0.200%	06/10/22	06/10/20	126.04
Moreton (Southern STS Bk Anniston)	CD	843879DC8	$250,000.00	$249,570.00	(430)	0.500%	06/12/24	06/12/20	315.06
Moreton (Preferred Bk Los Angeles)	CD	740367LK1	$250,000.00	$248,377.50	(1,623)	0.550%	07/02/25	07/02/20	346.57
Moreton (Enterprise Bk NA NB)	CD	29367QCZ9	$250,000.00	$249,232.50	(768)	0.850%	06/05/26	06/05/20	535.62
Moreton (Independent Bk Memphis)	CD	45383UUQ6	$250,000.00	$250,280.00	280	0.250%	12/08/22	06/08/20	157.53
Moreton (First Credit Bank)	CD	320055CC8	$250,000.00	$250,270.00	270	0.350%	06/12/23	06/10/20	220.56
Moreton (River Bk Stoddard Wis)	CD	76804DAJ8	$250,000.00	$250,217.50	218	0.200%	06/10/22	06/11/20	126.04
Moreton (1st Finl Bk USA Dakota Dunes)	CD	32022RNR4	$250,000.00	$248,857.50	(1,143)	0.400%	06/19/24	06/19/20	252.05
Moreton (Bristol Morgan Bk Oakfield)	CD	110087AK9	$250,000.00	$248,235.00	(1,765)	0.450%	12/19/24	06/19/20	283.57
Moreton (Vision Bk St Louis PK)	CD	92834ABN5	$250,000.00	$252,415.00	2,415	0.600%	06/30/25	06/30/20	378.09
Moreton (Bankwell Bk New Canaan)	CD	06654BCH2	$250,000.00	$250,427.50	428	0.400%	07/06/23	07/06/20	495.89
Moreton (Tandem Bk Tucker)	CD	87537YAB0	$250,000.00	$250,065.00	65	0.550%	06/23/25	06/22/20	346.57
Moreton (Exchange Bk Gibbon Neb)	CD	301074DV9	$250,000.00	$249,015.00	(985)	0.550%	12/24/24	06/24/20	346.57
Moreton (Midfirst Bk Okla City)	CD	59740JWN5	$250,000.00	$250,030.00	30	0.150%	12/27/21	06/24/20	-
Moreton (Independence Bk Owensboro)	CD	45340KFP9	$250,000.00	$249,295.00	(705)	0.550%	09/24/24	06/24/20	346.57
Moreton (Suthrn Bancorp Bk Arkadelphia)	CD	84223QAN7	$250,000.00	$248,810.00	(1,190)	0.500%	10/25/24	06/26/20	315.06
Moreton (Franklin Savings Bk)	CD	354632AF8	$250,000.00	$248,797.50	(1,203)	0.400%	06/28/24	06/29/20	252.05
Moreton (Bank Princeton New Jersey)	CD	064520BC2	$250,000.00	$249,137.50	(863)	0.450%	06/28/24	06/30/20	283.57
Moreton (Murphy-Wall St Bk & Tr Co.)	CD	626757AD0	$250,000.00	$250,010.00	10	0.300%	06/28/23	06/30/20	189.04
Moreton (New York CMNTY Bk Westbury)	CD	649447TV1	$250,000.00	$250,100.00	100	0.250%	01/04/22	07/01/20	309.93
Moreton (American Natl Bk Baxter Minn)	CD	02769QDJ5	$250,000.00	$250,242.50	243	0.200%	07/11/22	07/10/20	126.04
Moreton (Peoples Bk Talbotton GA)	CD	710721BE0	$250,000.00	$250,022.50	23	0.200%	01/31/23	07/31/20	126.04
Moreton (Meridian Bk Paoli PA)	CD	58958PHG2	$250,000.00	$249,915.00	(85)	0.300%	07/28/23	07/30/20	189.04
Moreton (Farmers & Merchants BK Col)	CD	30781JAP5	$250,000.00	$247,802.50	(2,198)	0.500%	07/29/25	07/29/20	315.06
Moreton (Texas Exchange Bk Crowley)	CD	88241TJB7	$250,000.00	$250,057.50	58	0.950%	07/17/26	07/17/20	598.63
Moreton (First Natl Bk MI Kalamazoo)	CD	32114VCD7	$250,000.00	$247,647.50	(2,353)	0.750%	07/24/26	07/24/20	472.61
Moreton (Bank VY Bellwood Neb)	CD	06543PCL7	$250,000.00	$249,372.50	(628)	0.200%	08/18/23	08/19/20	126.04
Moreton (First Natl Bk of Albany Tex)	CD	32117WAT9	$250,000.00	$247,662.50	(2,338)	0.300%	08/28/24	08/28/20	189.04
Moreton (BMO Harris BK Natl Assn)	CD	05600XAV2	$250,000.00	$248,392.50	(1,608)	0.500%	02/27/25	08/27/20	315.07
Moreton Lincoln 1st BK Lincoln Pk)	CD	53362LBE3	$250,000.00	$247,750.00	(2,250)	0.500%	08/11/25	08/12/20	315.06
Moreton (Commerce St Bk west Bend WI)	CD	20070PLS4	$250,000.00	$246,760.00	(3,240)	0.400%	08/19/25	08/19/20	252.05
Moreton (Northeast Cmnty Bk White)	CD	664122AF5	$250,000.00	$247,232.50	(2,768)	0.450%	08/20/25	08/20/20	283.57
Moreton (Bank3 Memphis Tenn)	CD	06653LAP5	$250,000.00	$246,715.00	(3,285)	0.400%	08/28/25	08/28/20	252.05
Moreton (Home LN Invt Bk F S B Warwick)	CD	43719LAF2	$250,000.00	$246,710.00	(3,290)	0.400%	08/29/25	08/31/20	252.05
Moreton (First Choice BK Cerritos Calif)	CD	319461CX5	$250,000.00	$247,497.50	(2,503)	0.300%	09/18/24	09/18/20	189.04
Moreton (Bridgewater Bk Bloomington)	CD	108622KT7	$250,000.00	$246,625.00	(3,375)	0.400%	09/16/25	09/18/20	252.05
Moreton (American Comm Bk NA Bremen G	CD	02519TBB1	$250,000.00	$246,592.50	(3,408)	0.400%	09/22/25	09/22/20	252.05
Moreton (First Natl Bk Amer E Lansing)	CD	32110YQS7	$250,000.00	$246,580.00	(3,420)	0.400%	09/25/25	09/25/20	252.05
Moreton (First Coml Bk Jackson Miss)	CD	31984GFK0	$250,000.00	$246,542.50	(3,458)	0.300%	03/31/25	09/30/20	189.04
Moreton (JPMorgan Chase Bk)	CD	48128UNC9	$250,000.00	$246,555.00	(3,445)	0.400%	09/30/25	09/30/20	501.37

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Moreton (Insbank Nashville Tenn)	CD	45776NDV5	$245,000.00	$241,621.45	(3,379)	0.400%	09/30/25	10/15/20	247.01
Moreton (Magnolia BK INC KY)	CD	559582AL5	$250,000.00	$247,275.00	(2,725)	0.400%	04/30/25	10/30/20	252.05
Moreton (Uinta BK MTN View WYO)	CD	903572EX9	$250,000.00	$246,277.50	(3,723)	0.400%	10/30/25	10/30/20	252.05
Moreton (Northpointe Bk Grand Rapids)	CD	666613HQ0	$250,000.00	$250,032.50	33	0.150%	11/14/22	11/13/20	94.52
Moreton (Bank Hapoalim B M NY)	CD	06251A2M1	$250,000.00	$250,167.50	168	0.200%	11/17/22	11/17/20	-
Moreton (Grand Bk Tulsa Okla)	CD	38522ABN5	$250,000.00	$248,607.50	(1,393)	0.150%	11/27/23	11/25/20	94.52
Moreton (Banccentral Natl Assn Alva)	CD	05890NBB6	$250,000.00	$248,587.50	(1,413)	0.150%	11/30/23	11/30/20	-
Moreton (First Glen Bk Rowland Heights)	CD	320337DX3	$250,000.00	$247,175.00	(2,825)	0.300%	11/20/24	11/20/20	189.04
Moreton (Old Dominion Natl Bk North CD)	CD	679585AS8	$250,000.00	$246,155.00	(3,845)	0.400%	11/13/25	11/13/20	252.05
Moreton (Oakstar Bk NA Springfield MO)	CD	67389LAR4	$250,000.00	$245,635.00	(4,365)	0.400%	11/20/25	11/20/20	252.05
Moreton (Landmark Community Bank)	CD	51507LCA0	$250,000.00	$246,552.50	(3,448)	0.450%	11/25/25	11/25/20	283.57
Moreton (Security Bk & TR CO Paris CD)	CD	814010CK8	$250,000.00	$243,207.50	(6,793)	0.450%	11/13/26	11/13/20	-
Moreton (Prospect Bk Paris ILL)	CD	74349KCS7	$250,000.00	$247,045.00	(2,955)	0.300%	12/18/24	12/18/20	189.04
Moreton (Transportation Alliance Bk Inc.)	CD	89388CEE4	$250,000.00	$247,045.00	(2,955)	0.300%	12/18/24	12/18/20	189.04
Moreton (1st Sec BK of Wash Mountlake)	CD	33625CDY2	$250,000.00	$246,587.50	(3,413)	0.250%	12/30/24	12/30/20	157.53
Moreton (Bank Grove Okla)	CD	06246PCB9	$250,000.00	$245,482.50	(4,518)	0.400%	01/22/26	01/22/21	252.05
Moreton (Connectone Bk Englewood)	CD	20786ADE2	$250,000.00	$246,012.50	(3,988)	0.450%	01/22/26	01/22/21	283.57
Moreton (BankUnited Natl Assn)	CD	066519QC6	$250,000.00	$247,072.50	(2,928)	0.550%	01/22/26	01/22/21	342.81
Moreton (Chambers BK Davnille AK)	CD	157767AG9	$250,000.00	$245,965.00	(4,035)	0.450%	01/27/26	01/27/21	557.88
Moreton (First Reliance Bk SC)	CD	33615RGB8	$250,000.00	$246,847.50	(3,153)	0.300%	01/29/25	01/29/21	189.04
Moreton (Community West Bk Goleta)	CD	20415QHH5	$250,000.00	$248,207.50	(1,793)	0.150%	01/29/24	01/29/21	94.52
Moreton (Metropolitan Cap Bk Chicago IL)	CD	591803CA7	$250,000.00	$244,432.50	(5,568)	0.550%	11/18/26	02/19/21	681.85
Moreton (Legacy Bk & Tr CO, Rogersville)	CD	52470QAS3	$250,000.00	$245,675.00	(4,325)	0.450%	02/26/26	02/26/21	283.57
Moreton (Investors Cmnty Bk Manitowoc)	CD	46147UUJ7	$250,000.00	$246,347.50	(3,653)	0.500%	02/12/26	02/23/21	315.06
Moreton (Sunwest Bak Irvine Calif)	CD	86804DCT3	$250,000.00	$246,127.50	(3,873)	0.700%	03/05/27	03/05/21	441.10
Moreton (FNB Oxford BK)	CD	30259XAW2	$250,000.00	$246,770.00	(3,230)	0.750%	03/19/27	03/19/21	472.61
Moreton (Home Savings Bk Chanute KS)	CD	43733WAH6	$250,000.00	$247,432.50	(2,568)	0.800%	03/19/27	03/19/21	1,008.22
Moreton (American Natl Bk-Fox Cty	CD	02772JCH1	$250,000.00	$247,400.00	(2,600)	0.300%	09/30/24	04/06/21	189.04
Moreton (Third Fed Svgs & Ln Assn)	CD	88413QCW6	$250,000.00	$248,345.00	(1,655)	0.200%	02/22/24	04/06/21	189.05
Moreton (Pilot Bk Tampa Fla)	CD	721531CQ2	$250,000.00	$249,132.50	(868)	0.200%	10/10/23	04/07/21	126.04
Moreton (Wex Bk Midvale Utah)	CD	92937CKH0	$250,000.00	$249,962.50	(38)	0.100%	10/11/22	04/09/21	-
Moreton (Guaranty St Bk o Belolt)	CD	401228BJ9	$250,000.00	$247,987.50	(2,013)	0.200%	04/15/24	04/14/21	126.04
Moreton (Goldman Sachs Bk USA N Y)	CD	38149MWH2	$250,000.00	$249,940.00	(60)	0.900%	05/19/26	05/19/21	567.13
Moreton (Peoples Svgs BK)	CD	71224LAB0	$250,000.00	$250,115.00	115	0.650%	05/19/26	05/19/21	409.58
Moreton (Sandhills St Bk Bassett NEB)	CD	800037AP8	$250,000.00	$247,372.50	(2,628)	0.800%	05/21/27	05/21/21	504.10
Moreton (National BK Comm Superior)	CD	633368FE0	$250,000.00	$246,515.00	(3,485)	0.600%	05/21/26	05/21/21	505.49
Moreton (Gulf Atlantic Bk Key West)	CD	40216LAG4	$250,000.00	$246,762.50	(3,238)	0.250%	11/25/24	05/25/21	157.53
Moreton (Bank Little Chute Wis)	CD	05549CHK9	$250,000.00	$248,005.00	(1,995)	0.250%	05/28/24	05/28/21	157.53
Moreton (Poppy Bk Santa Rosa Calif)	CD	73319FBB4	$250,000.00	$246,862.50	(3,138)	0.400%	07/28/25	05/28/21	252.05
Moreton (Washington TR CO Westerly)	CD	940637NN7	$250,000.00	$250,000.00	0	0.050%	05/11/22	05/21/21	-
Moreton (Mizuho Bk USA)	CD	60688M2Y9	$250,000.00	$250,000.00	0	0.050%	05/26/22	05/26/21	-
Moreton (Spring Bk Bronx NY)	CD	849430BM4	$250,000.00	$245,292.50	(4,708)	0.500%	05/28/26	05/28/21	315.06
Moreton (Merchants MFR Joliet ILL	CD	588339FS5	$250,000.00	$249,262.50	(738)	0.100%	05/30/23	05/28/21	63.01
Moreton (Webbank Salt Lake City)	CD	947547MZ5	$250,000.00	$248,335.00	(1,665)	0.300%	05/28/24	05/28/21	-
Moreton (Mega BK San Gabriel Calif)	CD	58517JAL6	$250,000.00	$247,470.00	(2,530)	0.200%	06/24/24	06/22/21	-
Moreton (First Bk Hamilton New Jersey)	CD	319137AZ8	$250,000.00	$246,630.00	(3,370)	0.350%	06/11/25	06/11/21	220.56
Moreton (Pinnacle Bk Jasper ALA)	CD	723451BX7	$250,000.00	$245,167.50	(4,833)	0.500%	06/11/26	06/11/21	-
Moreton (Southeast Bank Athens Tenn)	CD	84133PFD5	$250,000.00	$246,255.00	(3,745)	0.600%	06/17/26	06/17/21	-
Moreton (Denver Svgs Bk Iowa)	CD	249398BZ0	$250,000.00	$246,142.50	(3,858)	0.600%	06/28/26	06/28/21	378.09
Moreton (Security St Bk Scott City KS)	CD	81489RCE8	$250,000.00	$247,460.00	(2,540)	0.450%	06/30/25	06/29/21	283.57
Moreton (One Cmnty Bk Ore Wis)	CD	682325AH8	$250,000.00	$246,760.00	(3,240)	0.500%	12/29/25	06/29/21	315.06
Moreton (National Bk New York City)	CD	634116CX3	$250,000.00	$245,897.50	(4,103)	0.500%	03/30/26	06/30/21	315.06
Moreton (John Marshall Bk Baileys)	CD	47804GGL1	$250,000.00	$248,987.50	(1,013)	0.150%	09/19/23	06/17/21	94.52
Moreton (Toyota Finl Svgs BK)	CD	89235MLE9	$250,000.00	$249,957.50	(43)	0.950%	07/29/26	07/29/21	-

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Moreton (Prime Alliance BK Utah)	CD	74160NHL7	$250,000.00	$245,265.00	(4,735)	1.000%	07/31/28	07/30/21	424.66
Moreton (Sallie Mae Bk Murray Utah)	CD	795451AT0	$250,000.00	$250,935.00	935	1.050%	08/25/26	08/25/21	-
Moreton (Availa Bk)	CD	05290BAA1	$250,000.00	$246,720.00	(3,280)	0.400%	08/27/25	08/27/21	84.93
Moreton (Cumberland Fed Bk)	CD	23062KDM1	$248,514.45	$245,904.93	(2,610)	0.200%	09/03/24	09/08/21	-
Moreton (Nebraskaland Natl Bk)	CD	63970QFY7	$250,000.00	$246,202.50	(3,798)	0.500%	02/27/26	09/08/21	102.74
Moreton (Industrial & Coml Bk)	CD	45581ECQ2	$250,000.00	$249,520.00	(480)	0.250%	09/08/23	09/09/21	-
Moreton (Farm Bur Bk FSB Sparks Nev)	CD	307660LN8	$250,000.00	$243,745.00	(6,255)	0.950%	09/08/28	09/10/21	-
Moreton (Veritex Cmnty Bk Dallas)	CD	923450CP3	$250,000.00	$249,252.50	(748)	0.200%	09/15/23	09/15/21	-
Moreton (Beal Bk USA Las Vegas)	CD	07371CSM2	$250,000.00	$250,000.00	0	0.070%	09/14/22	09/15/21	-
Moreton (Bank OZK Little Rock)	CD	06417NB69	$250,000.00	$248,662.50	(1,338)	0.180%	12/15/23	09/15/21	-
Moreton (Safra Natl Bank New York)	CD	78658RFH9	$250,000.00	$250,000.00	0	0.500%	03/15/22	09/15/21	
Moreton (Henderson ST Bk Neb)	CD	425246AY1	$250,000.00	$241,885.00	(8,115)	0.850%	09/18/28	09/17/21	
Moreton (First Natl Bk Damariscotta ME)	CD	32117BEKO	$250,000.00	$250,000.00	0	0.050%	12/17/21	09/17/21	
Moreton (Riverwind Bk Augusta ARK)	CD	76951GAM5	$250,000.00	$247,115.00	(2,885)	0.250%	09/20/24	09/20/21	
Moreton (Envision Bank Massachusetts)	CD	29415LCE9	$250,000.00	$248,957.50	(1,043)	0.150%	09/25/23	09/24/21	
			$0.00						
Moreton (Federal Natl Mtg Assn)	Fed Natl Mtg Assn	3136G35U5	$1,496,791.13	$1,504,905.00	8,114	1.419%	12/28/21	09/28/16	10,683.73
Moreton (Freddie Mac)	FreddieMac	3134GXDF8	$1,003,015.52	$986,030.00	(16,986)	0.700%	11/24/26	12/11/20	-
Moreton (Freddie Mac)	FreddieMac	3134GW6C5	$989,941.22	$991,410.00	1,469	0.800%	10/28/26	04/05/21	-
Moreton (Federal Natl Mtg Assn)	Fed Natl Mtg Assn	3135G06L2	$1,484,535.54	$1,482,930.00	(1,606)	0.875%	12/18/26	04/05/21	-
Moreton (Federal Home Loan Bank)	Fed Natl Mtg Assn	3130AKY34	$1,743,175.99	$1,741,705.00	(1,471)	0.250%	08/16/24	04/05/21	1,768.00
Moreton (Federal Home Loan Bank)	Fed Natl Mtg Assn	3130ALD9	$1,987,282.75	$1,984,960.00	(2,323)	1.000%	02/26/27	04/05/21	8,216.08
Moreton (Farmer Mac)	Farmer Mac	31422XDX7	$1,000,000.00	$996,700.00	(3,300)	0.830%	03/27/26	04/05/21	3,965.56
Moreton (Federal Farm Credit Bank)	Federal Farm	3133EM2C5	$499,500.00	$494,075.00	(5,425)	0.710%	08/10/26	08/11/21	-
Moreton (Federal Farm Credit Bank)	Federal Farm	3133ELN34	$997,440.00	$986,690.00	(10,750)	0.875%	06/22/24	09/10/21	-
Moreton (Federal Farm Credit Bank)	Federal Farm	3133EM3Q3	$1,000,000.00	$982,650.00	(17,350)	1.290%	02/26/26	09/10/21	-
Moreton (Federal Home Loan banks)	Federal Home	3130AKYH3	$997,870.00	$987,330.00	(10,540)	0.830%	02/10/27	09/13/21	-
Moreton (Federal Home Loan banks)	Federal Home	3130AKYH3	$993,000.00	$987,330.00	(5,670)	0.830%	02/10/27	09/24/21	-
AVERAGE							193		
Wells Fargo BS securities transferred to Moreton Capital Markets May 20, 2016									
Moreton Capital Markets Money Market and Cash			$1,376,192.00	$1,376,192.00	0	varies	N/A	N/A	
Wells Fargo ST Money Market 6810881786			-	$0.00	0	varies	N/A	N/A	-
Wells Fargo - PHA account			207,664.40	$207,664.40	0	varies	N/A	N/A	
TOTAL			**62,821,192**	**62,714,719**	**(106,472.23)**				**131,035.41**
US Treasury Notes/Agency Bonds - WF / RBC			$14,192,552.15	22.67%					
State Investment Pool			$5,608.67	0.01%					
Certificate of Deposits			$47,039,174.43	75.13%					
Money Market Accounts			1,376,192.00	2.20%					
			$62,613,527.25	100.00%					

Investment Abbreviations

CD = Certificate of Deposit
FHLMC = Federal Home Loan Mortgage Corporation (Freddie Mac)
FNMA = Federal National Mortgage Association (Fannie Mae)
FHLB = Federal Home Loan Banks

CITY OF ALAMOGORDO

COLLATERALIZATION SUMMARY REPORT

MONTH CLOSING: **September 30, 2021**

	Financial Institution	Amount of City Funds	FDIC Amount	Amount Uninsured	Required Collateral per NMSA 1978 6-10-17	Amount to be Collateralized	Collateral Pledged by Financial Institutions	Over/(Under) Pledged	At Risk
1)	State Treasurer's Pool - COA	$ 5,609	n/a			-			-
	Wells Fargo	$ 4,473,708							
	Wells Fargo - PHA	$ 207,664	207,664.40	$ -					
		$ 4,681,372	250,000	$ 4,431,372	50.00%	2,215,686	3,407,474.90	1,191,789	1,023,897
2)	Moreton Capital Markets								
a.	Cash and Money Market	$ 1,376,192	1,376,192						
	Certificates of Deposit	$ 41,479,131	41,479,131	$ -					
b.	Securities	$ 14,192,552	n/a						
		$ 57,047,875							
	First National - Alamogordo	$ 4,557,200	250,000	$ 4,307,200	50.00%	2,153,600	6,527,797.89	4,374,198	(2,220,598)
	First National - Alamogordo - PHA	$ 1,616,196	-	$ 1,616,196	50.00%	808,098	2,734,344.83	1,926,247	(1,118,149)
	First Savings Bank	$ 3,319,110	250,000	$ 3,069,110	50.00%	1,534,555	1,601,625.38	67,070	1,467,485
	Bank '34	$ 250,000	250,000	$ -	50.00%	-		-	-
	Pioneer Bank	$ 278,483	250,000	$ 28,483	50.00%	14,241	85,931.18	71,690	(57,448)
	Bank of the West	$ 277,682	250,000	$ 27,682	50.00%	13,841	69,276.00	55,435	(41,594)
	Washington Federal	$ 1,434,768	250,000	$ 1,184,768	50.00%	592,384	1,246,608.00	654,224	(61,840)
3)	New Mexico Finance Authority	$ 1,568,565	n/a						
	TOTAL	**$ 75,036,860**		**$ 14,664,812**		**7,332,406**	**15,673,058.18**	**$ 8,340,652**	**$ (1,008,246)**

1) These funds are invested in 7-day and 14 day Tresury bills and fully-collaterized bank deposits; per NM STO correspondence Feb. 27, 2009. Per State Treasurer's Investment Policy authorized investments are U.S. Govt. Obligations, Investment Grade commercial paper, AA rated or better Corporate bonds, asset-backed obligations, and etc. (pages 4-8). - Per LGIP statements - New MexiGROW LGIP deposits are not guaranteed or insured by any bank, the State of New Mexico, the Federal Deposit Insurance Corporation, the Federal Reserve Board, or any other agency. New MexiGROW LGIP deposits involve certain investment risks. Yield and total return may fluctuate and are not guaranteed.

2) Moreton Capital Markets - transferred on May 2016 from WFBS, which included RBC
a. Securities and cash are protected up to $500,000 (including a $250,000 limit for cash only
b. Federal Home Loan Notes, Freddie Mac, Fannie Mae, etc. are backed by the full faith and credit of the U.S. government.

3) NMFA is a governmental agency which must itself comply with state investment policies

CITY OF ALAMOGORDO
ANALYSIS OF INVESTMENT AND YIELDS
TWELVE MONTHS ENDED

MONTH	(1) TOTAL INVESTMENTS	(2) RETURN ON INVESTMENTS	(3) YIELDS ON INVESTMENTS	TOTAL RETURN ON INVESTMENTS
October 2020	49,164,892	48,390	1.181%	48,390
November 2020	48,823,083	54,286	1.334%	54,286
December 2020	48,860,196	28,702	0.705%	28,702
January 2021	47,895,525	38,191	0.957%	38,191
February 2021	47,993,249	38,138	0.954%	38,138
March 2021	47,977,513	35,329	0.884%	35,329
April 2021	56,618,831	37,724	0.800%	37,724
May 2021	56,650,252	45,277	0.959%	45,277
June 2021	56,694,605	41,317	0.875%	41,317
July 2021	56,724,122	31,422	0.665%	31,422
August 2021	56,770,329	46,207	0.977%	46,207
September 2021	62,825,411	56,118	1.072%	56,118
ANNUAL AVERAGE	**53,083,167**	**41,758**	**0.9467%**	**$41,758**
12 MONTH TOTALS		**501,101**	**0.9440%**	**501,101**
			This Quarter	**133,747**

(1) AVERAGE TOTAL INVESTMENTS (BOOK VALUE)
(2) ALL RETURNS AND YIELDS ARE CALCULATED ON A CASH BASIS
(3) AVERAGE YIELD ON INVESTMENTS

CITY OF ALAMOGORDO
INVESTMENT SUMMARY
BY FUND
September 30, 2021

FUND NO.	FUND DESCRIPTION	PER FUND INVESTMENT
11	GENERAL OPERATING	13,449,900.54
12	INTERNAL SERVICE	
15	CORRECTIONS-CITY EXPENSE	
16	LODGER'S TAX-PROMOTIONS	172,091.27
17	POLICE COURT BONDS	
19	COURT AUTOMATION	
20	LODGER'S TAX-CITY SHARE	38,829.75
21	D.A.R.E. DONATIONS	16,249.18
22	GIFT FUND	
24	CAPITAL IMPRO	
27	MUNICIPAL COURT	
28	POLICE CONTINGENCY	54,076.68
31	CEMETERY-PERPETUAL CARE	802,584.32
32	COMMUNITY SERVICES	
33	FIRE PROTECTION FUND	168,868.84
36	LAW ENFORCEMENT	
37	ST HIGHWAY CLEANUP	114,952.97
38	TRAFFIC SAFETY	48,382.87
39	STATE JUDICIAL	
40	AIRPORT IMPROVEMENTS	
42	84 GRT	2,208,455.31
44	TRANSPORTATION FUND	
48	NEW MEXICO C.D.B.G.	
49	86 GRT	3,822,410.02
50	PROPERTY ACQUISITION	
53	GO BOND P&I	
54	REVERSE OSMOSIS PRJ RSV	
56	99 GRT FLOOD CONTROL	
59	GRT P & I	-
61	91 GRT INFRASTRUCTURE	538,607.87
63	ENGINEERING	
69	94 GROSS RECEIPTS TAX	2,560,770.91
71	SENIOR CENTER III	
74	SENIOR GIFT FUND	89,720.02
75	SENIOR CENTER RSVP	
81	WATER/SEWER OPERATIONS	5,813,129.64
82	1998 JT. WATER/SEWER BOND P&I	39,996.22
86	SOLID WASTE	432,746.88
88	BONITO LAKE	344,519.52
89	ESGRT .0625%	2,188,662.04
90	GOLF COURSE	
91	AIRPORT	
94	LANDFILL OPERATIONS	4,103,310.64
96	FLEET COLLISION	452,506.19
98	PAYROLL CLEARING	

104	UTILITY DEPOSITS	633,181.76
105	ECONOMIC DEVELOPMENT GRT	3,982,731.97
107	LIABILITY/DEDUCTABLE INSURANCE	670,223.66
109	2004 CAPITAL OUTLAY GRT	15,253,292.45
113	09 GO BOND	
114	SIDEWALK REVOLVING LOANS	143,350.47
115	CORP ESCROW ACCOUNT	
116	REG WATER SUPPLY TRANS LN	
117	2011 JT W/S REF/IMP REV BOND	
119	11 GRT REF/IMP REV BOND	256,821.36
121	2015 GO BONDS-FUN CENTER	90,022.25
122	2015 GO BONDS - STREETS	174,459.23
124	AMERICAN RESCUE PLAN ACT	3,952,892.00
901	HOUSING LOW RENT OPER	96,555.71
903	HOUSING HOMEOWNERSHIP OPR	111,108.69
904	HOUSING CAPITAL FUND PRJ	
	TOTAL:	**62,825,411.23**

AGENDA REPORT
CITY OF ALAMOGORDO
CITY COMMISSION

Meeting Date: 11/30/2021 **Report Date:** 11/16/2021 **Report No:** 12.

Submitted By: Britney Ybarra

Subject: Consider, and act upon, Aging and Long-term Services Department (ALTSD) severance tax bond funding to be used solely for the purchase and installation of Senior Center kitchen equipment, the total amount budgeted is $25,063.00. *(Magdalena Morales, ASC Manager and Veronica Ortega, Community Services Director)*

Fiscal Impact:
Amount Budgeted:
Fund:

Additional Fiscal Impact: Total Amount Budgeted: $25,063.00

Recommendation: Approve the funding.

Background: This funding is from the Aging and Long-term Services Department and is to be used for the purchase and installation of Senior Center kitchen equipment.

STATE OF NEW MEXICO
AGING AND LONG-TERM SERVICES DEPARTMENT
FUND 89200 CAPITAL APPROPRIATION PROJECT

THIS AGREEMENT is made and entered into as of this _______ day of __________, ______, by and between the Aging and Long-Term Services Department, hereinafter called the "Department" or abbreviation such as "ALTSD", and City of Alamogordo, hereinafter called the "Grantee". This Agreement shall be effective as of the date it is executed by the Department.

RECITALS

WHEREAS, in the Laws of 2021, Chapter 138, Section 5, Paragraph 25, the Legislature made an appropriation to the Department, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

WHEREAS, the Department is granting to Grantee, and the Grantee is accepting the grant of, funds from this appropriation, in accordance with the terms and conditions of this Agreement; and

WHEREAS, State Agency on Aging (28-4-1 to 28-4-9 NMSA 1978): successor agency, Aging and Long-Term Services Department (9-23-1 to 9-23-12 NMSA 1978) may enter into grants and contracts as appropriated by law.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained herein, the parties hereby mutually agree as follows:

ARTICLE I. PROJECT DESCRIPTION, AMOUNT OF GRANT AND REVERSION DATE

A. The project that is the subject of this Agreement is described as follows:

A21F2031 $25,063.00 APPROPRIATION REVERSION DATE: 30-JUN-2023
Laws of 2021, Chapter 138, Section 5, Paragraph 25, to purchase and install meals equipment and other equipment for the Alamogordo senior center in Alamogordo in Otero county;

The Grantee's total reimbursements shall not exceed twenty-five thousand sixty-three dollars $25,063.00 (the "Appropriation Amount") minus the allocation for Art in Public Places ("AIPP amount")[1], if applicable, ($0), which equals zero dollars $25,063.00.

In the event of a conflict among the Appropriation Amount, the Reversion Date, as defined herein and/or the purpose of the Project, as set forth in this Agreement, and the corresponding appropriation language in the laws cited above in this Article I(A), the language of the laws cited herein shall control.

---

[1] The AIPP amount is "an amount of money equal to one percent or two hundred thousand dollars ($200,000), whichever is less, of the amount of money appropriated for new construction or any major renovation exceeding one hundred thousand dollars ($100,000)." Section 13-4A-4 NMSA 1978.

This project is referred to throughout the remainder of this Agreement as the "Project"; the information contained in Article I(A) is referred to collectively throughout the remainder of this Agreement as the "Project Description." Attachment A sets forth additional or more stringent requirements and conditions, which are incorporated by this reference as if set forth fully herein. If Attachment A imposes more stringent requirements than any requirement set forth in this Agreement, the more stringent requirements of Attachment A shall prevail, in the event of irreconcilable conflict. The Grantee shall reference the Project's number in all correspondence with and submissions to the Department concerning the Project, including, but not limited to, Requests for Payment and reports.

ARTICLE II. LIMITATION ON DEPARTMENT'S OBLIGATION TO MAKE GRANT DISBURSEMENT TO GRANTEE

A. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Project Description, the Grantee shall only be reimbursed monies for which the Department has issued and the Grantee has received a Notice of Department's Obligation to Reimburse[2] Grantee (hereinafter referred to as "Notice of Obligation"). This Grant Agreement and the disbursement of any and all amounts of the above referenced Adjusted Appropriation Amount are expressly conditioned upon the following:

(i) Irrespective of any Notice of Obligation, the Grantee's expenditures shall be made on or before the Reversion Date and, if applicable, an Early Termination Date (i.e., the goods have been delivered and accepted or the title to the goods has been transferred to the Grantee and/or the services have been rendered for the Grantee); and

(ii) The total amount received by the Grantee shall not exceed the lesser of: (a) the Adjusted Appropriation Amount identified in Article I(A) herein or (b) the total of all amounts stated in the Notice(s) of Obligation evidencing that the Department has received and accepted the Grantee's Third Party Obligation(s), as defined in subparagraph iii of this Article II(A); and

(iii) The Grantee's expenditures were made pursuant to the State Procurement Code and execution of binding written obligations or purchase orders with third party contractors or vendors for the provision of services, including professional services, or the purchase of tangible personal property and real property for the Project, hereinafter referred to as "Third Party Obligations"; and

(iv) The Grantee's submittal of timely Requests for Payment in accordance with the procedures set forth in Article IX of this Agreement; and

(v) In the event that capital assets acquired with Project funds are to be sold, leased, or licensed to or operated by a private entity, the sale, lease, license, or operating agreement:

   a. must be approved by the applicable oversight entity (if any) in accordance with law; or
   b. if no oversight entity is required to approve the transaction, the Department must approve the transaction as complying with law.

   Prior to the sale, lease, license, or operating agreement being approved pursuant to Articles II(A)(v)(a) and II(A)(v)(b) herein, the Department may, in its sole and absolute discretion and unless inconsistent with State Board of Finance imposed conditions, reimburse the Grantee for necessary expenditures incurred to develop the Project sufficiently to make the sale, lease, license, or operating agreement commercially feasible, such as plan and design expenditures; and

(vi) The Grantee's submission of documentation of all Third Party Obligations and amendments thereto (including terminations) to the Department and the Department's issuance and the Grantee's receiving of

[2] "Reimburse" as used throughout this Agreement includes Department payments to the Grantee for invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee.

a Notice of Obligation for a particular amount in accordance with the terms of this Agreement shall be governed by the following:

a. The Grantee shall submit to the Department one copy of all Third Party Obligations and amendments thereto (including terminations) as soon as possible after execution by the Third Party **but prior to execution by the Grantee.**
b. Grantee acknowledges and agrees that if it chooses to enter into a Third Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such obligations.
c. The Department may, in its sole and absolute discretion, issue to Grantee a Notice of Obligation for the particular amount of that Third Party Obligation that only obligates the Department to reimburse Grantee's expenditures made on or before the Reversion Date or an Early Termination Date. The current Notice of Obligation form is attached to this Agreement as Exhibit 2.
d. The date the Department signs the Notice of Obligation is the date that the Department's Notice of Obligation is effective. After that date, the Grantee is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third Party Obligation and request the Third Party to begin work. Payment for any work performed or goods received prior to the effective date of the Notice of Obligation is wholly and solely the obligation of the Grantee.

B. The Grantee shall implement, in all respects, the Project. The Grantee shall provide all necessary qualified personnel, material, and facilities to implement the Project. The Grantee shall finance its share (if any) of the costs of the Project, including all Project overruns.

C. Project funds shall not be used for purposes other than those specified in the Project Description.

D. Unless specifically allowed by law, Project funds cannot be used to reimburse Grantee for indirect Project costs.

ARTICLE III. NOTICE PROVISIONS AND GRANTEE AND DEPARTMENT DESIGNATED REPRESENTATIVES

Whenever written notices, including written decisions, are to be given or received, related to this Agreement, the following provisions shall apply.

The Grantee designates the person(s) listed below, or their successor, as their official representative(s) concerning all matters related to this Agreement:

Grantee:	City of Alamogordo
Name:	Magdalena Morales
Title:	Senior Center Manager
Address:	2201 Puerto Rico Ave., Alamogordo, NM. 88310
Email:	mmorales@ci.alamogordo.nm.us
Telephone:	(575) 439-4150

The Grantee designates the person(s) listed below, or their successor, as their Fiscal Officer or Fiscal Agent concerning all matters related to this Agreement:

Grantee:	City of Alamogordo
Name:	Evelyn Huff
Title:	Finance Director
Address:	1376 E. 9th Street, Alamogordo, NM 88310
Email:	ehuff@ci.alamogordo.nm.us
Telephone:	(575) 439-4167

The Department designates the persons listed below, or their successors, as the Points of Contact for matters related to this Agreement.

Department:	Aging and Long-Term Services Department
Name:	Barbara J. Romero
Title:	Capital Projects Bureau Chief
Address:	2550 Cerrillos Road Santa Fe, NM 87505
Email:	barbara.romero@state.nm.us
Telephone:	505-365-3660

The Grantee and the Department agree that either party shall send all notices, including written decisions, related to this Agreement to the above named persons by email or regular mail. In the case of mailings, notices shall be deemed to have been given and received upon the date of the receiving party's actual receipt or five calendar days after mailing, whichever shall first occur. In the case of email transmissions, the notice shall be deemed to have been given and received on the date reflected on the delivery receipt of email.

ARTICLE IV. REVERSION DATE, TERM, DEADLINE TO EXPEND FUNDS

A. As referenced in Article I(A), the applicable law establishes a date by which Project funds must be expended by Grantee, which is referred to throughout the remainder of this Agreement as the "Reversion Date." Upon being duly executed by both parties, this Agreement shall be effective as of the date of execution by the Department. It shall terminate on June 30, 2023, the Reversion Date unless Terminated Before Reversion Date ("Early Termination") pursuant to Article V herein.

B. The Project's funds must be expended on or before the Reversion Date and, if applicable, Early Termination Date of this Agreement. For purposes of this Agreement, it is not sufficient for the Grantee to encumber the Project funds on its books on or before the Project's Reversion Date or Early Termination Date. Funds are expended and an expenditure has occurred as of the date that a particular quantity of goods are delivered to and received by the Grantee or title to the goods is transferred to the Grantee and/or as of the date particular services are rendered for the Grantee. Funds are ***not*** expended and an expenditure has ***not*** occurred as of the date they are encumbered by the Grantee pursuant to a contract or purchase order with a third party.

ARTICLE V. EARLY TERMINATION

A. Early Termination Before Reversion Date Due to Completion of the Project or Complete Expenditure of the Adjusted Appropriation or Violation of this Agreement

Early Termination includes:

(i) Termination due to completion of the Project before the Reversion Date; or
(ii) Termination due to complete expenditure of the Adjusted Appropriation Amount before the Reversion Date; or
(iii) Termination for violation of the terms of this Agreement; or
(iv) Termination for suspected mishandling of public funds, including but not limited to, fraud, waste, abuse, and conflicts of interest.

Either the Department or the Grantee may early terminate this Agreement prior to the Reversion Date by providing the other party with a minimum of fifteen (15) days' advance, written notice of early termination. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(A).

B. Early Termination Before Reversion Date Due to Non-appropriation

The terms of this Agreement are expressly made contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. Throughout this Agreement the term "non-appropriate" or "non-appropriation" includes the following actions by the New Mexico Legislature: deauthorization, reauthorization or revocation of a prior authorization. The Legislature may choose to non-appropriate the Appropriation referred to in Article I and, if that occurs, the Department shall early terminate this Agreement for non-appropriation by giving the Grantee written notice of such termination, and such termination shall be effective as of the effective date of the law making the non-appropriation. The Department's decision as to whether sufficient appropriations or authorizations are available shall be accepted by the Grantee and shall be final. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(B).

C. Limitation on Department's Obligation to Make Grant Disbursements to Grantee in the Event of Early Termination

In the event of Early Termination of this Agreement by either party, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth Article II.

ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS

A. The Department may choose, in its sole and absolute discretion, to provide written notice to the Grantee to suspend entering into new and further obligations. Upon the receipt of such written notice by the Grantee:

(i) The Grantee shall immediately suspend entering into new or further written obligations with third parties; and
(ii) The Department will suspend the issuance of any new or further Notice of Obligation under this Agreement; and
(iii) The Department may direct the Grantee to implement a corrective action plan in accordance with Article VI(D) herein.

B. In the event of Suspension of this Agreement, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth in Article II herein.

C. A suspension of new or further obligations under this Agreement shall remain in effect unless or until the date the Grantee receives written notice given by the Department informing the Grantee that the Suspension has been lifted or that the Agreement has been Early Terminated in accordance with Article V herein. If the Suspension is lifted, the Department will consider further requests for Notice of Obligation.

D. Corrective Action Plan in the Event of Suspension

In the event that the Department chooses, in its sole and absolute discretion to direct the Grantee to suspend entering into new or further written obligations with third parties pursuant to Article VI(A), the Department may, but is not obligated to, require the Grantee to develop and implement a written corrective action plan to remedy the grounds for the Suspension. Such corrective action plan must be approved by the Department and be signed by the Grantee. Failure to sign a corrective action plan or meet the terms and deadlines set forth in the signed corrective action plan, is hereby deemed a violation of the terms of this Agreement for purposes of Early Termination, Article V(A)(iii). The corrective action plan is in addition to, and not in lieu of, any other equitable or legal remedy, including but not limited to Early Termination.

ARTICLE VII. AMENDMENT

This Agreement shall not be altered, changed, or amended except by instrument in writing duly executed by both the parties hereto.

ARTICLE VIII. REPORTS

A. Database Reporting

The Grantee shall report monthly Project activity by entering such Project information as the Department and the Department of Finance and Administration may require, such information entered directly into a database maintained by the Department of Finance and Administration (http://cpms.dfa.state.nm.us). Additionally, the Grantee shall certify on the Request for Payment form (Exhibit 1) that updates have been maintained and are current in the database. The Grantee hereby acknowledges that failure to perform and/or certify updates into the database will delay or potentially jeopardize the reimbursement of funds. The Department shall give Grantee a minimum of thirty (30) days' advance written notice of any changes to the information the Grantee is required to report.

Monthly reports shall be due on the last day of each month, beginning with the first full month following execution of this Agreement by the Department and ending upon the submission of the final request for reimbursement for the Project.

B. Requests for Additional Information/Project Inspection

During the term of this Agreement and during the period of time during which the Grantee must maintain records pursuant to Article VIII, the Department may:

(i) request such additional information regarding the Project as it deems necessary; and

(ii) conduct, at reasonable times and upon reasonable notice, onsite inspections of the Project.

Grantee shall respond to such requests for additional information within a reasonable period of time, as established by the Department.

ARTICLE IX. REQUEST FOR PAYMENT PROCEDURES AND DEADLINES

A. The Grantee shall request payment by submitting a Request for Payment, in the form attached hereto as Exhibit 1. Payment requests are subject to the following procedures:

(i) The Grantee must submit a Request for Payment; and

(ii) Each Request for Payment must contain proof of payment by the Grantee or liabilities incurred by the Grantee showing that the expenditures are valid or are liabilities incurred by the Grantee in the form of actual unpaid invoices received by the Grantee for services rendered by a third party or items of tangible personal property received by the Grantee for the implementation of the Project; provided, however, that the Grantee may be reimbursed for unpaid liabilities only if the Department, in its sole and absolute discretion, agrees to do so and in accordance with any special conditions imposed by the Department.

(iii) In cases where the Grantee is submitting a Request for Payment to the Department based upon invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee, the Grantee shall make payment to those contractors or vendors within five (5) business days from the date of receiving reimbursement from the Department or such shorter period of time as the Department may prescribe in writing. The Grantee is required to certify to the Department proof of payment to the third party contractor or vendor within ten (10) business days from the date of receiving reimbursement from the Department.

B. The Grantee must obligate 5% of the Adjusted Appropriation Amount within six months of acceptance of the grant agreement and must have expended no less than 85% of the Adjusted Appropriation Amount six months prior to the reversion date.

C. **Deadlines**

Requests for Payments shall be submitted by Grantee to the Department on the earlier of:

(i) Immediately as they are received by the Grantee but at a minimum thirty (30) days from when the expenditure was incurred or liability of the Grantee was approved as evidenced by an unpaid invoice received by the Grantee from a third party contractor or vendor; or

(ii) July 15 of each year for all unreimbursed expenditures incurred during the previous fiscal year; or

(iii) Twenty (20) days from date of Early Termination; or

(iv) Twenty (20) days from the Reversion Date.

D. The Grantee's failure to abide by the requirements set forth in Article II and Article IX herein will result in the denial of its Request for Payment or will delay the processing of Requests for Payment. The Department has the right to reject a payment request for the Project unless and until it is satisfied that the expenditures in the Request for Payment are for permissible purposes within the meaning of the Project Description and that the expenditures and the Grantee are otherwise in compliance with this Agreement, including but not limited to, compliance with the reporting requirements and the requirements set forth in Article II herein to provide Third Party Obligations and the Deadlines set forth in Article IX herein. The Department's ability to reject any Request for Payment is in addition to, and not in lieu of, any other legal or equitable remedy available to the Department due to Grantee's violation of this Agreement.

ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS; REPRESENTATIONS AND WARRANTIES

A. The following general conditions and restrictions are applicable to the Project:

(i) The Project's funds must be spent in accordance with all applicable state laws, regulations, policies, and guidelines, including, but not limited to, the State Procurement Code (or local procurement ordinance, where applicable).

(ii) The Project must be implemented in accordance with the New Mexico Public Works Minimum Works Act, Section 13-4-10 through 13-4-17 NMSA 1978, as applicable. Every contract or project in excess of sixty thousand dollars ($60,000) that the Grantee is a party to for construction, alteration, demolition or repair or any combination of these, including painting and decorating, of public buildings, public works or public roads and that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics, shall be based upon the wages and benefits that will be determined by the New Mexico Department of Workforce Solutions to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the locality. Further, every contract or project shall contain a stipulation that the contractor, subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates and fringe benefit rates not less than those determined pursuant to Section 13-4-11 (B) NMSA 1978 to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.

(iii) The Project may only benefit private entities in accordance with applicable law, including, but not limited to, Article IX, Section 14 of the Constitution of the State of New Mexico, the "Anti-Donation Clause."

(iv) The Grantee shall not for a period of 10 years from the date of this agreement convert any property acquired, built, renovated, repaired, designed or developed with the Project's funds to uses other than those specified in the Project Description without the Department's and the Board of Finance's express, advance, written approval, which may include a requirement to reimburse the State for the cost of the project, transfer proceeds from the disposition of property to the State, or otherwise provide consideration to the State.

(v) The Grantee shall comply with all federal and state laws, rules and regulations pertaining to equal employment opportunity. In accordance with all such laws, rules and regulations the Grantee agrees to assure that no person shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with Grantee, be excluded from participation in the Project, be denied benefits or otherwise be subject to discrimination under, any activity performed under this Agreement. If Grantee is found to be not in compliance with these requirements during the life of this Agreement, Grantee agrees to take appropriate steps to correct any deficiencies. The Grantee's failure to implement such appropriate steps within a reasonable time constitutes grounds for terminating this Agreement.

B. The Grantee hereby represents and warrants the following:

(i) The Grantee has the legal authority to receive and expend the Project's funds.

(ii) This Agreement has been duly authorized by the Grantee, the person executing this Agreement has authority to do so, and, once executed by the Grantee, this Agreement shall constitute a binding obligation of the Grantee, enforceable according to its terms.

(iii) This Agreement and the Grantee's obligations hereunder do not conflict with any law or ordinance or resolution applicable to the Grantee, the Grantee's charter (if applicable), or any judgment or decree to which the Grantee is subject.

(iv) The Grantee has independently confirmed that the Project Description, including, but not limited to, the amount and Reversion Date, is consistent with the underlying appropriation in law.

(v) The Grantee's governing body has duly adopted or passed as an official act a resolution, motion, or similar action authorizing the person identified as the official representative of the Grantee to sign the Agreement and to sign Requests for Payment.

(vi) The Grantee shall abide by New Mexico laws regarding conflicts of interest, governmental conduct and whistleblower protection. The Grantee specifically agrees that no officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this Grant, during their tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed or goods to be received, pursuant to this Grant. Further, Grantee shall require all of its contractors to incorporate in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.

(vii) No funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of this or any agency or body in connection with the awarding of any Third Party Obligation and that the Grantee shall require certifying language prohibiting lobbying to be included in the award documents for all subawards, including subcontracts, loans and cooperative agreements. All subrecipients shall be required to certify accordingly.

ARTICLE XI. STRICT ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS; PROJECT RECORDS

A. The Grantee shall be strictly accountable for receipts and disbursements relating to the Project's funds. The Grantee shall follow generally accepted accounting principles, and, if feasible, maintain a separate bank account or fund with a separate organizational code, for the funds to assure separate budgeting and accounting of the funds.

B. For a period of six (6) years following the Project's completion, the Grantee shall maintain all Project related records, including, but not limited to, all financial records, requests for proposals, invitations to bid, selection and award criteria, contracts and subcontracts, advertisements, minutes of pertinent meetings, as well as records sufficient to fully account for the amount and disposition of the total funds from all sources budgeted for the Project, the purpose for which such funds were used, and such other records as the Department shall prescribe.

C. The Grantee shall make all Project records available to the Department, the Department of Finance and Administration, and the New Mexico State Auditor upon request. With respect to the funds that are the subject of this Agreement, if the State Auditor or the Department of Finance and Administration finds that any or all of these funds were improperly expended, the Grantee may be required to reimburse to the State of New Mexico, to the originating fund, any and all amounts found to be improperly expended.

ARTICLE XII. IMPROPERLY REIMBURSED FUNDS

If the Department determines that part or all of the Appropriation Amount was improperly reimbursed to Grantee, including but not limited to, Project funds reimbursed to Grantee based upon fraud, mismanagement, misrepresentation, misuse, violation of law by the Grantee, or violation of this Agreement, the Grantee shall return such funds to the Department for disposition in accordance with law.

ARTICLE XIII. LIABILITY

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 immunities and limitations of the New Mexico Tort Claims Act.

ARTICLE XIV. SCOPE OF AGREEMENT

This Agreement constitutes the entire and exclusive agreement between the Grantee and Department concerning the subject matter hereof. The Agreement supersedes any and all prior or contemporaneous agreements, understandings, discussions, communications, and representations, written or verbal.

ARTICLE XV. REQUIRED NON-APPROPRIATIONS CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

The Grantee acknowledges, warrants, and agrees that Grantee shall include a "non-appropriations" clause in all contracts between it and other parties that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement that states:

"The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, the City of Alamogordo may immediately terminate this Agreement by giving Contractor written notice of such termination. The City of Alamogordo's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. Contractor hereby waives any rights to assert an impairment of contract claim against the City of Alamogordo or the Aging and Long-Term Services Department or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the City of Alamogordo or the Department."

ARTICLE XVI. REQUIRED TERMINATION CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

Grantee acknowledges, warrants, and agrees that Grantee shall include the following termination clause in all contracts that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement:

"This contract is funded in whole or in part by funds made available under an Aging and Long-Term Services Department Grant Agreement. Should the Aging and Long-Term Services Department early terminate the grant agreement, the City of Alamogordo may early terminate this contract by providing Contractor written notice of such termination. In the event of termination pursuant to this paragraph, the City of Alamogordo only liability shall be to pay Contractor for acceptable goods delivered and services rendered before the termination date."

Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department.

XVII. COMPLIANCE WITH UNIFORM FUNDING CRITERIA.

A. Throughout the term of this Agreement, Grantee shall:

1. submit all reports of annual audits and agreed upon procedures required by Section 12-6-3(A)-(B) NMSA 1978 by the due dates established in 2.2.2 NMAC, reports of which must be a public record pursuant to Section 12-6-5(A) NMSA 1978 within forty-five days of delivery to the State Auditor;
2. have a duly adopted budget for the current fiscal year approved by its budgetary oversight agency (if any);
3. timely submit all required financial reports to its budgetary oversight agency (if any); and
4. have adequate accounting methods and procedures to expend grant funds in accordance with applicable law and account for and safeguard grant funds and assets acquired by grant funds.

B. In the event Grantee fails to comply with the requirements of Paragraph A of this Article XVII, the Department may take one or more of the following actions:

1. suspend new or further obligations pursuant to Article VI(A) of this Agreement;
2. require the Grantee to develop and implement a written corrective action plan pursuant to Article VI(D) of this Agreement to remedy the non-compliance;
3. impose special grant conditions to address the non-compliance by giving the Grantee notice of such special conditions in accordance with Article III of this Agreement; the special conditions shall be binding and effective on the date that notice is deemed to have been given pursuant to Article III; or
4. terminate this Agreement pursuant to Article V(A) of this Agreement.

ARTICLE XVIII. [OPTIONAL IF THE APPROPRIATION IS FUNDED BY SEVERANCE TAX BONDS OR GENERAL OBLIGATION BONDS] SEVERANCE TAX BOND AND GENERAL OBLIGATION BOND PROJECT CLAUSES

A. Grantee acknowledges and agrees that the underlying appropriation for the Project is a severance tax bond or general obligation bond appropriation, and that the associated bond proceeds are administered by the New Mexico State Board of Finance (SBOF), an entity separate and distinct from the Department. Grantee acknowledges and agrees that (i) it is Grantee's sole and absolute responsibility to determine through SBOF staff what (if any) conditions are currently imposed on the Project; (ii) the Department's failure to inform Grantee of a SBOF imposed condition does not affect the validity or enforceability of the condition; (iii) the SBOF may in the future impose further or different conditions upon the Project; (iv) all SBOF conditions are effective without amendment of this Agreement; (v) all applicable SBOF conditions must be satisfied before the SBOF will release to the Department funds subject to the condition(s); and (vi) the Department's obligation to reimburse Grantee from the Project is contingent upon the then current SBOF conditions being satisfied.

B. Grantee acknowledges and agrees that the SBOF may in its sole and absolute discretion remove a project's assigned bond proceeds if the project doesn't proceed sufficiently. Entities must comply with the requirement to encumber five percent (5%) of Project funds within six months of bond issuance as certified by the grantee in the Bond Questionnaire and Certification documents submitted to the SBOF. Failure to comply may result in the bond proceeds reassignment to a new ready project. If this should occur this grant agreement will be suspended until the entity has demonstrated readiness as determined by the SBOF and the Department.

C. Grantee acknowledges and agrees that this Agreement is subject to the SBOF's Bond Project Disbursements rule, NMAC 2.61.6, as may be amended or re-codified. The rule provides definitions and interpretations of grant language for the purpose of determining whether a particular activity is allowable under the authorizing language of the agreement.

[THIS SPACE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date of execution by the Department.

GRANTEE

____
Signature of Official with Authority to Bind Grantee

City of Alamogordo - Alamo Senior Center
Entity Name

By: Brian Cesar
(Type or Print Name)

Its: City Manager
(Type or Print Title)

____
Date

AGING AND LONG-TERM SERVICES DEPARTMENT

____
By:

Its: Cabinet Secretary or Designee

____
Date

AGING & LONG-TERM SERVICES DEPARTMENT

EXHIBIT 1
ALTSD CAPITAL OUTLAY GRANT
MONTHLY / FINAL REPORT FORM & REQUEST FOR PAYMENT

MONTHLY REPORT ☐ (Due on the last day of the month) PROJECT TITLE:______________ PAY REQUEST NO.______

DATE: ______________

Grantee:______________ Grant Number:__________ Reporting Period:________ Grant Expiration Date: __________

Address:______________ (City State Zip) Preparer's Name & Phone Number: ______________

Please provide a detailed status of project referenced above. Please check the box that would best explain the project phase.

Bonds Sold ☐ Plan / Design ☐ Bid Documents ☐ Construction Improvements Renovation in Process ☐

Purchase in Process ☐ Substantial Completion ☐ Project Complete ☐ Other (Please specify in narrative section) ☐

Provide a project update and the anticipated timeline for commencement and completion for each phase. (Attach extra sheet if needed)

REQUEST FOR PAYMENT

Grant Amount: ________
AIPP Amount (if applicable) ________
Funds Requested to Date: ________
Amount Requested This Payment: ________
Grant Balance: ________

FINAL REPORT ☐
Fiscal Year Expenditure Period Ending
(check one)
(Jan-Jun) ☐ (Jul-Dec) ☐
Fiscal Year ________

VENDOR INVOICE DETAIL (Attach extra sheet if needed)

Date of Invoice	Vendor Name	Amount of Invoice	Amount Applicable to This Grant
	Amount Requested This Payment:		

☐ **MONTHLY REPORT:** I hereby certify that the aforementioned Capital Outlay Project funds are being expended in accordance with all requirements of the Grant Agreement, and in compliance with all other applicable requirements.

☐ **FINAL REPORT:** I hereby certify that the aforementioned Capital Outlay Project funds have been completed and funds were expended in accordance with all requirements of the Grant Agreement, and in compliance with all other applicable state/ regulatory requirements. The remaining balance is requested to be reverted to the appropriate funding source.

☐ **PROCUREMENT METHOD:** Grantee received approval from ALTSD and Notice of Obligation was issued and signed prior to reimbursement request.

CERTIFICATION: Under penalty of law, I hereby certify to the best of my knowledge and belief, the above information is correct; expenditures are properly documented, are valid expenditures or actual receipts; and comply with NM State Procurement Code NMSA 13-1-21 through 13-1-199 and that the grant activity is in full compliance with Article IX, Sec. 14 of the New Mexico Constitution known as the "anti-donation" clause.

Grantee Fiscal Officer Signature & Printed Name ______________ Grantee Representative Signature & Printed Name (Preparer) ______________

STATE AGENCY USE ONLY

I certify that the ALTSD Financial and vendor file information agree with the above submitted information.

ALTSD Fiscal ________ Date ________ ALTSD Capital Projects Bureau ________ Date ________

1 of 1

NOTICE OF OBLIGATION TO REIMBURSE GRANTEE
EXHIBIT 2

Notice of Obligation to Reimburse Grantee [# 1]

DATE: [____________________]

TO: Department Representative: [____, ________________________]
FROM: Grantee: [____]
Grantee Official Representative: [____]

SUBJECT: Notice of Obligation to Reimburse Grantee
Grant Number: [____]
Grant Termination Date: [____]

As the designated representative of the Department for Grant Agreement number [____________________] entered into between Grantee and the Department, I certify that the Grantee has submitted to the Department the following third party obligation executed, in writing, by the third party's authorized representative:

Vendor or Contractor: [____]
Third Party Obligation Amount: [____]

Vendor or Contractor: [____]
Third Party Obligation Amount: [____]

Vendor or Contractor: [____]
Third Party Obligation Amount: [____]

I certify that the State is issuing this Notice of Obligation to Reimburse Grantee for permissible purposes within the scope of the project description, subject to all the terms and conditions of the above referenced Grant Agreement.

Grant Amount (Minus AIPP if applicable): [______________________]
The Amount of this Notice of Obligation: [______________________]
The Total Amount of all Previously Issued Notices of Obligation: [______________________]
The Total Amount of all Notices of Obligation to Date: [______________________]
Note: Contract amounts may exceed the total grant amount, but the invoices paid by the grant will not exceed the grant amount.

Department Rep. Approver: [____]
Title: [____]
Signature: [____]
Date: [____]

1 Administrative and/or Indirect Cost – generally, the legislation authorizing the issuance of bonds prohibits the use of its proceeds for indirect expenses (e.g. penalty fees or damages other than pay for work performed, attorney fees, and administrative fees). Such use of bond proceeds shall not be allowed unless specifically authorized by statute.

ATTACHMENT A
SPECIAL CONDITIONS

The capital outlay oversight requires grantees' accounting methods and procedures, including their internal control framework, to be scrutinized, so as to safeguard State capital outlay appropriations and assets acquired with such appropriations.

This Capital Outlay Special Grant Condition(s) **Attachment A** is necessary pursuant to Executive Order 2013-006 (2.A.2.a-c, if applicable), due to the Grantees' material weaknesses, significant deficiencies, or findings that raised concerns as to the ability to expend grant funds in accordance with applicable law in the organization's FY2020 audit. The Special Conditions identified below apply to the authorized agent, City of Alamogordo.

The City of Alamogordo was not required to provide documentation regarding the City of Alamogordo's 2020 Audit file. Therefore, the criteria to enter into this agreement have been met.

PROJECT DESCRIPTION FORM
SCOPE OF WORK (SOW)
(Please email per instructions to ALTSD in WORD format)

1. **Name of Grantee/ Fiscal Agent: City of Alamogordo**
2. **Project Title: Alamo Senior Center Equipment**
3. **Grant Agreement Number: A21F2031**
4. **Background Narrative**: The kitchen equipment currently used for meal preparation at the Alamo Senior Center (ASC), located in Alamogordo, Otero County, is over 10 years old and has become aged and unreliable. Due to the Covid-19 pandemic, we have been cooking even more meals than before, causing even more wear and tear. This equipment includes but is not limited to a double-deck oven and a small tilting skillet. Over the past 3 years, we have had to replace ignitors and regulators in the old oven. That oven is partially broken and several burners do not work at all. This caused it to cook unevenly, which meant we had to manually turn pans for even baking. This required more time and labor, with greater likelihood of under-baked, over-baked or burnt food, especially breads. The tilting skillet is also partially broken, posing a potential danger to kitchen personnel. In addition to meal preparation being more difficult and time-consuming and risks posed by partially broken equipment, there has been uncertainty about how long the old equipment would last before completely breaking. The risk was that unpredictable breakage would impair our ability to provide daily meals for our many Senior clients. All this equipment has reached their 10-year lifetime expectancy and needs to be replaced. Therefore, we resolved to purchase, equip and install multiple pieces of meals equipment, including but not limited to a double-deck oven and a small tilting skillet. The new equipment shall provide reliable baking and cooking necessary for preparation an average of 382 daily meals (including drive-through Grab-n-Go meals, plus home delivered meals).
5. **Work Plan**: Upon notification of successful funding for this project, we shall solicit up-to-date competitive bids for kitchen equipment from reliable vendors including but not limited to McComas Sales Co., Pueblo Hotel Supply, Uline, and others. Successful bids shall result in orders placed for needed meals equipment. Notification of award is expected in September 2021. Bids shall be received during October and November 2021, and Vendor awards made by December 2021and orders placed by January 2022. Equipment shall be delivered to ASC by the Vendor between January and February 2022 and City of Alamogordo workers shall remove the old equipment from our kitchen, at no cost to us, between January and March 2022. Vendor technicians shall install the new equipment in the same position as the old by April 2022. Payment shall be made through standard City of Alamogordo purchasing procedures and checks for agreed-up prices mailed to suppliers. We shall conduct the project completion and review phase during May 2022, and the entire project shall be completed by June 2022.
6. **Budget Detail**:

Project Cost Activities *(These are only examples. Insert activities specific to the proposed project.)*	**Other Funds**	**State Funds**
Equipment	0	25063.00
Vehicle Purchase	0	0
Other Costs (specify)	0	0
Totals	0	**25063.00**

7. **Performance Measures**: The new equipment shall be shipped from the Vendors to the ASC in Alamogordo on a truck owned and operated by the Vendors. Payment shall be made through the City of Alamogordo purchasing department using standard procedures. City of Alamogordo workers shall disconnect gas and electric lines from the old equipment and remove it from our kitchen. Vendor technicians shall install the new equipment in the same location as the old equipment. COA workers will then reconnect the gas and electric lines to the new equipment and ensure that all equipment is fully operational.
8. **Results Expected**: Acquisition and installation of the new equipment shall alleviate several problems and risks currently faced by the ASC. Primary is the partially broken condition of the old equipment, leading to extended meal preparation times, extra labor, and the unreliability and potentially complete breakdown of the old equipment. Repairs have included replace ignitors and regulators. A new equipment means no more repairs, no more extra labor and time needed for meal preparation, and no potential down-time due to complete equipment failure. This means less psychosocial stress on our senior clients and on our kitchen staff because they will no longer face missed meals or food insecurity that broken equipment would have entailed for an average of 382 seniors who consumer our meals daily.

9.

Time Frame/ Milestones: *(These are only examples. Insert milestones specific to the proposed project.)*	*(Project the month & year for each milestone)*
RFP/Quotes Secured	September 2019
Bid Closing	November 2021
Bid Award to Contractor/Vendor	December 2021
Purchase/Install Equipment	January – April 2022
Project Completion & Review	May 2022
Submit Request for Payment Form and Supporting Documents to ALTSD/Capital Projects Bureau	June 2022

10. **Responsible Staff** *(include Project Manager and Fiscal Contact):*

Name: Magdalena Morales
Title: ASC Manager
Address: 2201 Puerto Rico Ave. / Alamogordo, NM 88310
Email: mmorales@ci.alamogordo.nm.us
Phone: (575) 439-4150

Name: Evelyn Huff
Title: Finance Director
Address: 1376 E. 9th Street / Alamogordo, NM 88310
Email: ehuff@ci.alamogordo.nm.us
Phone: 575-439-4167

NOTICE: The Grant Application, if approved for funding by ALTSD and any attachments to the Grant Application are incorporated by reference into the scope of work. In the event of a conflict between any of the documents that are part of the Agreement, the ALTSD Cabinet Secretary, at the sole discretion of ALTSD, shall resolve that conflict.

AGENDA REPORT
CITY OF ALAMOGORDO
CITY COMMISSION

Meeting Date: 11/30/2021 **Report Date:** 11/17/2021 **Report No:** 13.

Submitted By: Barbara Pyeatt

Subject: Consider, and act upon, the award of RFP 2021-08 On-Call HVAC Repairs and Maintenance Services to MGS Refrigeration Heating and Cooling. *(David Nunnelley, Acting Public Works Director)*

Fiscal Impact:
Amount Budgeted:
Fund:

Additional Fiscal Impact:

Recommendation: Approve the award and authorize staff to proceed with a service agreement.

Background: RFP 2021-08 Scope of work is to provide the City of Alamogordo Departments with On-Call Services for HVAC Repairs and Maintenance services to all City Departments.

The RFP was advertised on October 17, 2021 in both the Alamogordo Daily News and Albuquerque Journal. The RFP was also sent out directly to 4 local vendors. On November 10, 2021 four (4) proposals were received. MGS Refrigeration Heating and Cooling, Control Equipment Company, PC Automated Controls and Yearout Mechanical. All proposals were reviewed for validity and were determined to be responsive. All proposals were distributed to 3 evaluators. The attached composite score sheet is the results of that evaluation.

Copies of all proposals are available at the Purchasing Department

CITY OF ALAMOGORDO
COMPOSITE SCORE SHEET
On-Call HVAC Repair and Maintenance Services
November 10, 2021
RFP NO. 2021-08

Factor	Available Points per Vendor	3 Committee Members	MGS Refrigeration	Yearout Mechanical	Control & Equipment Co	PC Automated Controls
1	75	Firm and personnel's experience in providing similar inforamtion and services relative to the requirements described in Attachment #1	68	61	60	56
2	60	Firm's capacity and capability to provide the information and sevices in a timely manner	58	50	43	37
3	30	Firms past performance on similar project assigments. Aspart of their response, firmsmust provide a list of four references with names and phone numbers	29	26	21	21
4	30	Firm should describe their approach to providing and managing the anticipated services	24	24	12	21
5	30	The key personnel who will be assigned to the project should be identified and summaries their experience.	30	24	25	27
6	75	Pricing	75	63.75	55.5	51.75
7	Based on Precentages	Preferences: Resident Vetrans, NM Business and Local Business	28.4	12.4375	0	0
		Accumulated Score	**312**	**261**	**217**	**214**

AGENDA REPORT
CITY OF ALAMOGORDO
CITY COMMISSION

Meeting Date: 11/30/2021 **Report Date:** 11/16/2021 **Report No:** 14.

Submitted By: Brian Cesar

Subject: Consider, and act upon, canceling the December 28, 2021 Commission meeting. *(Brian Cesar, City Manager)*

Fiscal Impact:
Amount Budgeted:
Fund:

Additional Fiscal Impact:

Recommendation: Approve canceling the Commission meeting.

Background:

AGENDA REPORT
CITY OF ALAMOGORDO
CITY COMMISSION

Meeting Date: 11/30/2021 **Report Date:** 11/17/2021 **Report No:** 15.

Submitted By: Teresa Gutierrez

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

Fiscal Impact:
Amount Budgeted:
Fund:

Additional Fiscal Impact:

Recommendation: One appointment to the Airport Advisory Board, one appointment to the Alamogordo Disability Council, one appointment to the Alamogordo Promotion Board, and one appointment to the Parks and Recreation Board.

Background: Airport Advisory Board - One (1) vacancy due to the expiring term of Robert Hicks.
The following individual is interested in being reappointed:
Robert Hicks - If reappointed, this will be his fourth term.

Alamogordo Disability Council - Four (4) vacancies.
The following individual is interested in being appointed:
Gwendolyn Penton - If appointed, this will be her first term.

Alamogordo Promotion Board - One (1) vacancy for a Lodging Representative position due to the expiring term of Jessica Blackwell.
The following individual is interested in being appointed:
Rachel Anderson - If appointed, this will be her first term.

Alamogordo Public Library Board - One (1) vacancy.
No applications received.

Parks and Recreation Board - One (1) vacancy due to the expiring term of Colleen Moon.
The following individual is interested in being appointed:
John Whiteley - If appointed, this will be his first term.

Senior Volunteer Programs Advisory Council - One (1) vacancy.
No applications received.

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

PLEASE COMPLETE THE FOLLOWING INFORMATION AND RETURN TO:

tgutierrez@ci.alamogordo.nm.us

Or mail to: *Teresa Y. Gutierrez*
Deputy City Clerk
City of Alamogordo
1376 E. Ninth Street
Alamogordo, NM 88310

Airport Advisory Board

X *Yes, I am interested in reappointment.*

__ *No, I am no longer interested in serving on this Board.*

Printed Name: Robert C. Hicks, Jr

Home Phone: 575-491-2949 Work Phone: 575-491-2949

Cell Phone: 575-491-2949

E-mail address: rhicks@zianet.com

Physical Address: 3251 N. Scenic Dr, Alamogordo, NM 88310

Is the above address within City limits? No

Mailing Address: 3251 N. Scenic Dr, Alamogordo, NM 88310

Present Employer: Holloman Aero Club Job Title: Chief Instructor

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

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

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

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

Please indicate your interest in continuing to serve on this Board/Committee: I want to continue to serve the pilots and citizens of Alamogordo, Holloman, and the Tularosa Basin. I want to work towards bringing scheduled airline service into the community. I want to work with pilots and service providers at Alamogordo Regional Airport to ensure that more choices and more capable services are available for local and visiting pilots.

Robert C. Hicks, Jr.
Signature

16 November 2021
Date

RECEIVED
NOV 17 2021
CITY CLERK

Teresa Gutierrez

RECEIVED
NOV 17 2021
CITY CLERK

From:	noreply@civicplus.com
Sent:	Wednesday, November 17, 2021 6:18 AM
To:	Rachel Hughs; Teresa Gutierrez; Sarah Crawford
Subject:	Online Form Submittal: Application to Serve on a Board/Committee

Application to Serve on a Board/Committee

City of Alamogordo Application to Serve on a City Board/Committee

First Name:	Gwendolyn
Last Name:	Penton
Phone Number:	5754914809
Email Address:	gpenrpen46@yahoo.com
Physical Address:	3000 Del Cerro
City:	Alamogordo
State:	NM
Zip Code:	88310
Is the above address within City Limits?	Yes
Mailing Address:	3000 Del Cerro
City:	Alamogordo
State:	NM
Zip Code:	88310
Present Employer:	Retired
Job Title:	*Field not completed.*
Board/Committee you would like to serve on (1st choice):	Alamogordo Disability Council (ADC)
Board/Committee you would like to serve on (2nd choice):	*Field not completed.*

Are you related to anyone who is presently employed by the City of Alamogordo?	No
If so, what is their relation to you?	*Field not completed.*
Are you related to an Elected Official of the City of Alamogordo?	No
Is so, what is their relation to you?	*Field not completed.*
Experience and education relating to the Board/Committee:	Retired Elementary Teacher Master Degree in Eduction Taught 33 years Presently tutor 18 year old grandson through BridgeWay Academy. He is diagnosed on the spectrum.
Please indicate your interest in serving on a City Board/Committee:	I want to see more opportunities and help for families/individuals with disabilities.

Email not displaying correctly? View it in your browser.

Email WARNING: This email may have originated external to the City of Alamogordo email system. Review the email address and NOT just the email user name. Do not click on links or open attachments unless you are sure the content is Safe. If unsure send to the Go Secure email verification system for processing.

Teresa Gutierrez

RECEIVED
NOV 18 2021
CITY CLERK

From:	noreply@civicplus.com
Sent:	Thursday, November 18, 2021 8:54 AM
To:	Rachel Hughs; Teresa Gutierrez; Sarah Crawford
Subject:	Online Form Submittal: Application to Serve on a Board/Committee

Application to Serve on a Board/Committee

City of Alamogordo Application to Serve on a City Board/Committee

First Name:	Rachel
Last Name:	Anderson
Phone Number:	5055923220
Email Address:	Rachel.Anderson@Hilton.com
Physical Address:	3450 Mesa Village Drive
City:	Alamogordo
State:	New Mexico
Zip Code:	88310
Is the above address within City Limits?	Yes
Mailing Address:	3450 Mesa Village Drive
City:	Alamogordo
State:	New Mexico
Zip Code:	88310
Present Employer:	Home2 Suites by Hilton
Job Title:	General Manager
Board/Committee you would like to serve on (1st choice):	Alamogordo Promotion Board
Board/Committee you would like to serve on (2nd choice):	Alamogordo Promotion Board

Are you related to anyone who is presently employed by the City of Alamogordo?	No
If so, what is their relation to you?	*Field not completed.*
Are you related to an Elected Official of the City of Alamogordo?	No
Is so, what is their relation to you?	*Field not completed.*
Experience and education relating to the Board/Committee:	I am currently the general manager for the Home2 Suites in Alamogordo as well as the Hampton Inn & Suites in Artesia. I have 5 years of hospitality experience as well as hold the Director of Sales position at both properties. I have extensive knowledge and experience in working with government and oil & gas industry.
Please indicate your interest in serving on a City Board/Committee:	I am excited for the possibility to learn more about the area and be of help with my experience in hospitality industry. I also would like to be more involved with the community and this is the perfect opportunity.

RECEIVED
NOV 05 2021
CITY CLERK

Teresa Gutierrez

From:	noreply@civicplus.com
Sent:	Friday, November 5, 2021 8:02 AM
To:	Rachel Hughs; Teresa Gutierrez; Sarah Crawford
Subject:	Online Form Submittal: Application to Serve on a Board/Committee

Application to Serve on a Board/Committee

City of Alamogordo Application to Serve on a City Board/Committee

First Name:	John
Last Name:	Whiteley
Phone Number:	575 491 0131
Email Address:	Whiteleyj585@msn.com
Physical Address:	2255 Cherry Hills crt.
City:	Alamogordo
State:	New Mexico
Zip Code:	88310
Is the above address within City Limits?	Yes
Mailing Address:	2255 Cherry Hills crt
City:	Alamogordo
State:	New Mexico
Zip Code:	88310
Present Employer:	Retired
Job Title:	*Field not completed.*
Board/Committee you would like to serve on (1st choice):	Parks & Recreation Board
Board/Committee you would like to serve on (2nd choice):	Mayor's Committee on Aging

Are you related to anyone who is presently employed by the City of Alamogordo?	No
If so, what is their relation to you?	*Field not completed.*
Are you related to an Elected Official of the City of Alamogordo?	No
Is so, what is their relation to you?	*Field not completed.*
Experience and education relating to the Board/Committee:	Served on Various Boards and Commitees during my career. Help start the Teen Court. Participated in Cultural diversity committee for NMSU-Carlsbad. Vice president of the Friends of Dog Canyon. Former President of Delta Omicon Nu (LAE) law enforcement fraternity.
Please indicate your interest in serving on a City Board/Committee:	I have lived in Alamogordo for nearly 50 years. Excluding my time in college at NMSU. I send the need to better our city. I see less for families to do here than when I grew up here. Would also like to see more activities to help the aging connecting with one another. I see potential for more involvement of our community leaders and volunteers to expand our great city.