



Alamogordo City Commission

NOTICE OF MEETING

Regular Meeting Agenda

July 9, 2024 - 6:30 PM

Donald E. Carroll City Commission Chambers
City Hall, 1376 E. Ninth Street

Susan L. Payne Mayor
Sharon McDonald Mayor Pro-Tem, District 5
Nick Paul District 1
Stephen Burnett District 2
Warren Robinson District 3
Josh Rardin District 4
Mark Tapley District 6

Rick Holden City Manager
Ashley Smith 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 east bulletin board located in the south of the City Hall and in the glass case located outside the north entrance of the City Hall, distributed to the appropriate news media, and posted on the City website: <http://ci.alamogordo.nm.us> within the required time frame. As a courtesy, the entire Agenda Packet has also been posted on the City of Alamogordo website: <http://ci.alamogordo.nm.us>

The Mayor and City Commission request that all cell phones be turned off or set to vibrate. Members of the audience are requested to step outside the Commission Chambers to respond to or to conduct a phone conversation. The Alamogordo Commission Chambers is wheelchair accessible. Other special assistance for disabled attendees must be requested 48 hours in advance by contacting the City Clerk's Office at 575-439-4100.

CALL TO ORDER & ROLL CALL

Announce the presence of a Quorum.

INVOCATION & PLEDGE OF ALLEGIANCE

APPROVAL OF AGENDA

PRESENTATIONS

1. Swearing in Non-Certified Officer Pierson Villa and Police Service Aide Leo Garcia (*David Overstreet, Municipal Judge*)

PUBLIC COMMENT

Residents must sign up with the City Clerk to address the City Commission. The standard allotted time is 3 minutes, but the Mayor reserves the right to change depending on the number of public comments.

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 Regular Commission meeting on June 25, 2024. *(Rachel Hughs, City Clerk)*
3. Consider, and act upon, Ordinance 1696 Case Z-2024-0001(A) for adoption and final publication of a map amendment to rezone properties located at 181 & 243 Hamilton Ridge Road, 3100, 3150, 3180, 3190, 3192, & 3194 Hamilton Road, Reynolds Subdivision Replat G, Lot G, and Pruiett Subdivision Replat A, Lot 4A from R-1 Single Family Dwelling to RE-Residential Estates. The property owners request the zone change to comply with the current ordinance for keeping livestock. *(Stella Rael, City Planner)* **(Roll Call Vote Required)**
4. Consider, and act upon Ordinance 1697 Case Z-2024-0002(A) for adoption and final publication of a map amendment to rezone Somerset Subdivision Phase 1 from R-2 Townhouse Dwelling District to Planned Unit Development District (PUD). *(Stella Rael, City Planner)* **(Roll Call Vote Required)**
5. Consider, and act upon Ordinance 1701, Case Z-2024-0003(A) for adoption and final first publication of a map amendment to rezone 2350 Eudora St. from C-3 Business District to M-1 Light Industrial District. *(Stella Rael, City Planner)* **(Roll Call vote required)**
6. Consider, and act upon, the approval of an agreement with the New Mexico Economic Development District, Non-Metro Area Agency on Aging for the Nutrition Services Incentive Program (NSIP), the total amount budgeted is \$58,648.57. *(Magdalena Morales, ASC Manager and Veronica Ortega, Community Services Director)*
7. Consider, and act upon, grant funding from the Non-Metro Area Agency on Aging FY25 contract for Direct Purchase of Services for senior programs, the total amount budgeted is \$548,187.49. *(Magdalena Morales, ASC Manager and Veronica Ortega, Community Services Director)*
8. Consider, and act upon, a \$2,500.00 1-time award from AmeriCorp Senior Companion and Foster Grandparent Programs for travel related for J. Rene' Reynolds, SVP Specialist and Magdalena Morales, ASC Manager to attend AmeriCorps Seniors National Convening in Baltimore MD from July 30 to Aug 1, 2024. *(Magdalena Morales, ASC Manager and Veronica Ortega, Community Services Director)*
9. Consider, and act upon, contract #25-624-4000-0014 between the City of Alamogordo and the State of New Mexico Aging and Long-Term Services Department for the FY25 Senior Companion and Foster Grandparent Program Grants. Senior Companion Program \$69,782.50. Foster Grandparent Program \$69,525.00. *(Magdalena Morales, ASC Manager and Veronica Ortega, Community Services Director)*

ITEMS REMOVED FROM CONSENT AGENDA

NEW BUSINESS

10. Consider, and act upon, Resolution 2024-48, amending the fee schedule for copies of public records inspected and distributed under the New Mexico Inspection of Public Records Act. *(Rachel, Hughs, City Clerk)* **(Roll Call Vote Required)**
11. Consider, an act upon, first publication of Ordinance 1705, approving a loan from the New Mexico

Finance Authority regarding the Yearout Contract and EPC project. *(Evelyn Huff, Finance Director and Chris Muirhead)* **(Roll Call Vote Required)**

12. Discussion regarding recent break-ins. *(Josh Rardin, Commissioner, and Gary Trinkle, Citizen)*

EXECUTIVE SESSION

13. Adjourn into Executive Closed Session in compliance with 10-15-1(H)(7) NMSA (as amended) to discuss Pending Litigation regarding various Tort Claims. **(Roll Call Vote Required)**

ADJOURNMENT

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 7/9/2024

Report Date: 07/01/2024

Report No: 1.

Submitted By: Lynn Wilkey

Subject: Swearing in Non-Certified Officer Pierson Villa and Police Service Aide Leo Garcia (*David Overstreet, Municipal Judge*)

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation: Recommend approval of Swearing in Non-Certified Officer Pierson Villa and Police Service Aide Leo Garcia

Background:

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 7/9/2024

Report Date: 07/03/2024

Report No: 2.

Submitted By: Rachel Hughs

Subject: Approve the minutes for the Regular Commission meeting on June 25, 2024. *(Rachel Hughs, City Clerk)*

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation: Approve the minutes.

Background: This is required by the Open Meetings Act.

**CITY OF ALAMOGORDO, NEW MEXICO
CITY COMMISSION REGULAR MEETING MINUTES
6:30 P.M., DONALD E. CARROLL COMMISSION CHAMBERS
June 25, 2024**

**SUSAN PAYNE, MAYOR
SHARON McDONALD, COMMISSIONER
JOSH RARDIN, COMMISSIONER
STEPHEN BURNETT, COMMISSIONER
NICHOLAS PAUL, COMMISSIONER**

**MARK TAPLEY, COMMISSIONER
WARREN ROBINSON, COMMISSIONER
RICK HOLDEN, CITY MANAGER
ASHLEY SMITH, CITY ATTORNEY
RACHEL HUGHS, CITY CLERK**

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

Mayor Payne called the meeting to order at 6:30 p.m. Roll Call was taken by the Deputy City Clerk. Deputy City Clerk Aleshire announced there was a quorum present. The Invocation was given by Pastor Tyler Grace, and the Pledge of Allegiance was led by Commissioner Tapley.

APPROVAL OF AGENDA

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

PRESENTATIONS

1. MainStreet recap of the last fiscal year and explain the projects and plans for FY25. (Nolan Ojeda, Executive Director)

The Executive Director of Alamogordo MainStreet, Nolan Ojeda, presented a recap of the last fiscal year and explained the projects and plans for FY25.

PUBLIC COMMENT

Jim Howard and Lance Grace signed up to speak under Item 3. Josiah Bass signed up to speak under Item 18.

CITY MANAGER'S REPORT

City Manager Holden made the following remarks:

1. Staff have been involved in getting the Bonito Lake situation under control. Additionally, our Fire and Police Departments have been helping our neighbors in Ruidoso. This community rises to the occasion to help others, which is one of our best attributes. Regarding Bonito Lake, we moved quickly in response to the Blue 2 Fire because of experienced staff, and we received federal funding, equipment, and personnel to build twenty-two detention ponds. As you know, the federal government shut down our operation because of a woodpecker. We finally got all the paperwork done, the federal government released us, and the twenty-two ponds were completed. Last weekend, there was a lot of rain up there, and there were fears of burn scars and debris like soot and ash going into the revitalized Lake. The twenty-two ponds did what you would expect; they caught most of the debris and things that came down the mountain with the rain. At this point, the Lake's water quality is in good shape. Fish and Game will be out to see about putting more fish into the Lake. Soot did get into the Lake, but we think we will be okay. Later this week, Utilities Director Nunnelley will meet with the NRCS group. They found more high-impact areas out at the Lake where we can do more ponds to help us further

into the future. We expect additional federal funding for the rotor maker and coffer dam already there, and we may be able to do a refurbishment. The effort, experience, and knowledge that Utilities Director Nunnelley and staff had helped us potentially avert another major disaster for the Lake. We might even be able to open the Lake for recreation in the summer, at least some fishing if we continue to be lucky. Had we sat back and waited, we likely would have had the Lake filled with rubbish, and it would have needed to be dredged out like before. Last time, it took ten years to get that operating.

2. Parks and Recreation Director Bass is scheduling a trip to Las Cruces at 11:30 AM to view the Sprung Structure discussed at the last Commission Meeting. The Sprung Structure could be the type of structure included over the potential Natatorium.

3. Based on last month's meeting, we have talked with real estate companies and other folks about the Fun Center. We are coming up with specific options to be presented to the Commission at a meeting.

4. Next week, July 1st through the 19th, is the Inaugural Event for fallen Officer Ferguson, called the Ferguson Academy. Juniors and seniors can participate in the Academy, working alongside law enforcement and firefighter personnel. Hopefully, they can learn more and potentially choose a career field within our Departments. The maximum number of kids, twenty, have already signed up.

REMARKS AND INQUIRIES BY THE CITY COMMISSION

Mayor Payne made the following comments:

I want to emphasize staff and Utilities Director Nunnelley's efforts regarding saving Bonito Lake. It could have been so much worse.

I toured Ruidoso with Fire Chief Ramirez and Assistant City Manager Hernandez. We all know about the devastating South Fork and Salt fires. It was pretty difficult, but there was hope, and I was encouraged. The downtown area and businesses are all there. Some of our neighbors in Ruidoso potentially went back home this week. Ruidoso is setting up a shelter for the displaced families.

Thank you to the Air Force Sergeants Association for the upcoming 4th of July Parade.

Mayor Pro-Tem McDonald made the following comments:

Thank you to the City for the past four years of helping with our cleanups. I appreciate the Utilities Department for helping us on each site. This cleanup will be on Saturday, July 20th, and five sites will be for roll-offs. The sites will be at the Dudley School on 6th and Maryland, Indian Wells and Scenic, Panorama Boulevard next to the Fairfield Inn, Walker Road near the baseball park, and 1817 North Scenic in the New Beginnings Church of Nazarene parking lot. You can bring your junk and dump it at those sites. Districts One, Three, and Six will have their Commissioners present to represent them. This year, there will also be a competition where each dumpster roll-off will be weighed. Whoever's dumpster weighs the most will win bragging rights or even a trophy. We will also do lawn work for seniors, veterans, and the disabled. There will be shredding at the Dudley School site. The cleaning will take place from seven to ten, and the shredding will be from ten to twelve. Lastly, we will have a float in the parade, encouraging folks to help and participate in the cleanup. Sponsors this year include the Sacramento Mountains Foundation, Amy Tillotson from State Farm Insurance, and the Center of Commerce.

CONSENT AGENDA

2. Approve the minutes for the Regular Commission meeting on June 11, 2024. (Rachel Hughs, City Clerk)

3. Consider, and act upon, Ordinance No. 1698, for adoption and final publication to amend Chapter 4, Article 4-06-060 of the Code of Ordinances concerning Fees and Conditions at the

Alamogordo-White Sands Regional Airport. (Troy Orr, Airport Manager) (Roll Call Vote Required)

4. Consider, and act upon, Ordinance 1700 for adoption and final publication, repealing Chapter 8 Article 8-08 "Cross Connection, Prevention, and Control", and amending Chapter 28, "Water, Sewer, and Sewage Disposal". (Bryan Mantz, GovRates Inc. President and Rick Holden, City Manager) (Roll Call Vote).

5. Consider, and act upon, Resolution 2024-33, declaring 1218 Post and 1403 Incredible no longer being ruined, damaged, and dilapidated, or a menace to public comfort, health, peace, or safety. (Josh Sides, Code Enforcement Manager) (Roll Call Vote Required)

6. Consider, and act upon, Resolution 2024-42, declaring 1803 College Ave. to be so ruined, damaged, and dilapidated that it is a menace to public comfort, health, peace, or safety. (Josh Sides, Code Enforcement Manager) (Roll Call Vote Required)

7. Consider, and act upon, Resolution 2024-43, declaring 1802 Mason Dr. to be so ruined, damaged, and dilapidated that it is a menace to public comfort, health, peace, or safety. (Josh Sides, Code Enforcement Manager) (Roll Call Vote Required)

8. Consider, and act upon, Resolution 2024-44, declaring 1108 Airport Ave. to be so ruined, damaged, and dilapidated that it is a menace to public comfort, health, peace, or safety. (Josh Sides, Code Enforcement Manager) (Roll Call Vote Required)

9. Consider, and act upon, Resolution 2024-45, declaring 1104 Lindberg Ave. to be so ruined, damaged, and dilapidated that it is a menace to public comfort, health, peace, or safety. (Josh Sides, Code Enforcement Manager) (Roll Call Vote Required)

10. Consider, and act upon, award of Public Works Bid No. 2024-002, Basin Sediment Removal Project No. PW2307, to Crosstown Construction related to the Alamogordo Basin Sediment Removal project in an amount not to exceed \$500,000, including NMGR. (Jimmy Vargas, Public Works Director)

11. Consider, and act upon, Resolution 2024-46 authorizing the execution and delivery of a loan and subsidy agreement between the City of Alamogordo and the New Mexico Finance Authority in the total of \$400,000 for the purpose of financing the costs of conducting the inventory/survey of possible lead service lines. (Evelyn Huff, Finance Director) (Roll Call Vote Required)

12. Consider, and act upon, Resolution 2024-41 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 June 25, 2024. (Evelyn Huff, Finance Director) (Roll Call Vote Required)

Mayor Payne removed Item 3 from the Consent Agenda. Commissioner Rardin removed Items 4 and 10.

Commissioner Robinson moved to approve the Consent Agenda as amended.

Commissioner Rardin seconded the motion.

Roll Call Vote was taken.

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

ITEMS REMOVED FROM CONSENT AGENDA

3. Consider, and act upon, Ordinance No. 1698, for adoption and final publication to amend Chapter 4, Article 4-06-060 of the Code of Ordinances concerning Fees and Conditions at the Alamogordo-White Sands Regional Airport. (Troy Orr, Airport Manager) (Roll Call Vote Required)

Public Comment

Jim Howard said he had a land lease at the Airport. There were accusations at the last meeting about the thirty-one land lessees taking advantage of thirty-one thousand citizens. That is not accurate. No land lessee out there has received anything from the City regarding the lease. We pay those leases, put our money into the property, and maintain it out-of-pocket. The land out there, the Airport property, would cost the City more money to maintain because it would be more to maintain if we were not there. It is the same cost whether we are there or not. The lease amount we pay is the icing on the cake for the City. The Airport serves the community and is an economic driver. I researched a private, independent 2016 study from the Alliance for Aviation Across America, which showed this Airport's economic impact was \$66,052,600 for the year. I received a bill for my land lease with a fifteen percent increase. My land lease is a written contract that says CPI will increase it. The standard urban city CPI for 2023-2024 is three-point-two percent. That is in direct violation of the written contract.

Lance Grace explained how he came to be on the Airport Advisory Board fifteen years ago. He said Jeff Rabon came on a year or so later, then another person. The three of them arranged the runway extension, which kept the air tanker base here for the next generation air tankers. Those tankers were used for the Little Bear Fire and for the last few weeks. All of that has nothing to do with the guys here tonight with planes out there, who are supposed to pay for the whole place. That isn't how that works. Between the Airport Advisory Board and the people behind me, we probably have one thousand years of experience in this stuff, and we understand it pretty well. We understand grant assurances and compliance associated with an FAA-funded airport. I do not know what the value of the Airport is now, but it is paid by ninety-five to ninety-seven percent by the FAA with a condition. The condition is it has to be run a certain way. As a Board, I know we have no authority, but we did not see what came to you last month. We had no idea it was coming up. I feel confident that if we get together, we can figure out what needs to be done. I strongly recommend kicking this down the road. Table it. Let's get together, figure out what the City wants, and let's make it happen.

Commissioner Burnett asked if what was being voted on tonight had anything to do with rates. Mayor Payne said it had nothing to do with rates. Rates will come up at a different time.

Assistant City Manager Hernandez said a change needed to be made. On page three, Item K, it says, "The fees referenced in paragraphs (b), (c), (d), and (i) are detailed on the Rates and Fees document". It needs to read, "The fees referenced in paragraphs (b), (c), (d), and (i) are adopted by resolution and detailed on the Rates and Fees document." Mayor Payne asked if that would be a resolution passed by the City Commission. Assistant City Manager Hernandez said correct.

Commissioner Tapley said he had spoken to people about this and asked what reasonable fees were. They said that a rate study was done. Assistant City Manager Hernandez said an appraisal was done. Based on our audit, we got hit for the Fun Center on anti-donation. All City property had to be appraised so they could be done at fair market value. That may be what they spoke of. I do not know anything about a rate study. I just know about the lease appraisal. Mayor Payne said the Airport did not get a rate study, but there were others. Commissioner Tapley said he was told that the fees being proposed were based on a study of other airports. Assistant City Manager Hernandez said they were not proposing anything tonight. We are requesting that the fees be taken off so we can bring them back to you by resolution. I believe what you have been hearing is about the appraisal. All the current lessees with us will be invoiced at that amount, which I believe is fifteen cents per square foot per

year. That was based on the appraisal. When we bring the resolution to do the fees and land leases, we will have that document, the needs assessment for the Airport, all the leases we have, what the effect shall be, and when this all takes effect. If you pass the fees, it will affect everyone differently. I will have a projection for you, plus which leases are not in compliance, the reason why, and any other information the Commission would like to see. Commissioner Tapley said it does not state anywhere in here what a land lease is. At the end of the lease, it automatically reverts to an aeronautical lease. She said the definitions are part of what we have to bring back in a resolution, such as what land leases, aeronautical leases, and parking are.

City Manager Holden said we spoke with Manny Gonzalez of the Airport Advisory Board recently. One of the things we discussed was that we weren't going to present numbers, fees, and structure until we got it prepared. Then, we would get it to Jeff Rabon and the rest of the Board, so they can look at it before the resolution goes to the Commission. There will be opportunities to discuss the numbers and reach some middle ground. That was our last conversation with him a couple of weeks ago. Assistant City Manager Hernandez said that Mr. Gonzalez said he could not be here tonight. We will have more meetings with him to start discussing part of the lease rates and fees coming forward to the Commission. Mayor Payne said to be clear, tonight, we are not talking about fees. We are only talking about this ordinance. Commissioner Burnett said it was just removing the fees.

Commissioner Paul said he was more confused about this now than before the first reading. Meetings have occurred, but I do not know if they were prior to the first reading. I do not understand where the confusion is coming from. Are City staff not communicating with the Board? Is the Board not communicating with the leaseholders or other parties? There is just a lot of confusion here. When the rate sheet was published last time, separate issues and problems were created. All I have heard is concerns about this item. I have not had one call from anybody who said they were on board, and let's get this passed through to talk about rates. Assistant City Manager Hernandez said there was a misunderstanding about the actual agenda item. Airport Manager Orr is at every single Board meeting. I have worked with Manny Gonzalez and spoken to him. There has been communication. When an airport user or Airport Advisory Board member calls Airport Manager Orr, he has spoken to them about the rates and ordinance; Airport Manager Orr is good at communicating with people. I cannot speak to where the confusion is. Commissioner Paul said our ordinances say in the Airport Board's duties, they can act in an advisory capacity and make recommendations to the City Commission. Is it possible to arrange a meeting with the Airport Advisory Board and clear up the confusion? If the Board needs to make a report to the Commission, they can come back and do that. Then, we can address this item at that time. I originally voted in favor of this, but the calls that flooded in after that left me with no choice but to vote against this, simply because I do not feel that questions have been fully answered yet. She said she went to the last Airport Advisory Board meeting and asked Mr. Gonzalez to put the item on the agenda to clear the air. I sat with them but cannot recall exactly who was there. Airport Manager Orr and I can only do what we can. I do not know where the miscommunication is. We can have another meeting, but I do not think it will fix the miscommunication because there is a concept that by approving this and taking the fees out of this ordinance, the fees are going to happen automatically at a rate. Nothing will happen at a rate that the Commission does not approve. As far as taking the fees out of this ordinance, what is in here, we are not currently collecting. It doesn't affect the current Airport Advisory Board members, lessees, or tenants. It does not even affect our revenue. We ask you to clean up the language and remove the fees. We are not asking you to approve anything at this point. The effect on the City is null at this point. No revenue is being generated with the listed fees. Nothing affected anybody here today. Commissioner Paul said there is a ton of confusion, and I do not think that can be pinpointed to any one person. Every call I received asked what was going on and what we were trying to do. People were upset about the rates; others felt the City was trying to give the Airport Manager full and all authority over said rates. Those questions need to be cleared up, answered, and the message delivered, even if it takes another meeting. This doesn't affect us by approving it or not tonight. She said this is the complete opposite, and it takes it out of Airport Manager Orr's hands. We have answered these questions. We are putting it in the Commission's hands. Every

fee change, if adopted by resolution, can only be changed by resolution. We are not giving Airport Manager Orr any additional power. The Airport Manager reports to the City Manager. We are giving it to the Commission and following protocol. As far as the Airport Advisory Board making a recommendation to the Commission, there is confusion that needs to be worked on that. In a Manager-Commission form of government, it was taken by staff that they report through the City Manager to the Commission. We have tried to be transparent. With the fee sheet, we wanted to show you what that would look like, but we should not have put the twelve cents on there. It should have been zeroed out, and that was our error. He said that was a template for, hey, this is what the actual form will look like.

Mayor Payne said if this passes tonight, will that affect anybody's current lease rates? Assistant City Manager Hernandez said no, this ordinance has nothing to do with leases at all. Mayor Payne said I do not think it will change anything if we wait for another meeting or two. I think people are here because they are concerned about lease rates, and I understand that, but we are not talking about that. Whether we pass this or not, we are still going to get something that talks about lease rates. Assistant City Manager Hernandez said we spoke with Mr. Gonzalez, who will head it as the Chair of the Airport Advisory Board. There will be a workshop, as has been said several times. We had one scheduled, but due to the fire, we had to cancel. I did not have the time to prepare it. Mayor Payne said the point is one has nothing to do with the other, whether this passes or not. Airport lease rates are still going to be talked about, which is what the people here are interested in. Whether we pass this or not doesn't matter, and I think that is where the confusion is coming in. Everybody thinks if we pass this, nothing will change. My understanding is that isn't true. That will be a separate vote and decision. Assistant City Manager Hernandez said there will be input from the workshop with the Airport Advisory Board headed by Mr. Gonzalez. There will be a discussion outside the Commission meeting with the stakeholders. Hopefully, we will come to an agreement on that. Then, we will bring that forward to the City Commission on the resolution. Commissioner Robinson said we are just voting on cleaning up language. Assistant City Manager Hernandez replied that this was all this was. He said so clean up the language to work on bigger problems later. She said yes. He said there are communication problems. She said that is correct. He said we are not doing any rates. She said we are cleaning up the language and taking fees out. Mayor Payne said the language that is being cleaned up is in the item.

Commissioner Rardin said I do not understand why we are pulling the fees out of the ordinance and then doing it by resolution. Putting the fee schedule in the ordinance would be just as easy. It would be more transparent for the public because it takes forty-five days for us to change fees by ordinance. It takes one vote to change by resolution. I do not agree with changing the fee schedule by resolution. At the last meeting, staff said we don't normally put them in the ordinance, which is wrong. During my entire time here, most of these fees have been in an ordinance, so the Commission has two readings, and the public has ample time to read through them to see what is being changed and done. Several people have called me and told me that the new leases have already gone out with the new rates. The rates have not been adopted yet. They said they were billed fifteen cents per square foot. Assistant City Manager Hernandez said they get invoiced every year. We are at the end of the fiscal year, and this is not new business. It is based on the increase in the CPI. City Attorney Smith said the leases say that the amounts will increase by the City-determined CPI. It does not guarantee an annual CPI, it is City-determined. Commissioner Rardin asked if we could pick whatever we wanted. She continued by saying that we had done some research to figure out how to determine CPI. We took a market rent analysis we had done; when they did this, they looked at what several other places have for undeveloped land leases. They looked at Alamogordo, Albuquerque, Farmington, Moriarty, Santa Teresa, Belen, El Paso, and Dell City. They also looked at the range of 0.115 to 0.28 per square foot per year for unimproved land. That is what our expert determined across the board for this type of lease. They determined that for Alamogordo, rent for unimproved aeronautical land should be \$0.15 per square foot per year. The audits have hit us for the Airport. Now, because we have this appraisal, that would prevent that. So that is where the City determined the CPI. It wasn't an arbitrary number; it came from an expert who was doing it for us. Commissioner Rardin said instead of using the actual

CPI. Assistant City Manager Hernandez said the \$0.15 are going up, but many are going down. If you take all the thirty-eight leases, the average is 14.6. That means some are below, and others are going to \$0.15. Some are at \$0.165, and some are less than \$0.15. Some will get the benefit; some will have to come up to fair market value. Commissioner Rardin said that after a discussion with some members, FAA rules say we have to charge a reasonable fee. Per that fee schedule put out last time, some of those were not reasonable. The government is non-profit, and we are supposed to charge only the amount of money we need to provide the service. Assistant City Manager Hernandez said if we did that, it would go up to about \$0.10. Commissioner Rardin said it states that it is recognized in their rules that we may not be able to charge what needs to be charged to make it break even. In my eyes, it is more of a hobby. Business is out there, but many users are tinkering with their planes. We have some leeway in that. She said the \$0.125 cents was wrong. We should not have put it in there. We are going to have a workshop to present rates and work with the Airport Advisory Board and the community. What we bring to you will not be the \$0.125, but whatever proposal we bring will have the Needs Assessment. This may be a Commission issue; do you want to make it part of our economic hub? If so, then we need to look at all our funding sources and what we need to do with it. As Commissioner Paul said, the Airport has been neglected. We are trying to put it all in perspective. We are not by any means making a profit or trying to. We are trying to put more money into getting the Airport up to standards, and looking for money and getting shovel-ready projects. The \$0.125 is not the rate. It was the absolute maximum the City could charge. That is not going to come forward. Commissioner Rardin asked why we looked at this backward. Why didn't we look at what we need to improve out there first, get the costs, and then bring it to the Commission? Why are we raising the rates before knowing what we want to do? What we want to do has not been disclosed to us, or at least not to me. Assistant City Manager Hernandez said we could bring you the needs of the Airport, but do you want the needs of every facility? As city staff, that is operational, such as when Facility Maintenance tells us the roof needs to be replaced or the building is sinking. As I said at the last meeting, we broke up the Airport into three sections. The runway/taxiway, the terminal, and the parking lot to the access road, which is the highway. I am going to bring this to you next week before we propose a rate increase. You will have a complete needs assessment for the Airport to get it to the minimum, including funding sources. FAA only takes care of the runway/taxiway. That ninety-five percent that everyone talks about, even one percent, is high for the City. The State covers some things and will give us money, like the ICIP approved last time. They can give us money for the vault. We look for special projects for the State, but everything else operational is City. The Needs Assessment will have things regarding mowers and equipment, potential staff if we grow, and building issues like the roof. This is before the Commission approves the rates. Commissioner Rardin said that typically, in the past, with major improvements done to buildings, we only have to maintain our portion of it, plus the runway and parking lot area. The leaseholders maintain their hangars and portion. The FAA helps us with the other part of it. Typically, if a major repair was needed out there, you would come to the Commission during budget time and say we need to make this repair or we need capital outlay money. Then, the Commission could authorize that as the governing body. Why haven't we done that if there are all these major repairs? Assistant City Manager Hernandez said we just found out the building was sinking either last year or the year before. It was when they were doing the appraisals. Commissioner Rardin asked if the appraiser realized that. She said no, it was our guys that went out there. We have to balance all the needs, and even City Hall needs work. He said we should step back on this. I think the rates need to be included in the ordinance to make it more transparent and a lengthier process, giving the public more time to review it.

Mayor Payne said that in eight years, we had never had a discussion about the Airport like this. I think we have more important things to look at and worry about than the Airport. Last time we discussed this, I know at least one person is making \$2000 a month from having a hangar out there, and the City gets \$2000 a year from that. I have an issue with that. Commissioner Rardin said the gentleman invested \$200,000 to build that property. Mayor Payne said that was fine, but it was still City property. I would like to get a hold of our auditor to confirm that this will be problematic if we do not do something. I would like to get information from an auditor and our Attorney. I hear that if we do not do something,

we will have a problem with our audit, but nobody seems to have a problem with that. Commissioner Rardin said we will have a minor audit finding that we are already in the process of correcting by looking into it.

Commissioner Rardin moved to table this until staff and the Commission can sit down with the Airport Advisory Board.

Commissioner Tapley seconded the motion.

Motion tabled 7-0-0.

4. Consider, and act upon, Ordinance 1700 for adoption and final publication, repealing Chapter 8 Article 8-08 "Cross Connection, Prevention, and Control", and amending Chapter 28, "Water, Sewer, and Sewage Disposal". (Bryan Mantz, GovRates Inc. President and Rick Holden, City Manager) (Roll Call Vote).

Commissioner Rardin said the old water ordinance had a tier system, and the reason for the system was for the very large consumers of water in the summertime during water rationing. I noticed that it was pulled out. Is that something we should look at keeping in there? Finance Director Huff said we pulled it out for different reasons. One, the idea was to simplify things. The other is that while a tier system like that charges more to large consumers during water rationing, it also negatively impacts low-income people. When you get into higher tiers like that, it can be because of something you cannot control. If you are on a lower income and hit the higher tier, it negatively impacts you. Another reason we pulled it out is that the first gallon of water has the same cost of production as the millionth gallon. Keeping the tier system is considered economic inequality because it doesn't cost more to produce more water. He said we have not had to implement water rationing in the last eight years, but I have been here when we had to. I think we got to Stage Two of water rationing. I did not know if it would be good to have it hinted that we are allowed to do that. She said we left the ordinance's water rationing and conservation portions the same, including the penalties. We left the penalties the same on the resolution which will be a later item. We discussed possibly increasing the penalties but felt to bring them the same. If we get into water rationing, we can bring a resolution to you and say we are in Stage Two water rationing and need to increase these penalties. Then, if we see people not complying with water rationing, we are directing it to people who are violating it, not to the customer base as a whole. He asked if the even/odd water schedule would be in there. She said that was still in there. We did not change any part of the conservation aside from removing tiers. He said I have concerns about the number of times this ordinance changes the words City Commission to City Manager. I want to clarify that we still have authority over anything with this or the authority to overrule the City Manager if there is an issue with something in this. She said we understand that as staff. At least once a month, I talk to somebody, and our conversation ends with you always have the right to go to the City Commission. He said I want to make sure this does not tie our hands as elected officials. We still have to answer to them. If they have an issue, they address it with us. Well, now our ordinance reads this, and we passed it that way, and now we have no authority to help you. We are shooting ourselves in the foot. She said Mark Threadgill would say that when someone came in front of you, yes, you have the power and you always have the power per the Charter, but the ordinance allows us to operate for all the customers. He said he wanted to make sure we were good. Later on, it looks like there will be substantial increases in the rate structure. She said at the last meeting, we presented about the increases, and we also presented to you one-on-one. It is a substantial percentage increase. He said on the commercial accounts, my bill has been \$22.10 at my office for about fifteen years. Under these new rates, it will go to \$41.86. She said everything we have on the resolution is the same as what we presented last time, knowing there will be increases across the board to make up for nine years.

Commissioner Robinson moved to approve.

Mayor Pro-Tem McDonald seconded the motion.

Roll Call Vote was taken.

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

10. Consider, and act upon, award of Public Works Bid No. 2024-002, Basin Sediment Removal Project No. PW2307, to Crosstown Construction related to the Alamogordo Basin Sediment Removal project in an amount not to exceed \$500,000, including NMGR. (Jimmy Vargas, Public Works Director)

Commissioner Rardin asked which sediment basins will be cleaned under this contract. Public Works Director Vargas said Griggs Basin and Public Works Basin. Commissioner Rardin said the engineer's estimate was \$306,000, and the lowest was \$391,000. Why is there so much variation? There is also a huge variation between all the bidders. Public Works Director Vargas said those were the only two that came in under budget. The others were higher. Commissioner Rardin said we are about \$85,000 over what we estimated it would be. Public Works Director Vargas said he did not know, but he was standing in place of the Project Manager who helped with that. Commissioner Rardin asked if the contractor was local. Public Works Director Vargas answered this was Crosstown Construction from Las Cruces. Commissioner Rardin said if we are only allocating \$390,000 for the project, including GRT, why are we doing it in an amount not to exceed \$500,000? Public Works Director Vargas said that is the projected budget we have. \$500,000 is the actual budget, and we are trying to stay within that budget. Commissioner Rardin asked if this gave staff the authority to change the contract to \$500,000 without returning to the Commission. Public Works Director Vargas said he was unsure but did not think so. Commissioner Rardin said Utilities Director Nunnelley was shaking his head no. I am checking because the numbers did not add up. We had \$390,000, then \$500,000, and it will usually say the amount budgeted, or fund, is \$500,000. Then it will tell us. If you have changed orders, they usually come back to us. Public Works Director answered that we would put it on the agenda if we did.

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

NEW BUSINESS

13. Consider, and act upon, an Energy Performance Agreement with Yearout Energy awarded on the Statewide Price Agreement with the State of New Mexico. (Evelyn Huff, Finance Director and Tara Trafton, Yearout Energy)

Finance Director Huff said this was presented before when we were in the middle of it, but we are now towards the end of the planning phase and entering the phase for signing and starting.

Tara Trafton said we are approaching the end of defining scopes of work and wanted to share what was finally decided upon. You may recall that last time, I told you the final report would be generated and reviewed by the New Mexico Energy Minerals and Natural Resource Department, as well as a third-party engineer. We have our final report as well as facility descriptions. Those are the finalized documents certified by the State of New Mexico and the third-party engineer. They have reviewed all of our calculations, including savings, to ensure they are accurate, plus costs for reasonableness and things along those lines. They acted on your behalf through this process and have done their part. She proceeded with her presentation.

Commissioner Rardin asked if we were borrowing money to do this or what Funds it was. That may have been answered at the last presentation. Finance Director Huff said we were borrowing money to do this. You borrow the funds, and then you pay them back with the savings from the energy. We reached out to the New Mexico Finance Authority, and as Ms. Trafton was saying, we have a better rate than four-point-five because it is through NMFA. Our bond counsel and financial advisor looked at this. We have to guarantee a gross receipts tax. One of the unrestricted gross receipts taxes in Fund 11 was looked at. As Financial Analyst John Archuleta said, you sign a piece saying that if you

miss, you pay it with this. That is the beauty of entering into the contract with Yearout. If we miss the energy savings, they must pay the difference. The City of Albuquerque recently entered into one of these, and they used the same type of GRT match we did. We have to put in \$1,700,000 upfront, and we have identified funds from Fund 49 for that. He asked what Fund 11 was. She said it was the General Fund. He asked which GRT it was. She said the unrestricted gross receipts tax was passed in 2019. He asked if that was the first one-eighth. She said it was the one that was but wasn't really a hold harmless; the first eighth.

Commissioner Burnette moved to approve.

Commissioner McDonald seconded the motion.

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

14. Consider, and act upon, Ordinance 1699 for first publication, repealing Article 09-02 Cemetery Board and Article 02-04-120 through 02-04-180 Mayor's Youth Advisory Council of the Alamogordo Code of Ordinances. (Stephanie Hernandez, Assistant City Manager) (Roll Call Vote Required)

Assistant City Manager Hernandez said that when the boards and committees came to the Commission with their presentations in a March meeting, the Commission directed staff to come back with recommendations to look at them. Some of our boards and committees were passed by resolution, others were passed by ordinance, and some were just created. These two were passed by ordinance and needed to be dissolved by ordinance. The Cemetery Board was suspended a few years ago. Anything that needs to come for the Cemetery can be brought through the Parks and Recreation Board, because the Cemetery is part of Parks and Recreation. The Mayor's Youth Advisory Council hasn't met in quite a while. Those two would be dissolved by this ordinance.

Commissioner Robinson moved to approve.

Commissioner Rardin seconded the motion.

Roll Call Vote was taken.

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

15. Consider, and act upon, Ordinance 1703 for first publication, Amending Chapter 24, Articles 01-010; 01-020; 13-060 Additional Parking restrictions and 12-12-1.3 of the Alamogordo Code of Ordinances Concerning Schedule of Penalty Assessments, Penalty Assessment Misdemeanors; Additional Fees, Mandatory Fees upon Conviction, and Texting While Driving. (Ashley Smith, City Attorney) (Roll Call Vote Required)

City Attorney Smith said several months ago, we talked about how the State was doing away with mandatory State court fees. This ordinance is brought in response to that. The fees went away at the beginning of June. The State is allowing municipalities to do local court fees instead of State court fees, which is what we are doing with these changes. We are increasing some of the fees and changing them to local fees. We added texting-and-driving and parking stuff. We spoke with Chief Kunihiro, and we wanted to increase penalties and penalty assessments based on what the Police Department is seeing on the streets. Texting-and-driving is one of those; it initially had a first, second, and third offense, but we did away with those and made it one offense. I do need to make one amendment. In 24-12-12-1.3, the mandatory fees upon a conviction, I would like to strike out (2) and renumber (3) and (4), so that (2) is the same as (4), but we prefer the wording in (4). We ask to strike (2) completely out, and change (3) to (2), and (4) to (3) for numbering purposes. Commissioner Rardin asked if we changed these fees recently. A young kid came and gave a presentation. City Attorney Smith said yes, we increased fines. There are fines and fees. We are still keeping the increase on fines. Some of the numbers here are decreasing because we are increasing the fees. The overall amounts will be the same. Some were decreased to even them out.

Commissioner Rardin said in 24-12-6-2.7, school zones, I would be in favor of leaving them where they are at instead of decreasing them. That is a problem area. Assistant City Manager Hernandez said we can do whatever the Commission wants, but I wish to clarify something. We are backing out some of these \$60 and putting in the fees. Others were based on feedback from the Police Department. For example, we are keeping failure to abide by traffic control high. We are also keeping speeding and texting-while-driving high because those issues here in Alamogordo are causing major concerns for citizens. Some are being reduced because if you are going five miles over the speed limit, that could be hitting some pretty hard. They have to pay the fine, plus the court cost fee. We are trying to make it more reasonable. Commissioner Rardin said so the court cost fee is the other side of that. She said yes. If you look at speeding, we are backing out the \$60 fees. If you are speeding over ten miles per hour, right now, it is \$90 plus \$60, so you have to pay \$150. He asked what if you just paid for the ticket instead of going to court. Is it just the \$90? Chief Kunihiro said they are combined. Starting July 1st, the State is mandating that the administrative fees, the court fees, go away. We are a home rule, so we get to add \$10 to it. These dropped \$60 and went up \$10. We have identified speeding, failing to yield obedience to traffic control devices, and texting while driving as ones to be bumped up in this ordinance. So, we are dropping by \$60 because we have to add \$10 as a local fee, which we are allowed to do as a home rule. Commissioner Rardin asked what his fee would be for going ten over. Would it be \$35? Here, it says up to including ten miles per hour, going from ninety to thirty-five. Assistant City Manager Hernandez said the fine is \$30, but the fee would be the \$60 added. Commissioner Rardin asked what would happen if he just signed and paid for it. What would the fee be? City Attorney Smith said it is added. If you look at the next ordinance, 24-01-20, it says, "In addition to the penalty assessment established for each penalty assessment misdemeanor, there shall be assessed a fee to be deposited in the city treasury which is calculated as follows:". We are amending that section, too, so the citation in their track system already puts it there. Chief Kunihiro said you are given the one fee. Commissioner Rardin said that the \$60 plus the \$35 will be on the ticket. Chief Kunihiro said yes. You would expect to receive all the fines currently struck through if you received a citation. You are paying for it all. Assistant City Manager Hernandez said instead of paying \$90 plus \$60, you are paying \$90 total now. City Attorney Smith said the fees really play a factor in cases where the judge may defer. The judge has the authority to defer a sentence. For example, if the judge defers a sentence on a traffic citation, the fine goes away, but the mandatory local fees do not. So, with a deferred sentence, you would still have to pay those fees but would not pay the fine. Commissioner Rardin said the fee is essentially the court cost and the fine for the infraction.

Commissioner Burnett moved to approve with the amendment.

Commissioner Tapley seconded the motion.

Roll Call Vote was taken.

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

16. Consider and act upon Resolution 2024-31 Adopting Rates for Water, Sewer, and Reclaimed Water Service. (Bryan Mantz, GovRates Inc. President and Rick Holden, City Manager) (Roll Call Vote).

Finance Director Huff said this resolution goes along with the ordinance from two meetings ago. As you can see, the resolution details all the charges as part of our water rates and ancillary fees. For water service in particular, it is broken down by household/non-household customers, followed by the five-year plan with monthly base and usage charges for 2025 through 2029.

Mayor Payne asked how you know the size of the meter, such as three-quarters or one-inch. Finance Director Huff said that it is currently listed on the bill. Payne said she couldn't find it. Mr. Mantz said the majority of customers have the smallest meter size, like a three-quarter inch. Finance Director Huff said that is typically for household users. Non-household customers go larger, such as big businesses like the hospital. Mayor Payne asked if it would be \$19.37 with a three-quarter-inch meter. Finance Director Huff said plus \$2.88 for every hundred cubic feet used. Mayor Payne asked if that included

sewer and garbage. Finance Director Huff said correct. Mr. Mantz said the average user would be around \$0.02 to \$0.03 per gallon.

Commissioner Rardin asked why the tapping fees were so high. I can see that with the bigger ones, but not a three-quarter or one-inch tap. There is the saddle and labor of digging the hole. Is the City on the hook for compacting the hole and passing asphalt? Is that included in the price? Finance Director Huff said a change for us is we will be providing the parts. Right now, it's a mishmash. Utilities Director Nunnelley said that is correct. Historically, we show up, do the tap, and then we charge back for the labor. Half the time we do not end up charging, which is a loss. Half the time when we show up, they are using random parts. We can't warranty that. The way it will work now is, the City supplies the saddle, valving, and performs the tap. We no longer allow plumbers to tap our water lines, just our certified operators. Regarding the cost, if you run the numbers, the cost of the saddle, storage, maintaining storage, valves, tapping equipment, replacing teeth in the tapping equipment, labor, and generator power adds up. We are not in the market to make money, but we are making it fair for all the plumbers. We are giving an upfront cost. Commissioner Rardin asked if that included backfill and compacting. Utilities Director Nunnelley said no. Commissioner Rardin said so it is basically going in and tapping the water line for the user. Utilities Director Nunnelley said correct. Commissioner Rardin asked who would be in charge of backfilling and excavating. Utilities Director Nunnelley said the contractor. They do the excavation, set up the appointment and account, and then we go out there. We install the saddle, get it inspected, do the pressure testing, tap it, test it again, and then turn it over. Commissioner Rardin asked if a three-quarter-inch tap was on there. Is one-inch the smallest we have? Utilities Director Nunnelley said one-inch is the smallest we go on tap. We go one inch up to a quarter meter. Commissioner Rardin said that seems high. Utilities Director Nunnelley said that is quite lower than most across the nation. Our twelve-inch is significantly lower. I did an average, and most of them were up to \$7,500 across the state. Commissioner Rardin asked how many ten to twelve-inch taps were done in a year. Utilities Director Nunnelley said very few. That is only for big businesses and apartment complexes. Commissioner Rardin asked how many of those we currently have in the community on the six-inch meters. Utilities Director Nunnelley said he did not know. Finance Director Huff said I think we have less than ten. Commissioner Rardin said it is for the large ones like the hospital. Utilities Director Nunnelley said correct. Mr. Mantz said not many people would be paying for the high-inch ones. Most of your taps are small. Commissioner Rardin asked how much additional money this would generate each year. There are about thirteen thousand and five-hundred user accounts. At the end of FY25, how much additional revenue would be generated? About \$3,000,000 to \$4,000,000 a year? Finance Director Huff said it is more than that because the intent is to be able to fund the debt to start handling the \$160,000,000 backlog. The idea is we generate enough to cover the debt service to start issuing large bonds for large projects. Commissioner Rardin asked if we would still do a typical twenty-year bond. Finance Director Huff said she believed that was what Mr. Mantz had predicted. Mr. Mantz said when the financing comes around, you can determine which route makes sense and is affordable. To answer your question, a chart on my presentation details this. For 2025, we would be going from \$11,500,000 to \$14,500,000. Commissioner Rardin asked how much it would be the following year. Mr. Mantz said this chart shows you the total revenues each year. It is increasing. City Manager Holden asked if we needed to put the presentation onto the screen. Mr. Mantz said we could do that. Finance Director Huff said it starts at \$3,000,000 to \$4,000,000, and then it gains from there to cover the debt service at the thirty-year bonds, to start chipping into the \$160,000,000. Commissioner Rardin asked how we knew what the debt service would be. Finance Director Huff said it was assumed based off information from NMFA and our financial analyst and bond council. Commissioner Rardin asked how we planned to borrow to start the improvements. City Manager Holden said there is a slide in the presentation for that. Commissioner Rardin said we have \$160,000,000 worth of infrastructure to fix, but we do not have to do that overnight. It could be spread over twenty to thirty years. Mr. Mantz said we assumed three bond issues over the ten-year period based on arbitrage rules, which basically means you have to spend all proceeds within three years. We assumed about \$107,000,000 additional senior lean debt. Those would be for the projects with long asset lives that will benefit many customers for the next thirty years. You are spreading the useful

life of the asset over the debt payments. We have about thirty-three-percent on a pay-as-you-go basis, which is mainly for routine renewals or replacements. Stuff like vehicles and equipment has a shorter asset life. Finance Director Huff said the bonding, the SMP, is the tanks, the large pipeline replacements. We are still dealing with pipes from the 1950's. Commissioner Rardin said this additional revenue is going to increase our bonding capacity. Finance Director Huff said correct. Speaking with our bond council over the last couple of weeks, they have made it clear that if this resolution passes with the five-year plan, we could go out to the bond market. I talked to them about how long of data we needed to do, and Chris indicated that once it is approved, the bond markets are pretty happy. Once you have a plan approved, you can go out there and start talking about it. We cannot issue all the bonds at once; we can't get all that work done. Mr. Mantz said a chart showed what we needed to recover through our rates, and solid red lines show what revenues under existing rates are. The dark blue bar is the operating expenses, and the green bar is debt. As you can see, we are not even paying under our budgeted 2025 operating budget. We are not paying for all our existing debt. If you are not meeting obligations on existing debt, no one is going to allow you to borrow more. Commissioner Rardin said he was concerned from past conversations. We have \$15,000,000 available in bonding capacity. How are we going to do this? Finance Director Huff said that was our general obligation bonds, the GO bonds that are paid with the property tax. It is completely separate, these are rate-based bonds. These would only be looking at the revenue generated in Fund 81. We are not trying to use GRT or general obligation bonds. Commissioner Rardin asked what our bonding capacity was using. Finance Director Huff said we have not gone out to bonds yet because this is not approved. I cannot go out and talk to bonds about something not approved. Commissioner Rardin said if we borrowed \$102,000,000 off the bat. Finance Director Huff said we cannot do that, we cannot spend \$102,000,000. Commissioner Rardin asked if that would be broken up into three equal pieces. Mr. Mantz said is based on the actual spending curve of when the projects are anticipated to be constructed. In this chart, the debt payments represented by the green bars gradually increase over time. It is staggered over the next ten years. Finance Director Huff said is what we were looking for when we started looking at the capital plan. What is our backlog, and what are our projections for the next ten years to be able to get us to replacing versus trying to catch up. As Mr. Mantz said previously, we talked about the roads, and how you need these rates to be able to systematically fund your road replacements. There are fires going on, so that stresses the need for adequate water infrastructure. There are a lot of good reasons outlined for this in the presentation. Commissioner Rardin said he was concerned because the rate increase could get the Commission recalled. This is a substantial increase I do not think a lot of people know is coming. In July, they are going to get their bill and have shellshock. To some of us, \$26 a month isn't a lot, but a lot of people in our community are on a fixed income. That may be whether they eat that month or not. Mr. Mantz said part of the plan is vetted for affordability. If you look at this chart, you are looking at \$0.012 to \$0.023 per gallon to have water delivered to your house and taken away once you are done with it. The affordability threshold used by the utility industry is four-point-five percent of median household income. You can see, in the last column, you are well below four-point-five percent for the entire plan. By any utility industry standard, this would be considered an affordable and competitive plan. Finance Director Huff said when they brought the rate increases in 1994, there were attempts to recall the Commission based on those increases. There is a legal precedent that says you cannot be recalled for making rate decisions. Mr. Mantz said you can't affect change and address critical capital needs until you have a plan in place. Nothing is set in stone. This is something the City will need to keep track of. There will be a response to the increases. Some may choose to conserve more water. Commissioner Rardin said I pay about \$24 a month in my office. The toilet flushes twice a day and that's it. My bill is going to double, and I will be using no additional water. That is where I was looking at it. Mr. Mantz said there is a lot of infrastructure that looks bad. You do not have a sustainable utility. Customers have benefited from having the same rates over the past nine years. Commissioner Rardin said five years is the revenue portion of this, and I do not know how long the construction portion will last, but have we looked at doing this over a ten-year period instead of a five-year period. Finance Director Huff said what is on the ordinance now is the five years of catch-up adjustments. We looked at ten years in total. The next five years is just the CPI increase. We are not looking at having to raise thirty-five percent every year,

we are going to have to do that for the next five years to catch up. From there, it would be the CPI increase. That is in the ordinance. We are not trying to fit all the capital into five years. The capital is spread out over ten years, and in some cases, fifteen years. We have to get going quicker because we are so far behind.

Mayor Payne asked if a slide showed where we would be at our rates compared to other cities. I believe we are in the middle. Finance Director Huff said yes, this requested increase puts us in the middle. Commissioner Rardin said he understood catching up and COVID increasing costs and pricing, but this is a huge increase. Mr. Mantz said since the last rate adjustment last year, the PVC pipe needed for these replacements has gone up three hundred percent. The utility has to pass this cost onto the customer. To answer the Mayor's question, you would be in the middle of what other New Mexico utilities charge under the proposed rates. You are much lower than the City of Rio Ranch and La Luz. In La Luz, their customers are on the septic systems, but they have higher water rates than what Alamogordo would charge. Mayor Payne said the shock would be that it would all happen at once. I was disappointed when I saw the presentation. This should have been done over the last ten years. Nobody would have thought anything about it if it was \$3 a year over the last ten years. This isn't an easy position to be in, but we have to pay for this stuff. We have serious infrastructure issues to deal with. We have to just take the hit. Mr. Mantz said it would be less if you used less. Commissioner Rardin asked how many units six thousand gallons a month would be. The bill is figured in units. Finance Director Huff said it is eight cubic feet. Commissioner Rardin said mine is usually around three hundred units. How many gallons is that? Mr. Mantz said we try to relate to gallons. Commissioner Burnett asked if anyone received emails in opposition of this. Commissioner Rardin said he did not think anyone knew it was happening. Commissioner Burnett said he had not. Mayor Payne said she had not. Everyone I have talked to understands we have to do this. Commissioner Burnett said yes, I have not had anyone saying this is ridiculous or crazy. Finance Director Huff said the phone calls are coming to us, too. It is going to be intense. Our only other option to generate more revenue is to pass more tax. We have to be able to generate more revenue to cover our debt and operating and capital needs. As a government, the two options are to raise rates or raise taxes. Commissioner Rardin asked how many we cut off on average. Is it every day or twice a month? Finance Director Huff said two to three hundred a month. We do them on cycles, and there are thirteen cycles. It is rotating and constant. It's not like we have a cutoff day. Mr. Mantz said part of this package allows people the option to turn off their service. A young man was here talking about that, and he talked about the trailer park. He appreciated that he would have the option under this plan. Commissioner Rardin said not being able to turn off has been a heated issue. I think that is a separate deal where the bill should follow the customer, not the property owner.

Commissioner Robinson moved to approve.

Mayor Pro-Tem McDonald seconded the motion.

Roll Call Vote was taken.

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

17. Consider, and act upon, Ordinance 1702 for first publication, amending Chapter 25, Article 01, Section 050 Skirting. (Josh Sides, Code Enforcement Manager) (Roll Call Vote Required)

Code Enforcement Manager Sides said skirting has been a constant battle. We have a skirting ordinance; to summarize, if you have a tongue attached to a mobile home, it needs to have skirting. It does not have to be anywhere else. In talks with City Attorney Smith and Chief Kunihiro, rewording it is in our best interest. I researched other cities and the International Property Maintenance Code. The language here comes from Valencia County, as it was clear and concise. Mobile homes should have skirting all around the base within our City. It is not only an IPMC violation, but also a fire hazard should it not be there.

Commissioner Rardin asked what we would do with an existing mobile home that has plastic skirting. That is not flammable. Are we going to tag these people and force them to upgrade? Code Enforcement Manager Sides said we have warnings in due process. Like the weed ordinances, this is about education first. We say the skirting has changed, and we are not enforcing it today, but we are educating them it is going to be enforced in a reasonable amount of time. You can do it now voluntarily, or we will start enforcing this on a certain date. Then, we will do warnings and start our process, up to and including Municipal Court. Commissioner Rardin asked what the recourse was if they could not afford to replace plastic skirting that was not flammable. Code Enforcement Manager Sides said we cite them in Municipal Court, and we will keep citing them. They have to be non-flammable; that is in the Property Maintenance Code, and I believe it is a fire block. From a fire standpoint, it has to be a fire-retardant material. Commissioner Rardin asked if that included an existing structure. Code Enforcement Manager Sides said it is in the Fire and International Property Maintenance Codes. Commissioner Rardin said I do not see how we can force them to improve it. On the Construction Industries Division side of this, CID, we can't enforce improvements. You could not come in here and say this building is not up to the code until you substantially change the building with a building permit and contractor. Code Enforcement Manager Sides said through CID, you cannot. Through IPMC, during inspections, if you do not have GCF/GFCI outlets in a kitchen, I will write you up for it. IPMC has been in code since January 2024 and will be in code until January 2027. Commissioner Rardin said my house was built in 1956. It was built to that standard and has not been altered since then. So, you cannot require them to upgrade to today's code when they met the code when the structure was built. I think we are opening up a can of worms in a lower-income area where people cannot afford to change their skirting. A lot of those have fiberglass panels. I do not know if that is considered flammable material. Code Enforcement Manager Sides said since he started, we have had three fatal fires. Two of those have been in trailer parks, where this is a direct thing we need to do for the safety of trailer occupants. Commissioner Rardin said he did not want to see us fining the same people over and over again when they cannot afford to fix the violation. I think there should be a grandfather clause. Most of this will be in the Walkertown area and others on Florida.

Mayor Payne asked about the mobile homes in parks where we cannot enter. How do we enforce that? Code Enforcement Manager Sides said it isn't impossible for Code Enforcement to get into a trailer park. They either need the property owner or a tenant to give consent. Mayor Payne asked how we got that. Code Enforcement Manager Sides said he has been to Oasis Mobile Home Park about three times in the past week. Evergreen more times than I can count. Mayor Payne asked if he had been to Tinsley lately. He said he had, and it was coming. I have been to Town and Country more times than I can count. Tenants are calling. We can go in as long as we have a tenant giving consent. Mayor Payne said so then you can cite the park owner for those. I see Commissioner Rardin's side of this, and I think this will be problematic. Commissioner Rardin said with CID, you cannot force somebody to bring their house up to code when it has a CFO, a certificate of occupancy that has been issued. The State already says you are legal to live in that home the way it is. Until you do a renovation or modification that goes past a certain dollar amount, even the State cannot force you to bring certain areas of it up to today's code if it meets the code it was at when built. Mayor Payne asked about when you sell it. Commissioner Burnett said it did not matter. Commissioner Rardin said we are getting into an area where we have some say and we also don't. When we had a Building Department, we had say. When the State took that away from us, we lost our ability to have a say in that part of it. We are walking a fine line where we do and do not have jurisdiction. This falls under the Mobile Home Division, some of this is under the State, and we may be overstepping. I do not want to fine and cite people into court that cannot afford to fix it. I understand the intent. Mayor Payne said if they do not have skirting at all, they would have to put skirting on it. Commissioner Rardin said he understood that. If they do not have it, then yes. Should we just grandfather them in if they already have existing skirting but not a non-flammable material? If they ever make an improvement, then they need to fix it at that point. Leave them alone, let them have it.

Mayor Payne asked City Attorney Smith if we do not do this and there is a fire, is the City liable? City Attorney Smith said we could. We could be liable if there are issues we ignore, even on private property. We have seen that. I was trying to pull up the State statute, and I know it talks about skirting. We have had several fires in mobile homes, and that is one of the concerns, too. I know that Code Enforcement Manager Sides has been trying to get mobile homes to comply with smoke alarms. As far as what Fire would need, I will leave that to Fire Chief Ramirez. Fire Chief Ramirez said in 2024, we have had four mobile home fires. Part of this with the skirting is if they do not have skirting, the weeds that grow under the home can catch fire. Once that catches fire, it spreads and catches those mobile homes, and radiant heat just progresses down. Maybe we cannot go specifically after the mobile home resident, but the property owners that have these parks are just as liable for not keeping the mobile home parks. Just like if they let weed growth or sewer go in these parks. Why would they not be held accountable for making sure their mobile home parks have the skirting? It is no different than a building we go into that does not have any type of ceiling tiles. That is a fire retardant for a minimum of a few seconds, but it has to be there. Same thing as skirting. Mayor Payne said the question is about private individuals who own mobile homes and do not have the right kind of skirting. We are going to cite them into court, but what if they cannot afford the skirting? Is the skirting something reasonable or expensive? How are they going to pay? Citing them into court will cost them money when they already do not have it. I want to be reasonable because public safety is important, but how are they going to pay for it? Commissioner Rardin said he was not concerned about the ones that do not have it, it's the ones that have been there for years. They use plastic under skirting on the majority of those trailers back in the '70s and '80s, and the ordinance reading of, "...shall be made of nonflammable materials" will give the authority to go out and force them to change that. They have been complaint for years with plastic. I do not think the plastic is nonflammable, it still melts and burns. The ones that don't have it, let's make them do it. The ones that are already skirted but may be nonflammable is my concern. Fire Chief Ramirez said under the International Fire Code, there is a section that consists of skirting for mobile homes or even homes that act as a protective barrier for that. I do not have the IFC book here, but I can get code-specific information to the Commission. It goes into International Building Code as well. Commissioner Rardin said that we have no authority to get into the IBC and IRC. We do in the Fire, but not in the code side of it. That all falls under the State of New Mexico and CID. I would like a little change in the wording to grandfather the ones that have existing skirting. Ones with damaged or missing skirting, we can make them fix it. Mayor Payne asked if we just gave them more time to replace it. Commissioner Rardin said if they keep the property up and the skirting is in good shape, why make them change it? Just because it is not a nonflammable material? It was compliant when they put it in. Commissioner Burnett said if you buy a house built in the 1950's, they are not making you upgrade all the electrical outlets. You are allowed to buy it as-is. Commissioner Rardin said he wanted either a grandfather clause or leeway in the wording of the ordinance. City Manager Holden said you have the privilege to amend that ordinance. Commissioner Rardin said he did not know how to say that. If it is in existing condition but in good shape, they should be able to keep it. If there is no skirting or OSB that will catch fire and burn, then yes, have them fix it. City Manager Holden said we could reword it and try to put it in a format that is in the middle of what you are describing and bring it back to you at the next possible meeting. Let you review it and see if it meets your needs. Then, we can strike it out or approve it at that point. It is not like you have to do it tonight. Commissioner Rardin said it for future staff and future Commission that are to abide by this. We may get a tyrant that enforces it excessively, but that is not the intent. The intent is to bring it up so it's safe, but do not pick on ones that are well-maintained and may not meet the ordinance. Commissioner Burnett said there has to be a list of approved skirting. Commissioner Rardin said there is. A lot of these properties were built in the '70s and '80s, and those were approved skirting at the time. Commissioner Burnett said as far as OSB, that will not meet the criteria. Commissioner Rardin said that plastic may meet the criteria.

Commissioner Rardin moved to table Item 17 until the next meeting or a future date.

Commissioner Burnett seconded the motion.

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

18. Consider, and act upon Ordinance 1704 Case Z-2024-0004(A) for first publication of a map amendment to rezone 916 & 918 South Florida Ave. from R-1 Single Family Dwelling to C-1 Neighborhood Business. (Stella Rael, City Planner) (Roll Call Vote Required)

Public Comment

Josiah Bass said he wanted to express his strong objection to the proposed expansion of property address 916 and 918 S. Florida, which belongs to the Center of Protective Environment (COPE). As a resident of this neighborhood, I am deeply concerned about the impact this expansion could have on our community's safety and quality of life. Currently, we are experiencing significant disturbances due to the residents of COPE. On a regular basis, we are awakened by women standing at the gate who appear to be under the influence of alcohol or drugs, yelling and causing disturbances. This behavior creates an unsafe environment for our neighborhood residents, including families and children. We understand the importance of supporting vulnerable populations, but it is evident that COPE is unable to effectively manage their residents and ensure they do not disrupt the peace and safety of our community. Allowing an expansion of their facilities would only exacerbate these issues and potentially increase the frequency and severity of disturbances. Furthermore, I urge the Commissioners to consider relocating COPE to an area where there is less opportunity for residents to access illegal substances and where the impact on residential neighborhoods is minimized. Our neighborhood deserves to be a peaceful and safe place to live, free from the disturbances caused by inadequate supervision of COPE residents. I respectfully request that you take into account the concerns of the residents who are directly affected by this proposal. Please reconsider the expansion of COPE at the current location and explore alternative solutions that prioritize the safety and well-being of our community.

City Planner Rael gave her presentation and recommended approval of the map amendment. The City owns the COPE building, but the applicant is Executive Director Veronica Gutierrez with COPE. They are requesting to change R-1 Single Family Dwelling to C-1 Neighborhood Business District to build additional office space needed for counseling staff employed with the Center of Protective Environment, or COPE. COPE is located at 909 South Florida. The employees park along Mimosa Drive, and there are a lot of hit-and-runs. People were hitting employee vehicles or other vehicles parked there, so they were seeking alternative parking methods. They came across these two lots that were for sale, so they purchased those with the intent of fencing it in and using it as parking for staff. Their capacity, as far as office space goes, well, they thought they could use it as a parking lot in an R-1 zoning district. When we spoke, I told them you cannot build a building there and use it as offices. You would have to go through the rezoning process. I suggested C-1 because that limits the type of businesses that can go there and the types of offices. Also, on the map, the light brown surrounding the area is C-1. We have a lot of mixed use there. After our conversation, they decided to apply for C-1 zoning. I provided you with the letter of opposition that Mr. Bass read. Late this afternoon, I received a phone call from the property owner at 619 Kingston, saying she was in opposition. I asked her if she would be here tonight to speak, but she did not think she would. I asked her for the reason to opposition, and she said she did not want a business there.

Mayor Payne asked Chief Kunihiro how many disturbance calls we have had at COPE in the last year. Chief Kunihiro said he looked it up for 2024, and we have had four total calls as of this year. She asked if they were all for disturbances. He said there was a request for an officer, an agency assist, a stolen vehicle, and a second request for officer. There were actually five calls. There was another for suspicious activity. That is just what has been reported.

Commissioner Rardin said if employee's vehicles were being hit, would we have police reports on those? Chief Kunihiro said it depends on what address they use on the crash report. I am not showing any crashes that use this specific address of 909 South Florida. Commissioner Rardin said it may not

come in as that address. Chief Kunihiro said potentially. Commissioner Rardin said hit-and-runs were why they asked to park over here.

Commissioner Burnett asked how big the facility they wanted to build was. City Planner Rael said Ms. Gutierrez was here and would know. Ms. Gutierrez said we still need to get funding for that in the future, but two thousand square feet to put three to four office spaces for counselors and also have an office available for victims where they may continue to have their remote court proceedings.

Commissioner Tapley asked if they could put parking in there as it is currently zoned. City Planner Rael said they could put a parking lot. If Ms. Gutierrez wanted to, she could have someone fence in the two parcels because they own them. As far as the parking lot, they could use it as additional parking. Commissioner Rardin said it only needed to be zoned C-1 if they built a building. City Planner Rael said she suggested that because when we had the conversation, Ms. Gutierrez had said they were in need of additional space. This was not currently the zone where additional space could be built.

Commission Rardin moved to approve.

Commission Tapley seconded the motion.

Roll Call Vote was taken.

Motion carried with a vote of 6-1-0. Commissioner Tapley voted nay.

19. Consider and act upon Resolution 2024-47, A resolution supporting and adopting project R.I.S.E as a framework for guiding principles encompassing respect, integrity, service, and excellence. (Rick Holden, City Manager, and Jerrett Perry, Executive Director, Chambers of Commerce) (Roll Call Vote Required)

City Manager Holden said he had spent time with Mr. Perry and discussed the direction this community was headed. Mr. Perry has a great vision for what the Center of Commerce can do and how the community, county, and school district can work together for the greater good in ways we have not thought of or done in a while.

Mr. Perry introduced Project RISE and said it wasn't his concept but one he had found at the right place and time. The idea of Project RISE is to find a strategy to create a better quality of life for all our people. You do that by using a common language and common goals. Successful businesses use common language throughout the system. Project RISE was initiated through the Center of Commerce and was recently codified. Alamogordo Public Schools and Otero County have also codified it. As decision-makers in our community, you should ask four basic fundamental questions through every endeavor, project, idea, and agenda. For example, does this agenda item have an element of respect, integrity, service, or excellence? Does the endeavor push us in the direction of raising quality of life and standards in Alamogordo? If the answer is yes, push it forward. The 4th of July Parade's theme is Rise as a Community. This also follows the core values of the United States Air Force. We asked what our values as a community were. We are different, diverse, with different political affiliations and churches, but we can collectively say we respect, have integrity, and believe in components of service and excellence. I am asking the Commission to collectively use that tactic to determine the direction you would like to go. There are three elements of success, and one of those is communication. There needs to be a standard and collective road map. I am asking you to support this collective idea for a common language in pushing our community forward.

Mayor Pro-Tem McDonald moved to approve.

Commissioner Tapley seconded the motion.

Roll Call Vote was taken.

Motion carried with a vote of 6-0-1. Nick Paul abstained due to his association with the Center of Commerce.

20. Consider, and act upon, the 4th of July Fireworks Display for 2024. (Rick Holden, City Manager)

City Manager Holden said there was feedback after the fires in Bonito Lake and Ruidoso; people were asking about our 4th of July Fireworks Display. I thought it best to put it on the agenda for the Commission's discussion and give direction to staff as to whether we should proceed with the display or not.

Fire Chief Ramirez said that with the fires burning all over the state and Ruidoso not even being a portion of a percent contained, many of our resources are still up there. We would not have them to assist us on the 4th of July. I do not know when they will be demobilized and returned back to local areas where they can assist us. Another aspect is, as people have been asking me, is it right to have a 4th of July event with everything that just happened? What if something goes wrong and it burns up the side of the Space Hall, or catches the apartments in that general area? Those concerns have been brought to my attention. We are short-staffed. By Chaparral, they are still having a fireworks show. People buy fireworks at the fireworks stand on 54 by the state line. They buy them there and bring them into the City, so we run a lot of calls. On the 4th of July, we had four structure fires amongst all the brush fires. Regardless, we are going to be busy that night. With everything being said, think of this with the potential aspect of what just happened.

Mayor Payne asked if this was just the display at the Space Center, or fireworks within City limits. City Manager Holden said the major display at the Space Center. Mayor Payne said so this does not affect households that want to shoot off fireworks in the street. Fire Chief Ramirez said no ma'am. Commissioner Rardin asked if we still had the county's volunteer groups for mutual aid. Fire Chief Ramirez said we do, but most of them have been deployed to help with additional fires. Now that the big event is happening in Chaparral, most of them have gone down there. We get a few, but I do not have a guarantee as to what we will have here to help us. Commissioner Rardin said you guys typically go up there and saturate the area with water beforehand. I do not think we have started a fire up there in my forty-six years. I think all the other people setting fireworks set off the fire. Chief Ramirez said we have had brush fires up there. You cannot see them in the desert at night, but most of the Hot Shots or Wildland Division are deployed out in the desert at night, so they can get on those that do happen.

Mayor Payne said she had received multiple calls in opposition to a fireworks display this year. I also got Facebook messages on the Mayor's page opposing a fireworks display this year. Their feeling is that it is in poor taste, considering how close it is to Ruidoso. It's a tough call. We shouldn't be banning fireworks completely, just the display.

City Manager Holden said we had visited with our fireworks provider, just in case. They are willing to defer that to another time if there is a better time. He said he would not charge us the full amount. Assistant City Manager Hernandez said our contract normally says that we need to give them ninety day's notice, but they are well aware of the situation. We explained the strain on the Fire Department, and they are willing to push it to another event or just charge us the cost incurred. They are willing to work with us, and are allowing us, in a sense, to get out of that part of the contract.

Commissioner Robinson asked Chief Ramirez if he had a recommendation. Chief Ramirez said that in lieu of everything that happened, I would not have that fireworks show. I can maybe recommend it at a later date. Mayor Payne said a lot of our firemen have gone up to Ruidoso on their own time as volunteers. I would say they are pretty tapped right now.

Commissioner Burnett asked Johnny Powell how this affected the event at the Space Hall. Mr. Powell said we would not have the event at the museum because the event is to tag onto the fireworks show and allow the museum membership to enjoy the parking lot at the museum. It's a venue for observing

the fireworks. It is the only time of the year we allow members to bring guests. The museum is planning on being open during that time. It's an important community event for our membership that we segue onto, but we understand and sympathize with the events in the community. It would cancel our event because there would be no purpose for it.

Commissioner Rardin said he felt this was a safe event on the City's end. It is everybody else keeping the Fire Department busy. I have been here my whole life and watched that display, and I want to see it go on. It's not us being unsafe. We can ask for mutual aid from the county that night.

Commissioner Burnett said Mescalero canceled theirs. Chief Ramirez said they turned the casino area into a refuge for displaced people. Their event has been canceled. This event would be the only one in the Southwest here. With everything that has happened, it is on the fifty-fifty line. Commissioner Rardin asked if Holloman was doing theirs. Chief Ramirez said he did not believe so. They used to do one, but I haven't heard of them doing it in years.

Commissioner Rardin moved to proceed with the display.

Commissioner Burnett seconded the motion.

Motion failed with a vote of 3-4-0. Commissioners Rardin, Burnett, and Paul voted aye. Commissioners Robinson, Tapley, Mayor Pro-Tem McDonald, and Mayor Payne voted nay.

Commissioner Rardin moved to adjourn at 9:37 p.m.

Commissioner Paul seconded the motion.

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

ADJOURNMENT

Mayor Susan L. Payne

ATTEST:

City Clerk Rachel Hughs

(Prepared by Dylan Aleshire, Deputy City Clerk)
Approved at the Regular Meeting held on July 9, 2024.

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 7/9/2024

Report Date: 07/02/2024

Report No: 3.

Submitted By: Stella Rael

Subject: Consider, and act upon, Ordinance 1696 Case Z-2024-0001(A) for adoption and final publication of a map amendment to rezone properties located at 181 & 243 Hamilton Ridge Road, 3100, 3150, 3180, 3190, 3192, & 3194 Hamilton Road, Reynolds Subdivision Replat G, Lot G, and Pruiett Subdivision Replat A, Lot 4A from R-1 Sigle Family Dwelling to RE-Residential Estates. The property owners request the zone change to comply with the current ordinance for keeping livestock. *(Stella Rael, City Planner)* **(Roll Call Vote Required)**

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact: None

Recommendation: Adopt the Ordinance.

Background:

The Ordinance was approved for first publication by the commission by a vote of 7-0 on June 11, 2024.

A map amendment to rezone properties located at 181 & 243 Hamilton Ridge Road, 3100, 3150, 3180, 3190, 3192, & 3194 Hamilton Road, Reynolds Subdivision Replat G, Lot G, and Pruiett Subdivision Replat A, Lot 4A from R-1 Sigle Family Dwelling to RE-Residential Estates. The property owners request the zone change to comply with the current ordinance for keeping livestock.

ORDINANCE No. 1696

AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF ALAMOGORDO, CHANGING THE CLASSIFICATION OF CERTAIN PROPERTIES FROM THEIR PRESENT DESIGNATION AND ZONING DISTRICT OF R-1-SINGLE FAMILY DWELLING DISTRICT TO RE-RESIDENTIAL DISTRICT, WITHIN THE CORPORATE BOUNDARIES OF THE CITY OF ALAMOGORDO, OTERO COUNTY, NEW MEXICO.

WHEREAS, the owners of certain real properties commonly known and legally described below (herein after referred to as "the Properties") located within the corporate boundaries of the City of Alamogordo, New Mexico, (hereinafter referred to as "the City"); and

181 Hamilton Ridge Road

243 Hamilton Ridge Road

3100 Hamilton Road

3150 Hamilton Road

3180 Hamilton Road

3186 Hamilton Road

3188 Hamilton Road

3190 Hamilton Road

3192 Hamilton Road

3194 Hamilton Road

WHEREAS, an application has been filed under Case No. **Z-2024-0001(A)** to change the zoning of the Properties, and

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

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

Reynolds Subdivision Replat G Lot 1G

Reynolds Subdivision Replat G Lot 2G

Reynolds Subdivision Replat G Lot 3G

Reynolds Subdivision Replat F Lot 1F

Pruiett Subdivision Replat A Lot 2A

Pruiett Subdivision Replat A Lot 3A

Pruiett Subdivision Replat A Lot 4A

Pruiett Subdivision Replat A Lot 5A

Pruiett Subdivision Replat B Lot 1A-B

Pruiett Subdivision Replat B Lot 2-B

Pruiett Subdivision Replat B Lot 3-B

Pruiett Subdivision Replat B Lot 4-B

Pruiett Subdivision Replat B Lot 5-B

Are hereby changed from R-1 Single Family Dwelling District to RE-Residential Estates, and the official zoning map and comprehensive plan of the City are hereby amended to reflect this change.

PASSED, APPROVED, AND ADOPTED this _____ day of _____, 2024

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

By: _____
Susan L. Payne, Mayor

ATTEST:

Rachel Hughs, City Clerk

APPROVED AS TO FORM:

Ashley Smith, City Attorney

City of Alamogordo



1

City Commission



Z-2024-0001(A)

Stella Rael, City Planner
June 11, 2024

Map Amendment Request Case: Z-2024-0001(A)

Request:

The property owners are requesting a map amendment to change the zoning from R-1 Single Family Dwelling District to RE-Residential Estates District.

Applicants:

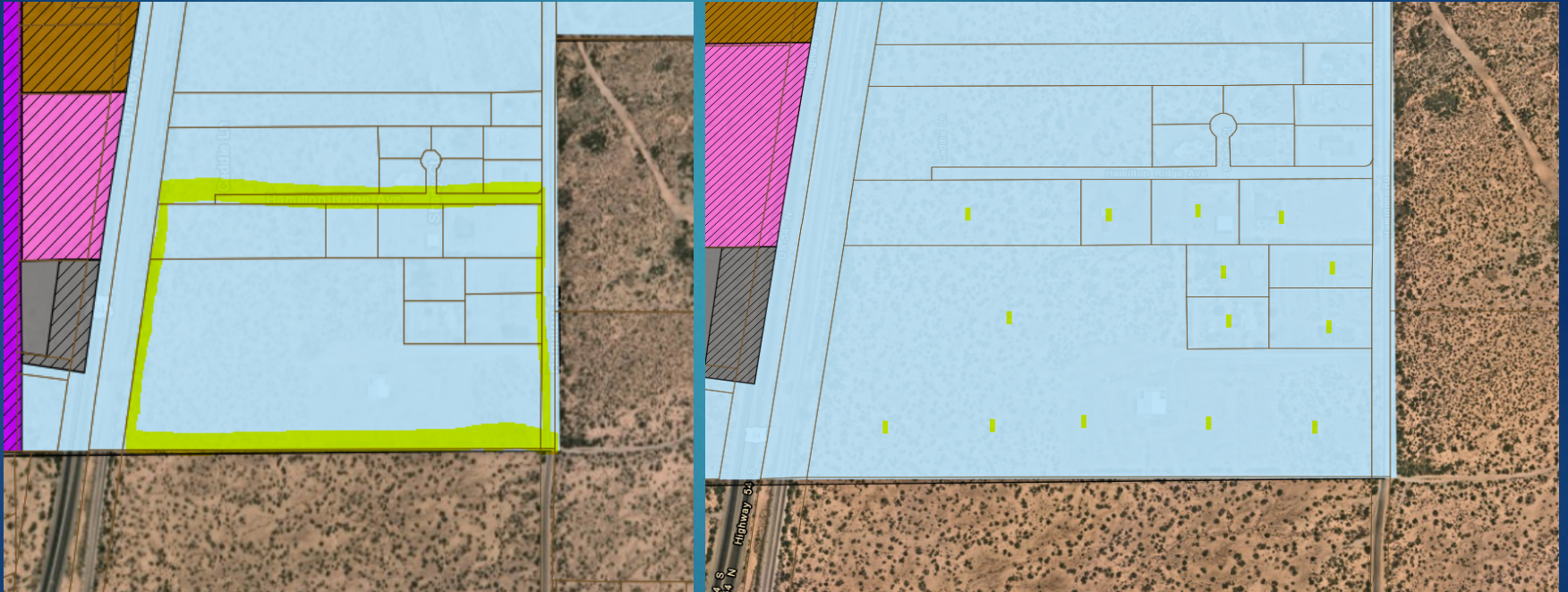
Marcos Doporto (Applicant/Representative)

181 Hamilton Ridge Rd.

Alamogordo, NM 88310

ZONING MAP

3

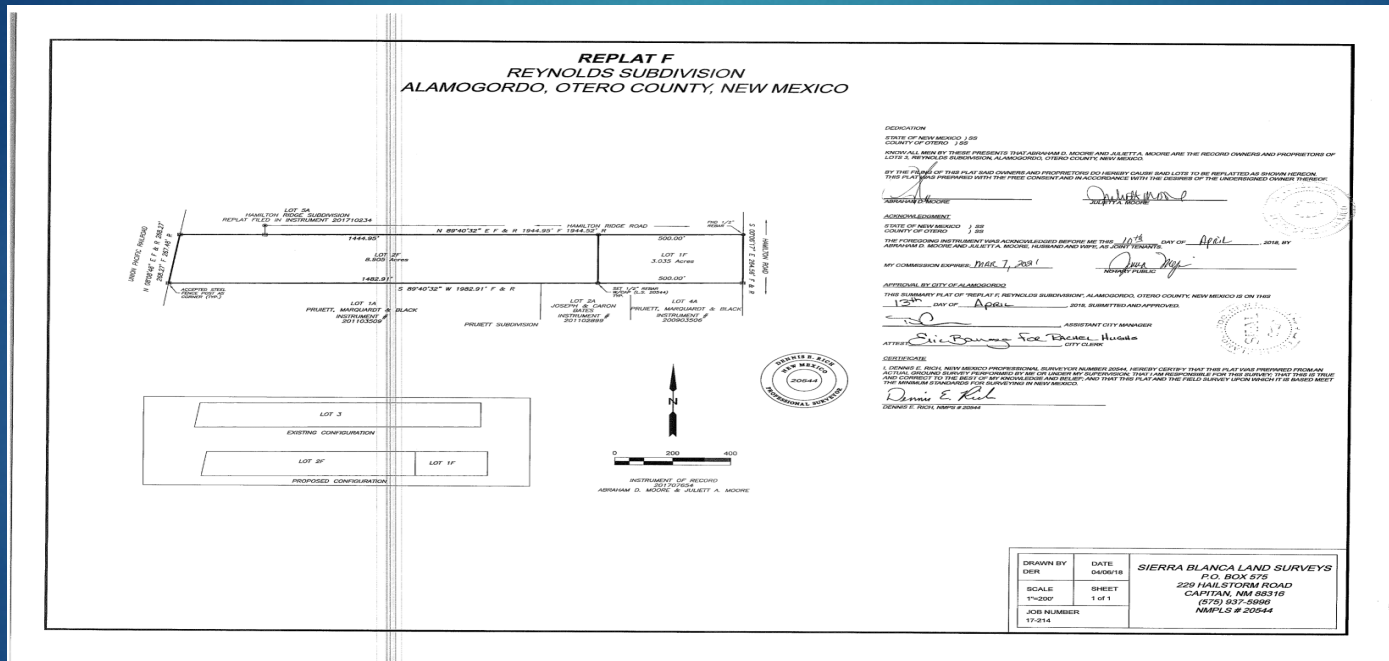


5



REYNOLDS SUBDIVISION REPLAT F

6



7



Z-2024-0001(A)

8

Findings of Fact

- ◆1. The properties are located within the Reynolds Subdivision Replats F & G and the Pruiett Subdivision Replats A & B, consisting of ten separately owned parcels. The request is to change the zoning of the ten parcels from R-1 Single Family Dwelling District to RE- Residential Estates to comply with the current keeping of animal's ordinance.
- ◆2. Public Notice was placed in the Alamogordo Daily News.
- ◆2. Five(5) letters were mailed by certified/returned receipt mail to all property owners of record within two hundred (200) feet from the property excluding public right-of-way, of the properties for which the rezoning is sought.
- ◆5. As of June 3, 2024, there have been three letters of support from property owners on the opposite side of Hamilton Ridge Rd. and one letter of opposition from the opposite side of Hamilton Ridge Rd.

Z-2024-0001(A)

- ◆ Staff recommends approval since this request will not be materially detrimental to surrounding property owners or the public

Stella Rael

From: Vicki Smith <vickismith355@gmail.com>
Sent: Monday, April 8, 2024 11:55 AM
To: Stella Rael
Subject: Response to notification

You don't often get email from vickismith355@gmail.com. [Learn why this is important](#)

Dear board members,

In response to your registered letter I signed for on the 1st of April.

We oppose the rezoning of R-1 Single family dwelling to RE residential estates for address on Hamilton Ridge Road. Addresses being 243, Abe Moore and 181, Marco DePorto, along with Abe Moore property near the rail road.

I don't believe we received proper notice on time for commission to vote. First attempt was the 29th of March, I was able to pick up and sign for the registered letter on the 1st of April.

In accordance to the ordinance, less than 1 acre, and less than 5 acres livestock prohibited. Marco DePorto who owns two horses, has 1.6 acres includes barn home. Unknown acreage at the end of the road registered to Abe Moore. Property need s to be surveyed to ensure 5 acres.

All properties 3100, 3150, 3180, 3186, 3188, 3190, 3192, and 3194 Hamilton Road show in otero county tax assessment as being commercial properties not single dwelling homes.

My concerns is property value decreases due to live stock in the city limits.

The dirt the livestock will kick up, and the stench that will blow straight to my house, and the increase in flies.

Submitted,
Thomas and Vicki Smith

Email WARNING: This email may have originated external to the City of Alamogordo email system. Review the email sender address and NOT just the email username. Do not click on links or open attachments unless you are sure the content is Safe. If unsure, send an email to the BITS helpdesk for analysis.

Stella Rael

From: GERALD R MATHERLY <gmatherly@msn.com>
Sent: Friday, April 19, 2024 5:30 PM
To: Stella Rael
Subject: Re-Zoning of Hamilton Ridge rd

 You don't often get email from gmatherly@msn.com. [Learn why this is important](#)

My name Gerald Matherly and Cheryl Matherly at 298 Hamilton Ridge rd. We are in support of the re-zoning. Thank you Gerald Matherly

Get [Outlook for iOS](#)

Email WARNING: This email may have originated external to the City of Alamogordo email system. Review the email sender address and NOT just the email username. Do not click on links or open attachments unless you are sure the content is Safe. If unsure, send an email to the BITS helpdesk for analysis.

Stella Rael

From: Josiah Solberg <josiah1122@gmail.com>
Sent: Friday, April 19, 2024 5:20 PM
To: Stella Rael
Subject: Rezoning Hamilton Ridge

You don't often get email from josiah1122@gmail.com. [Learn why this is important](#)

Hello,
My name is Josiah Solberg.
I own 3037 Shady Ct.
I am for rezoning Hamilton Ridge.
Also, I would like my property rezoned, as I am on the north side of Hamilton Ridge.

Thank you very much!

Josiah Solberg
813-997-0024

Email WARNING: This email may have originated external to the City of Alamogordo email system. Review the email sender address and NOT just the email username. Do not click on links or open attachments unless you are sure the content is Safe. If unsure, send an email to the BITS helpdesk for analysis.

RE: Rezoning of Hamilton Ridge Rd area by Mark Doporto

Stella Rael <srael@ci.alamogordo.nm.us>

Fri 5/10/2024 3:06 PM

To: W.C. Arnold <wcarnoldjr@gmail.com>

Mr. Arnold,

Thank you I will make this part of the record.

From: W.C. Arnold <wcarnoldjr@gmail.com>

Sent: Friday, May 10, 2024 10:01 AM

To: Stella Rael <srael@ci.alamogordo.nm.us>

Subject: Rezoning of Hamilton Ridge Rd area by Mark Doporto

You don't often get email from wcarnoldjr@gmail.com. [Learn why this is important](#)

Stella,

This is William (Bill) Arnold at 242 Hamilton Ridge Road. As you know, Vicky and I built the first House on Hamilton Ridge Rd over 22 years ago in our subdivision.

Vicky and I are in approval of the rezoning efforts of Mark Doporto.

If you need any further information please let me know.

Thanks

William C Arnold Jr
242 Hamilton Ridge Rd
Alamogordo, NM 88310

Email WARNING: This email may have originated external to the City of Alamogordo email system. Review the email sender address and NOT just the email username. Do not click on links or open attachments unless you are sure the content is Safe. If unsure, send an email to the BITS helpdesk for analysis.

Subject: Opposition to Allowing Livestock in Residential Zone

Tom and Vicki Smith
222 Hamilton Ridge Rd.

Alamogordo NM 88310

5-11-2024

Dear Members of the Alamogordo City Commission,

We are writing to express our opposition to the proposed ordinance change that would allow the keeping of livestock within our neighborhood. This our second letter as the last one was short due to not having proper time to respond.

One of the primary reasons our family chose to live within the city limits rather than in the county was to enjoy the benefits of a residential community with ordinances and actual enforcement of ordinances. We believe that the presence of livestock belongs in rural, agricultural areas and not in residential zones. Below you will find several areas we are concerned with connected to this zoning proposal and other city service areas we are being excluded from.

We were also excluded from receiving natural gas, we had to go to New Mexico gas and push to ask why weren't offered natural gas services when our neighbors got service and we were told we were eligible as well, but our neighbor refused to extend the line to us as per the contract with NM gas stated he would. Over a year later we were finally afforded the opportunity to connect to natural gas.

Allowing livestock in residential zones would have several negative consequences for our family and our neighbors, including:

1. **Noise and Odor:** The presence of livestock has led to increased noise and unpleasant odors, which diminish the quality of life for our family and neighbors.
2. **Predators:** Livestock attract predators such as coyotes' bobcats and snakes.
3. **Health Concerns:** Keeping livestock in close proximity to residential areas can pose health risks to residents, including the potential spread of disease and increased exposure to allergens.
4. **Flies:** Livestock brings in flies, flies carry are a nuisance and carry disease.
5. **Property Values:** Allowing livestock in residential zones could decrease property values, as many potential homebuyers would be deterred by the presence of nearby livestock.
6. **Zoning Compliance:** Residential zones are designed for the peaceful enjoyment of homes, and allowing livestock in these areas would be contrary to the intended purpose of such zones.

7. **Livestock already here:** Livestock has been on this property since January 2024 and has been allowed to remain on property even though it's against the ordinance and Alamogordo Animal Control has had to come out to check on the welfare of the animals.

Specific reasons for opposing the zoning change that has been requested,

1. Mr. Doporto doesn't own the required amount of land to have livestock even with the proposed ordinance change. No other property owner wanted this change until he moved in and water was provided to other neighbors excluding us.
2. Permanent pens were built, and livestock were brought in before even applying to change the ordinance.
3. Mr. Doporto's property is currently permanently fenced and doesn't allow the livestock to leave his property and go to the lease land he is claiming he will keep the livestock on.
4. Mr. Doporto is claiming to "lease" land surrounding his property, although said land has no fences to contain livestock.
5. The livestock are being fed one ton's bales of hay, which are being put on the ground contributing to flies, rodents, and predators. As well as the wind is blowing hay and horse feces across to our property.

Long standing zoning ordinance issues and city service issues that are not being addressed by City of Alamogordo Staff and Alamogordo Police Department.

1. When we purchased our property, we vacated the remaining undeveloped section of the subdivision and COA staff at the time vacated the easement starting at our east property line for Hamilton Ridge Road. We were assured the easement no longer existed and that the dirt road on our property was ours. Because all the land on the PLAT south of our property was owned by the same owner. The city of Alamogordo, City staff at the time, were even gracious enough to put up concrete barriers to keep individuals from trespassing onto our property. After multiple occasions of trespassers.
2. When a new owner purchased the land to the south, he didn't want to use his easement if he sold off a section of the land and asked city staff (at the time) to go back on our agreement and force us to let him have access to the previous easement for our land.
3. COA staff later went back on the agreement and forced us to give easement access across property we own. They sent crews out and removed the barriers open, opening our property to trespassers again. Although they repeatedly deny any responsibility for maintaining or paving the road.
4. The PLAT maps in the City Planners presentation clearly show that our property is in its own Plat and property to the south in another plat with a clear easement through private property to Mr. Doporto's property.
5. We understood that City water and sewer may never be offered to us unless collectively with our neighbors covering the bill to have the lines installed. Although a deal was made for some of our neighbors to receive city water. Although us and several other properties owners were excluded from the chance to have city water service and continue to have no way to get city water service.

6. Darnold plumbing has moved in commercial activity, at 243 Hamilton Ridge Rd, in the neighborhood although it is not zoned for commercial use. Our questions and complaints to COA staff have been disregarded for years.
7. We pay taxes relevant to city property but get no city services such as water, sewer, fire hydrants, sidewalks & paved road to end of where city now claims owner ship.
8. Our neighborhood's peace and wellbeing is distorted with ATV/UTV and motorcycle traffic at all hours. Creating dust on the dirt section of the road.
9. We constantly report unreasonable noise, harassment and intimidation and nothing is done. Officers do not respond; we are unsure if the issue is in dispatch or the Police Department, we have basically given up with officers and dispatch. Either way we are being intimidated and harassed and not provided with any engagement or intervention from law enforcement.
10. Multiple reports were made about the welfare of the horses on said property after they arrived in January 2024, they had not been there before. This is where the zoning issue came to light and the horses have been allowed to stay although they are not allowed under the current zoning.
11. Mr. Doporto is using an easement to access his property that was never intended to access his property, rather for a subdivision that was vacated when we bought the property. Instead of the easement in the PLAT map for the property he purchased.

We have attempted to be understanding and gracious neighbors. We understand others are trying to build their homes and their properties. But they should research and find property that meets their needs instead of trying to change a neighborhood that already has restrictions in place.

The neighbors supporting this change will not have any direct effect from where the livestock are placed. We have the direct effective of this change. Those neighbors have been a forwarded opportunities such as city water and paved roads in and around their property.

If we wanted to live near livestock, we would have chosen to live in the county. We purchased this tract of land because it was inside the city limits and was a considerable distance from county property. Therefore, livestock would be a considerable distance away from our home. Now we have livestock within 200 feet of our front door. Our family consists of a retired law enforcement and a 96-year-old grandmother, who bought a house in a golf course type subdivision to enjoy retirement and live in peace and tranquility.

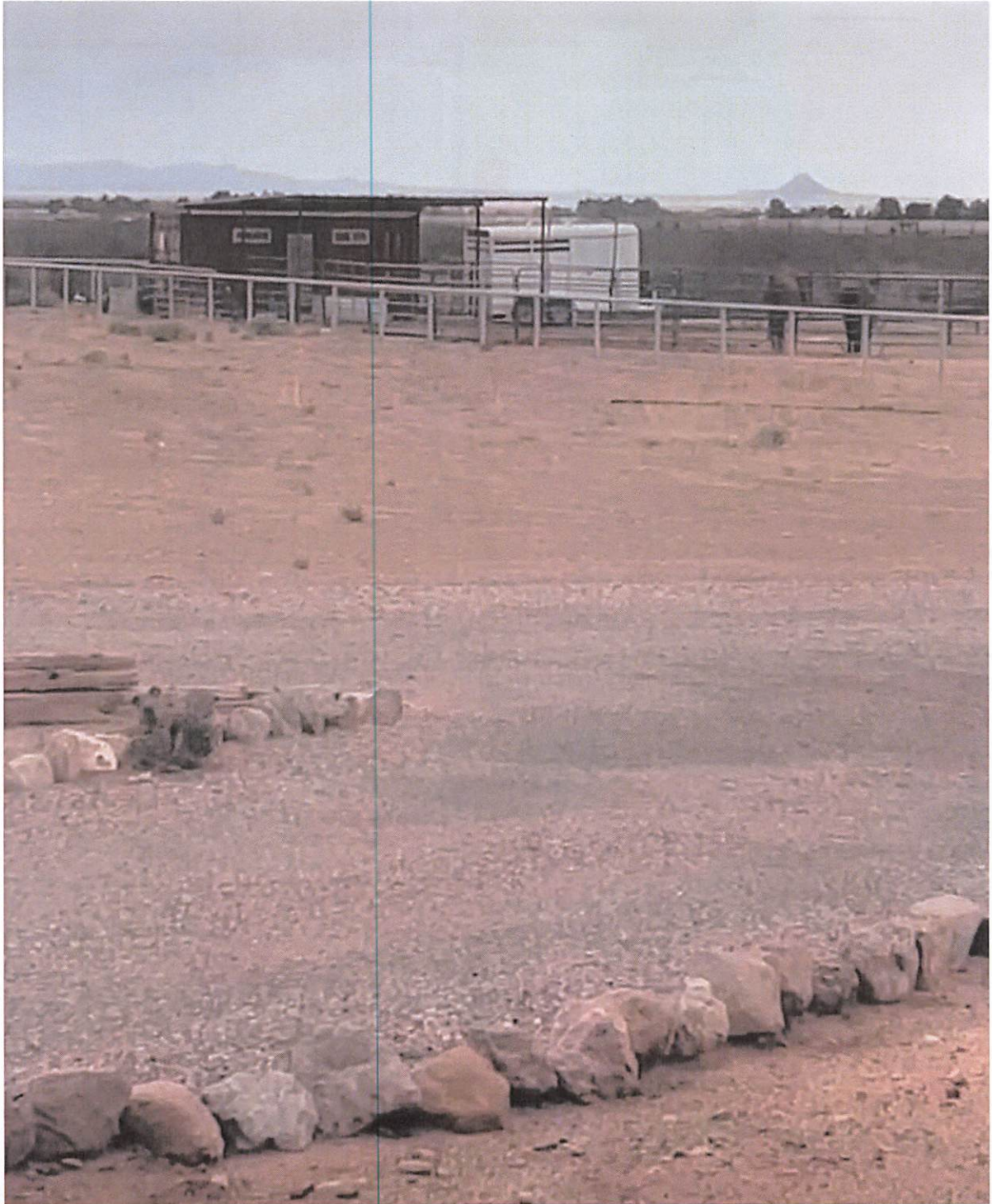
We believe that it is essential to maintain the integrity of our residential zone and to protect the rights and well-being of our family. who all have lived here and respected the zoning and ordinances for years. Therefore, we ask you to vote against the proposed ordinance change.

We have attached a few photos of how close the livestock is to our home and encourage you, if possible, to take a look for yourself.

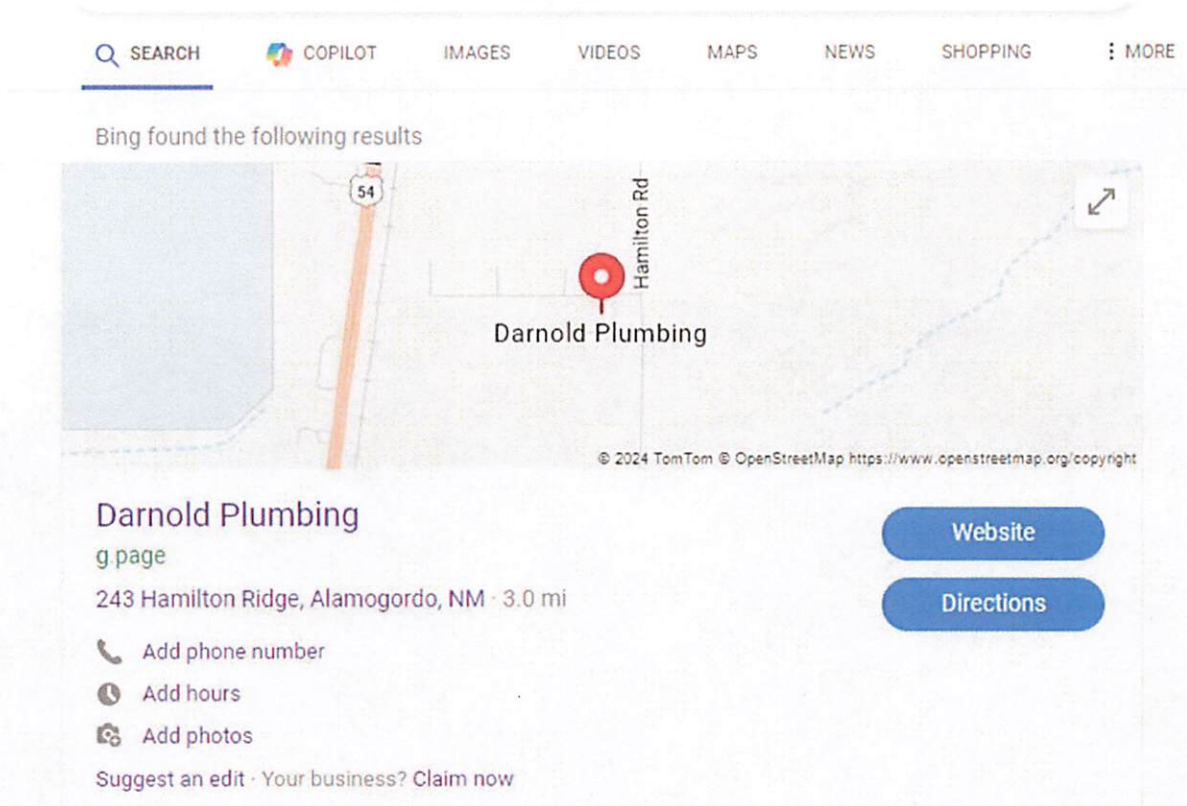
Tom and Vicki Smith



Picture from our Front house sidewalk



Picture from our Front door



Google search shows Commercial business at residential address.

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 7/9/2024

Report Date: 07/02/2024

Report No: 4.

Submitted By: Stella Rael

Subject: Consider, and act upon Ordinance 1697 Case Z-2024-0002(A) for adoption and final publication of a map amendment to rezone Somerset Subdivision Phase 1 from R-2 Townhouse Dwelling District to Planned Unit Development District (PUD). (*Stella Rael, City Planner*) **(Roll Call Vote Required)**

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact: None

Recommendation: Adopt the Ordinance.

Background:

The Ordinance was approved for first publication by the commission by a vote of 7-0 on June 11, 2024.

Somerset LLC is requesting that the city amend the zoning map to change the zoning of the property known as Somerset Subdivision Phase 1 from Townhouse Dwelling District to Planned Unit Development (PUD) District. The developer intends to create smaller lots within this area of the subdivision.

ORDINANCE No. 1697

AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF ALAMOGORDO, CHANGING THE CLASSIFICATION OF A CERTAIN PROPERTY COMMONLY KNOWN AS SOMERSET SUBDIVISION PHASE 1 FROM THEIR PRESENT DESIGNATION AND ZONING DISTRICT OF R-2-TOWNHOUSE DWELLING DISTRICT TO PUD-PLANNED UNIT DEVELOPMENT DISTRICT, WITHIN THE CORPORATE BOUNDARIES OF THE CITY OF ALAMOGORDO, OTERO COUNTY, NEW MEXICO.

WHEREAS, Somerset LLC (hereinafter referred to as "the Owners") is the owner of certain real property commonly known as Somerset Subdivision Phase 1 and legally described below (herein after referred to as "the Property") located within the corporate boundaries of the City of Alamogordo, New Mexico, (hereinafter referred to as "the City"); and

SOMERSET SUBDIVISION PHASE 1

WHEREAS, an application has been filed in the Owner's name under Case No.

Z-2024-0002(A) to change the zoning of the Property, and

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

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

Somerset Subdivision Phase 1

Is hereby changed from R-2 Townhouse Dwelling District to PUD, Planned Unit Development District; and the official zoning map and comprehensive plan of the City are hereby amended to reflect this change.

PASSED, APPROVED, AND ADOPTED this _____ day of _____, 2024

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

By: _____
Susan L. Payne, Mayor

ATTEST:

Rachel Hughs, City Clerk

APPROVED AS TO FORM:

Ashley Smith, City Attorney

SOMERSET SUBDIVISION PHASE 1 REPLAT NO. 1
BEGINING A REPLAT OF SOMERSET SUBDIVISION
FILED ON NOVEMBER 21,2022 INSTRUMENT # 2022112736
LOCATED IN WEST 1/2 SECTION 31, TOWNSHIP 16 SOUTH,
RANGE 10 EAST, NMPM, ALAMOGORDO,
OTERO COUNTY, NEW MEXICO
6.04 ACRES +/-

DEDICATION

STATE OF NEW MEXICO) JSS
COUNTY OF OTERO)

KNOW ALL MEN BY THESE PRESENTS THAT SOMERSET, LLC. IS THE OWNER AND PROPRIETOR OF A TRACT OF LAND IN THE WEST 1/2 OF SECTION 31, TOWNSHIP 16 SOUTH, RANGE 10 EAST, NEW MEXICO PRINCIPAL MERIDIAN, ALAMOGORDO, OTERO COUNTY, NEW MEXICO.

SAID OWNER DOES HEREBY IN ACCORDANCE WITH HIS FREE WILL AND DESIRE CAUSE THE ABOVE DESCRIBED LAND TO BE RESUBIDED AND BE REPLATTED, TO BE DESIGNATED AS SOMERSET SUBDIVISION, ALAMOGORDO, OTERO COUNTY, NEW MEXICO, AS SHOWN ON THE FORE GOING FINAL PLAT.

IN WITNESS WHEREOF THE OWNERS HAVE SET THEIR HAND AND SEAL ON THIS _____ DAY OF _____, 2024

SOMERSET, LLC. _____

CORPORATE ACKNOWLEDGEMENT

STATE OF NEW MEXICO) JSS
COUNTY OF OTERO)

ON THIS _____ DAY OF _____, 2024 BEFORE ME PERSONALLY APPEARED JIM FRENCH OWNER, ON BEHALF OF SAID OWNER, KNOWN TO ME BY THE SAID PERSON WHO EXECUTED THE FOREGOING INSTRUMENT, AND THE ACKNOWLEDGED THAT THE EXECUTED SAID INSTRUMENT AS THEIR ACT AND DEED.

WITNESS MY HAND AND SEAL ON THIS DAY AND YEAR LAST WRITTEN ABOVE

NOTARY PUBLIC

MY COMMISSION EXPIRES _____

APPROVAL OF THE ALAMOGORDO PLANNING AND ZONING COMMISSION

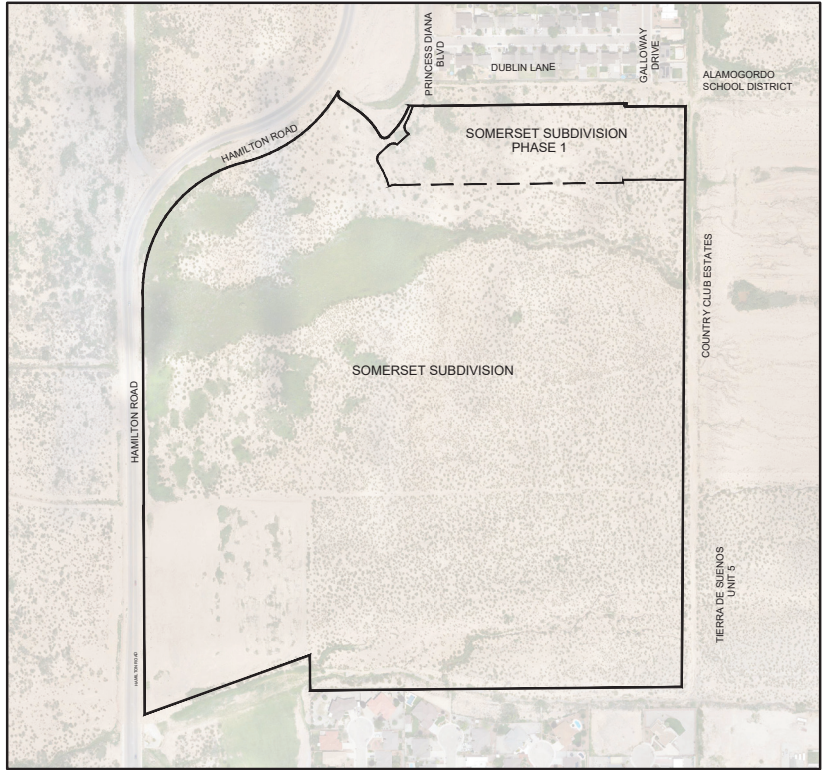
STATE OF NEW MEXICO) JSS
COUNTY OF OTERO)

THIS FINAL PLAT OF SOMERSET SUBDIVISION, ALAMOGORDO, OTERO COUNTY, NEW MEXICO WAS ON _____ THIS DAY OF _____, 2024, SUBMITTED TO THE CITY COMMISSION OF THE CITY OF ALAMOGORDO, NEW MEXICO, AND WAS APPROVED BY A MAJORITY OF THE MEMBERS.

SURVEYOR'S CERTIFICATE

I, DARRYL D. COSTER DO HEREBY CERTIFY THAT THIS SUBDIVISION PLAT AND THE ACTUAL SURVEY ON THE GROUND UPON WHICH IT IS BASED WERE PERFORMED BY ME OR UNDER MY DIRECT SUPERVISION; THAT I AM RESPONSIBLE FOR THIS SURVEY; THAT THIS SURVEY MEETS THE MINIMUM STANDARDS FOR SURVEYING IN NEW MEXICO; AND THAT IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

DATE OF SURVEY _____ DARRYL D. COSTER



VICINITY MAP
SCALE: 1" = 300'



THIS FINAL PLAT OF SOMERSET SUBDIVISION, ALAMOGORDO, OTERO COUNTY, NEW MEXICO WAS ON _____ THIS DAY OF _____, 2024, SUBMITTED TO THE CITY COMMISSION OF THE CITY OF ALAMOGORDO, NEW MEXICO, AND WAS APPROVED BY A MAJORITY OF THE MEMBERS.

MAYOR ATTEST CITY CLERK

ACKNOWLEDGEMENT OF STREET EXTENSIONS

THE EXTENSION OF PRINCESS DIANA BOULEVARD AS SHOWN HEREON IS ACKNOWLEDGE BY THE CITY OF ALAMOGORDO _____ THIS DAY OF _____, 2024.

MAYOR ATTEST CITY CLERK

THE EXTENSION OF GALLOWAY DRIVE AS SHOWN HEREON IS ACKNOWLEDGE BY THE CITY OF ALAMOGORDO _____ THIS DAY OF _____, 2024.

MAYOR ATTEST CITY CLERK

AFFIDAVIT

STATE OF NEW MEXICO) JSS
COUNTY OF OTERO)

THE SUBDIVISION DOES LIE WITHIN THE PLATTING JURISDICTION OF THE CITY OF ALAMOGORDO, NEW MEXICO

SURVEYOR

SUBSCRIBED AND SWORN TO BEFORE ME THIS _____ DAY OF _____, 2024.

NOTARY PUBLIC

MY COMMISSION EXPIRES: _____

STATE OF NEW MEXICO) JSS
COUNTY OF OTERO)

RECORDED IS THE OFFICE OF THE COUNTY CLERK AND EX-OFFICIO RECORDER OF OTERO COUNTY, NEW MEXICO, AT _____ O'CLOCK ____ M. THIS _____ DAY _____, 2024.

COUNTY CLERK BY _____

RECEPTION NO. _____ BOOK _____ PAGE _____



SOUDER, MILLER
& ASSOCIATES

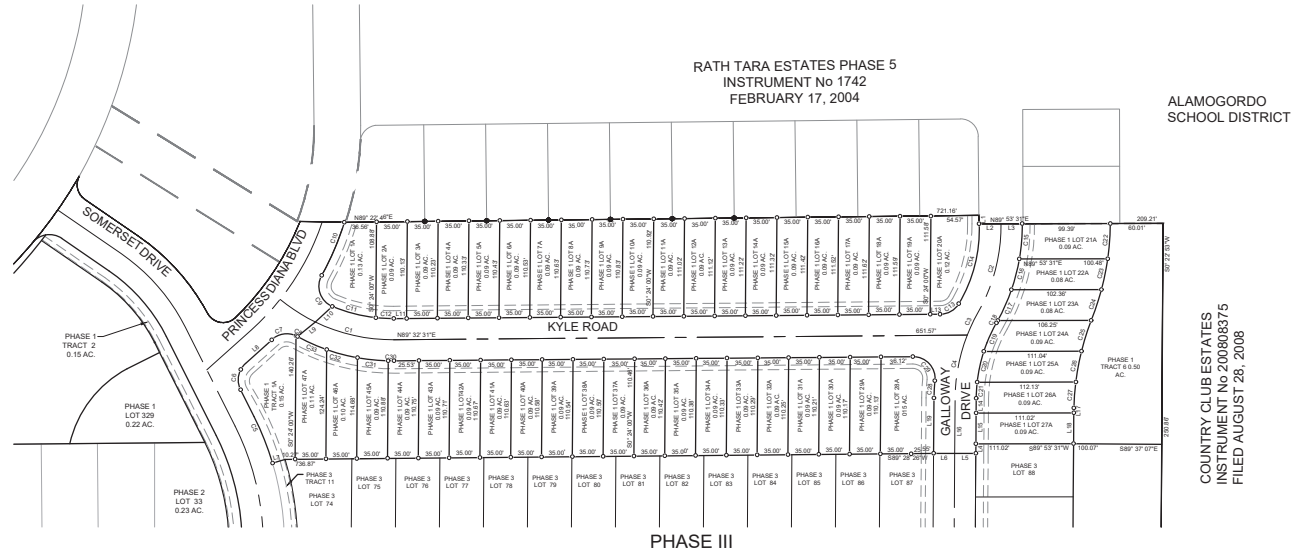
3500 Sedona Hills Parkway
Las Cruces, NM 88011
Phone (575) 647-0799
Toll Free (800) 647-0799

SOMERSET SUBDIVISION
PHASE 1 REPLAT NO. 1

SUBMITTED BY :
SOMERSET, LLC
ALAMOGORDO, NEW MEXICO

PROJECT NUMBER DATE
9330393 FEBRUARY 2024
DRAWN BY TB 1
CHKD BY DCC OF
DATE 02-01-2024 2

SOMERSET SUBDIVISION PHASE 1 REPLAT NO.1
BEGINING A REPLAT OF SOMERSET SUBDIVISION
FILED ON NOVEMBER 21,2022 INSTRUMENT # 2022112736
LOCATED IN WEST 1/2 SECTION 31, TOWNSHIP 16 SOUTH,
RANGE 10 EAST, NMPM, ALAMOGORDO,
OTERO COUNTY, NEW MEXICO
6.04 ACRES +/-



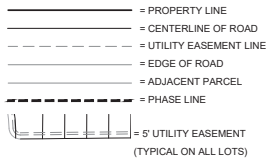
LEGEND

- SET 1/2" IRON ROD W/ 1" PLASTIC CAP MARKED "SMA PS 21204"
- FOUND CONCRETE NAIL
 - FOUND 1/2 IRON ROD W/ 1" PLASTIC CAP MARKED 111010

FOUND 1/2 IRON ROD

MEASURED BEARINGS AND DISTANCES EQUAL RECORD UNLESS OTHERWISE NOTED.

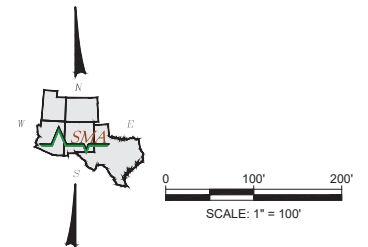
NOTE: EXISTING TRACTS WITHIN THE BOUNDARY OF THE SOMERSET SUBDIVISION WILL BE VACATED BY THE FILING OF THIS PLAT.



Parcel Line Table		
Line #	Direction	Length
L1	N0°44'07"W	9.59'
L2	N89°53'31"E	25.00'
L3	N89°27'55"E	24.00'
L4	S0°24'00"W	10.39'
L5	S89°56'13"W	24.00'
L6	S89°56'13"W	24.00'
L7	S73°19'42"W	14.91'
L8	S48°06'32"W	30.66'
L9	N51°07'11"E	26.22'
L10	N47°14'11"E	26.13'
L11	N89°32'31"E	620.95'
L12	N89°32'31"E	620.95'
L13	N89°32'31"E	620.95'
L14	N0°24'00"E	16.74'
L15	S0°24'00"W	35.00'
L16	N0°24'00"E	62.71'
L17	N0°56'10"E	5.43'
L18	S0°24'00"W	35.00'
L19	S0°24'00"W	62.90'

Curve Table					
Curve #	Arc Length	Radius	Delta Angle	Chord Direction	Chord Length
C1	92.23'	200.00'	26°25'23"	S77°18'53"E	91.42'
C2	105.32'	200.33'	30°07'27"	N14°31'39"E	104.12'
C3	28.54'	200.00'	8°10'38"	N25°30'03"E	28.52'
C4	73.35'	200.00'	21°00'45"	N10°54'22"E	72.94'
C5	57.02'	324.09'	10°04'48"	S21°14'26"E	56.94'
C6	23.82'	25.00'	54°35'36"	S0°33'58"W	22.93'
C7	29.73'	25.00'	68°08'09"	S80°27'07"W	28.01'
C8	1.85'	25.00'	4°14'11"	N63°21'43"W	1.85'
C9	42.00'	25.00'	96°15'50"	S18°56'25"E	37.23'
C10	58.37'	310.00'	10°47'17"	S23°47'52"W	58.28'
C11	51.33'	173.75'	16°55'34"	S75°27'00"E	51.14'
C12	20.32'	173.75'	6°41'57"	S87°15'45"E	20.30'
C13	25.33'	25.00'	58°03'01"	N60°31'01"E	24.26'
C14	95.00'	163.85'	33°13'10"	N14°15'59"E	93.68'
C15	40.37'	224.33'	10°18'40"	N4°37'15"E	40.32'
C16	36.19'	224.33'	9°14'38"	N14°23'54"E	36.15'
C17	38.37'	224.33'	9°47'58"	N23°55'12"E	38.32'
C18	3.01'	224.33'	0°46'11"	N29°12'17"E	3.01'
C19	25.12'	176.00'	8°10'38"	N25°30'03"E	25.10'
C20	35.99'	176.00'	11°43'01"	N12°10'57"E	35.93'

Curve Table					
Curve #	Arc Length	Radius	Delta Angle	Chord Direction	Chord Length
C21	18.20'	176.00'	5°55'26"	N3°21'43"E	18.19'
C22	40.15'	300.00'	7°40'02"	N4°14'16"E	40.12'
C23	35.75'	300.00'	6°49'40"	N11°29'07"E	35.73'
C24	36.94'	300.00'	7°03'17"	N18°25'35"E	36.91'
C25	36.72'	300.00'	7°00'48"	S17°23'42"W	36.70'
C26	35.63'	300.00'	6°48'17"	S10°30'08"W	35.61'
C27	29.67'	300.00'	5°39'58"	S4°16'00"W	29.66'



**SOUDER, MILLER
& ASSOCIATES**

3500 Sedona Hills Parkway
 Las Cruces, NM 88011
 Phone (575) 647-0799
 Toll Free (800) 647-0799

**SOMERSET SUBDIVISION
 PHASE 1 REPLAT NO. 1**

**SUBMITTED BY :
 SOMERSET, LLC
 ALAMOGORDO, NEW MEXICO**

PROJECT NUMBER 9330393	DATE FEBRUARY 2024
DRAWN BY CHKD BY DATE	TB DCC 02-01-2024
2 OF 2	



City of Alamogordo

City Commission



Z-2024-0002(A)

Stella Rael, City Planner
June 11, 2024

Map Amendment Request Case: Z-2024-0002(A)

Request:

The developer requests a map amendment to change the zoning from R-2 Townhouse Dwelling District to a Planned Unit Development Dwelling District (PUD). The developer intends to create smaller lots within Phase 1 of the Somerset Subdivision to construct single-family dwellings.

Applicants:

Somerset LLC

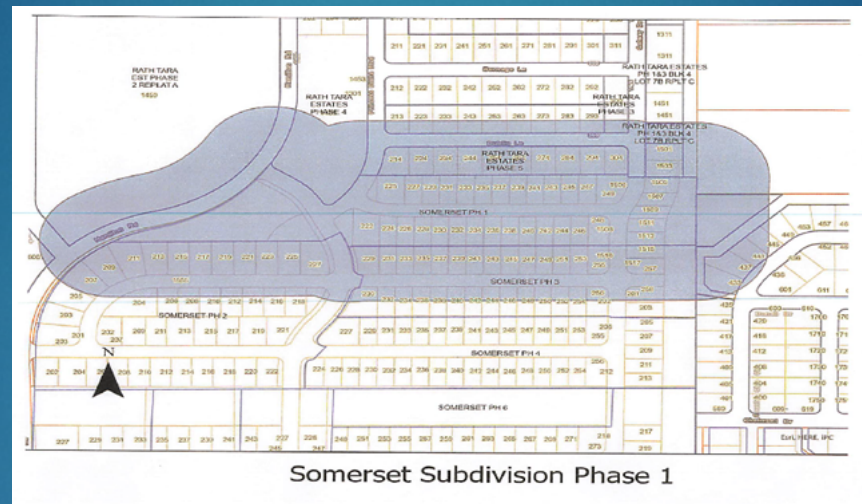
1010 Zuni Drive

Alamogordo, NM 88310

SOMERSET SUBDIVISION SITE MAP

3





SOMERSET SUBDIVISION PHASE 1 PROTEST AREA

Z-2024-0002(A)

6

Findings of Fact

- ◆ 1. The property is located within the Somerset Subdivision
- ◆ 2. The request is to change the zoning of the area within Phase 1 of Somerset Subdivision from R-2 Townhouse Dwelling District to a Planned Unit Development Dwelling District to allow smaller lots for the construction of single-family dwellings.
- ◆ 3. The application was filed on March 18, 2024
- ◆ 4. The legal notice was published in the Alamogordo Daily News
- ◆ 5. Twenty-two (22) letters were mailed by certified/returned receipt mail to all property owners of record within two hundred (200) feet from the property, excluding public right-of-way, of the property for which the rezoning is sought.
- ◆ 6. As of June 3, 2024, there have been no letters returned undeliverable, and I have not received any letters of opposition.
- ◆ 7. Two phone calls were received requesting further information.

Z-2024-0002(A)

7

- ◆ Staff recommends approval since this request will not be materially detrimental to surrounding property owners or the public

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 7/9/2024

Report Date: 07/02/2024

Report No: 5.

Submitted By: Stella Rael

Subject: Consider, and act upon Ordinance 1701, Case Z-2024-0003(A) for adoption and final first publication of a map amendment to rezone 2350 Eudora St. from C-3 Business District to M-1 Light Industrial District. (*Stella Rael, City Planner*) (**Roll Call vote required**)

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact: N/A

Recommendation: Adopt the ordinance.

Background:

The Ordinance was approved for first publication by the commission by a vote of 7-0 on June 11, 2024.

Consider, and act upon Ordinance 1701, Case Z-2024-0003(A) for n of a map amendment to rezone 2350 Eudora St. from C-3 Business District to M-1 Light Industrial District.

ORDINANCE No. 1701

AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF ALAMOGORDO, CHANGING THE CLASSIFICATION OF A CERTAIN PROPERTY COMMONLY KNOWN AS 2350 EUDORA STREET FROM THEIR PRESENT DESIGNATION AND ZONING DISTRICT OF C-3 BUSINESS DISTRICT TO M-1 LIGHT INDUSTRIAL ZONING DISTRICT, WITHIN THE CORPORATE BOUNDARIES OF THE CITY OF ALAMOGORDO, OTERO COUNTY, NEW MEXICO.

WHEREAS, Shannan T. Tammi G. Wright, Family Revocable Trust (hereinafter referred to as "the Owners") is the owner of certain real property commonly known as 2350 Eudora Street and legally described below (herein after referred to as "the Property") located within the corporate boundaries of the City of Alamogordo, New Mexico, (hereinafter referred to as "the City"); and

2350 EUDORA STREET

WHEREAS, an application has been filed in the Owner's name under Case No. **Z-2024-0003(A)** to change the zoning of the Property, and

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

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

2350 EUDORA STREET

Is hereby changed from C-3 Business District to M-1 Light Industrial District; and the official zoning map and comprehensive plan of the City are hereby amended to reflect this change.

PASSED, APPROVED, AND ADOPTED this _____ day of _____, 2024

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

By: _____
Susan L. Payne, Mayor

ATTEST:

Rachel Hughs, City Clerk

APPROVED AS TO FORM:

Ashley Smith, City Attorney



City of Alamogordo

1

City Commission



Z-2024-0003(A)

Stella Rael, City Planner
June 11, 2024

Map Amendment Request Case: Z-2024-0003(A)

Request:

The Property owner requests a map amendment to change the zoning from C-3 Business District to M-1 Light Industrial District.

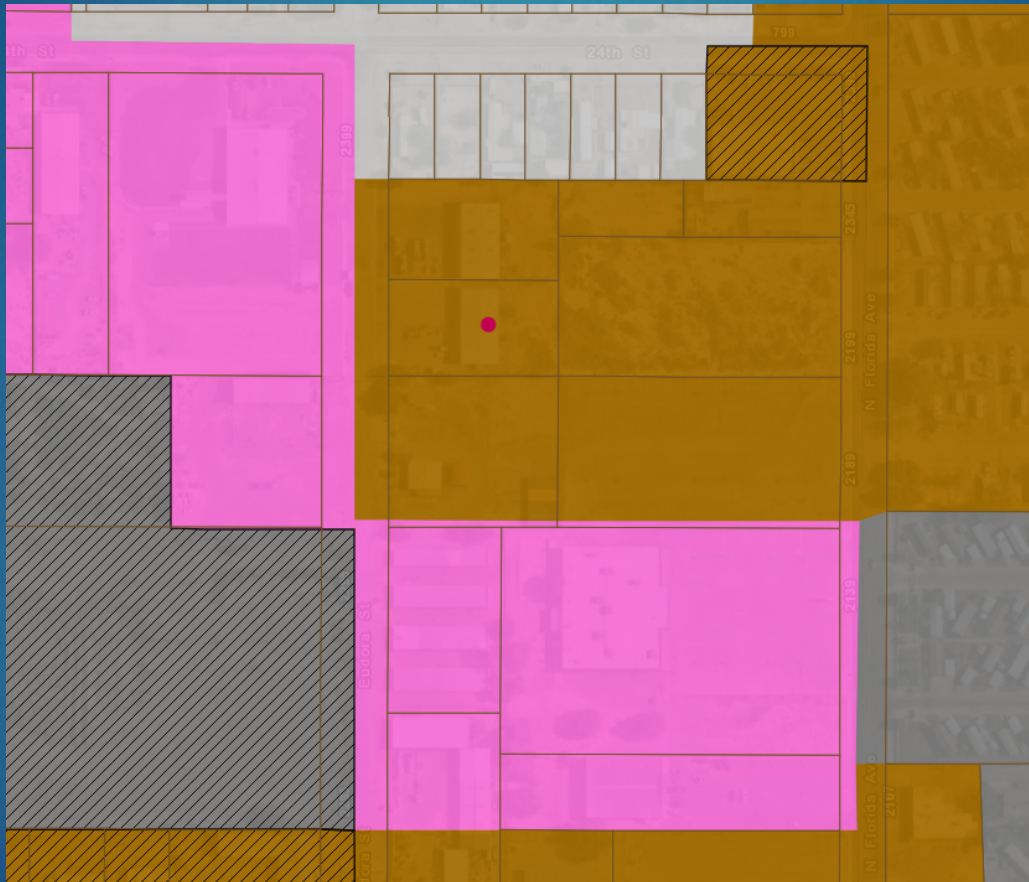
Applicants:

Shannon & Tammy G. Wright

Wright Family Revocable Trust

Alamogordo, NM 88310

ZONING MAP



Z-2024-0003(A)

4

Findings of Fact

- ◆ 1. The property is located at 2350 Eudora Street.
- ◆ 2. The request is to change the zoning from C-3 Business to M-1 Light Industrial.
- ◆ 3. The application was filed on May 15, 2024.
- ◆ 4. The legal notice was published in the Alamogordo Daily News.
- ◆ 5. Sixteen (16) letters were mailed by certified/returned receipt mail to all property owners of record within two hundred (200) feet from the property, excluding public right-of-way, of the property for which the rezoning is sought.
- ◆ 6. As of June 3, 2024, there has been one letter of support of the rezoning and one letter returned undeliverable. There have not been any letters of opposition received.
- ◆ 7. One phone call was received requesting further information.

Z-2024-0003(A)

5

- ◆ Staff recommends approval since this request will not be materially detrimental to surrounding property owners or the public

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 7/9/2024

Report Date: 06/28/2024

Report No: 6.

Submitted By: Britney Ybarra

Subject: Consider, and act upon, the approval of an agreement with the New Mexico Economic Development District, Non-Metro Area Agency on Aging for the Nutrition Services Incentive Program (NSIP), the total amount budgeted is \$58,648.57. (*Magdalena Morales, ASC Manager and Veronica Ortega, Community Services Director*)

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Amount budgeted: \$58,648.57

Contract amount: \$58,648.57

Project string: SCCM25.SUPP.FOOD.NSIP / 52%

Project string: SCHD25.SUPP.FOOD.NSIP / 48%

Recommendation: Approve the agreement.

Background: The Federal government provides this funding for the Nutrition Service Incentive Program. The funding is utilized for our nutrition programs: congregate and home-delivered meals.

Funding is based on the number of eligible meals we serve to our seniors. This will be a one-time funding amount for the fiscal year. These Federal dollars may be spent only on food grown in the U.S.A.

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

NUTRITION SERVICE INCENTIVE PROGRAM (NSIP) SUB AWARD

This Agreement is made and entered into this 1st day of July 2024, by and between the North Central New Mexico Economic Development District (NCNMEDD) Non-Metro Area Agency on Aging (Non-Metro AAA), hereinafter referred to as the “Agency” and City of Alamogordo hereinafter referred to as the “Subrecipient Contractor.”

PURPOSE

The Nutrition Services Incentive Program (NSIP) provides incentives for the effective delivery of nutritious meals to older individuals. NSIP funds allow nutrition programs to increase the number of meals served.

The purpose of this Agreement is to allocate funds in support of the provision of congregate and home delivered meals provided under Title IIIC of the Older Americans Act (OAA). The Subrecipient Contractor must be a recipient of Title III funding or Title III matching funds.

1. SCOPE OF SERVICES

- A. Services: The Subrecipient Contractor agrees to provide service(s) to eligible consumers as identified in accordance with the Subrecipient Contractor application or Service Delivery Plan, all required assurances, licenses, and certifications, as applicable.
- B. Service Area: The Subrecipient Contractor agrees to provide service(s) to eligible consumers in the service area as identified in the Service Delivery Plan submitted May 2024.
- C. Targeting: Target populations include persons aged 60 or older and their spouses of any age, Per the Older Americans Act, an effort must be given to serving eligible persons with the greatest social or economic need, with particular attention to minority individuals with low incomes. Efforts must also be given to targeting individuals residing in rural and frontier areas, individuals with limited English proficiency, and individuals with Alzheimer’s disease and related disorders, with severe disabilities or at-risk of institutionalization and their caregivers.
- D. Payment for Services: The total amount payable under this Agreement shall not exceed **\$58,648.57** [Assistance Listing Number: 93.053] for the purchase of foods produced in the United States, for use in senior nutrition programs
- E. Reimbursement Process: The Agency will provide payment for services to Subrecipient Contractor as follows:
 - 1. Subrecipient Contractor shall submit timely and accurate information necessary for reimbursement:

- a. All service performance data should be verified and reconciled by the Subrecipient Contractor prior to submitting the Verification Statement and the Agency Summary Report (ASR) to the Non-Metro AAA office by the 5th business day of the month. The Agency Summary Report (ASR) is the official document used to initiate reimbursement of services provided by the Subrecipient Contractor and must be reviewed and certified by the Agency each month.
 - b. Subrecipient Contractors shall invoice the Agency on or before the 5th business day of the month for prior month expenditure using the OAA-SYS system provided by the Agency. The Agency may extend these dates on a case-by-case basis if the Subrecipient Contractor reports a hardship. However, the Agency will not accept, process, or pay invoices submitted fifteen (15) days or more after the deadline(s) until the next reimbursement cycle if within the fiscal year.
 - c. Invoicing shall include supporting documentation to validate reported expenses to include the Nutrition Services Incentive Program (NSIP) Expense Detail report, provided by the Agency; copies of invoices containing:
 - i. The vendor's name, address, and contact information.
 - ii. Internal transaction number
 - iii. The purchased items with a description of each product along with the corresponding quantity.
 - iv. The price for each item and any applicable discount given and the total amount of the sale items.
 - v. NSIP items must be identified with an "N" or "NSIP" on the invoice.
 - vi. Senior center or meal site to which received the delivery, full name, address, and contact information.
2. Payment for services shall be consistent with all applicable federal and state laws and regulations.
3. Payments to the Subrecipient Contractor will be made after receipt of funds by the Agency.
4. Payments to the Subrecipient Contractor may be withheld or denied by the Agency for expenditures which are not authorized by, or are in excess of, the regulations, terms and conditions contained in this Agreement or for expenditures which are not properly documented or substantiated by the Subrecipient Contractor. The Subrecipient Contractor agrees to hold the Agency harmless against all audit exceptions arising from the Subrecipient Contractor's violation and shall make restitution to the Agency of such amounts of money due to the Subrecipient Contractor's non-compliance.
5. Subrecipient Contractor must submit a detailed statement accounting for all services performed and expenses incurred. Reimbursements shall be made by the Agency on a monthly basis upon receipt of monthly expenditures and reports furnished by the Subrecipient Contractor. If the Agency finds that the services are not acceptable,

within thirty days after the Subrecipient Contractor's invoice, it shall provide the Subrecipient Contractor a letter of exception explaining the defect or objection to the services and outlining steps the Subrecipient Contractor may take to provide remedial action. Upon certification by the Agency that the services have been provided and accepted, payment shall be tendered to the Subrecipient Contractor within thirty days after the date of acceptance.

6. Payments to the Subrecipient Contractor are encouraged to be made electronically through the Automated Clearing House (ACH) Network.
7. This agreement does not guarantee a total level of reimbursement other than for individual units/services authorized, contingent upon availability of Federal and State funds.
8. Subrecipient Contractor shall track and report all information needed for the State Program Report for Administration for Community Living (ACL) through the Older Americans Act Performance System (OAAPS). Subrecipient Contractor shall adopt the standard universal consumer assessment instrument provided by the Aging & Long-Term Services Department to capture information for all data fields on the tool, as required by OAAPS and state and federal reporting requirements.

2. TERMS OF AGREEMENT

In addition to the other provisions contained in this Agreement, the parties agree to the following:

- A. The Subrecipient Contractor agrees to:
 1. Provide services in accordance with Agency and State of New Mexico Aging and Long-Term Services Department policies and the OAA.
 2. Target services to older individuals with greatest economic and social need, including low-income individual, low-income minorities, older individuals at risk of institutional placement, individuals with limited English proficiency, and older individuals residing in rural areas, as applicable.
 3. Record timely and accurate consumer service delivery into WellSky Aging & Disabilities Database. Data should be recorded daily.
 4. Submit timely and accurate consumer/client assessment and reassessment documentation (including transmittals), on the day conducted, utilizing the assessment tool required by the Agency.
 5. Ensure consumer contact and demographic information is accurate in WellSky Aging & Disabilities database.
 6. Establish procedures to ensure that NSIP funds are used solely for the purchase of United States agriculture commodities and other foods produced in the United States for the use in the senior nutrition program. No imported foods, or food items containing imported products, may be purchased with these funds.
 7. Ensure that NSIP funds are used exclusively for the purchase of food, not meal preparation, and may not be used for administrative costs.

8. Ensure that meals furnished under contractual agreement with food service management companies, caterers, restaurants, or institutions, contain foods or commodities of United States origin; imported foods may not be purchased with these funds.
9. Purchase and use locally sourced farm fresh food products that meet the nutritional standards of the Agency. Subrecipient Contractors must ensure that the farm food products meet the New Mexico Environment Department requirements.
10. Ensure that each meal complies with the most recent Federal and State nutritional guidelines and requirements.
11. Maintain accounting records for NSIP separate and apart from other accounting records maintained for other nutrition funding sources such as Title IIIC-1 and Title IIIC-2.
12. Maintain documented NSIP eligibility for all meals reported. Meal counts, as recorded in the service database, must be accurate, unduplicated and include no meals that do not meet the requirements for NSIP eligibility.
13. Maintain and retain for three (3) years from close of the federal fiscal year to which they pertain, complete and accurate records of all amounts received and disbursed under this Agreement.
14. Allow the Agency to monitor periodically the Subrecipient Contractor's fiscal accountability of NSIP.
15. Ensure eligible consumers are assessed and information recorded in the service database.

B. The Agency agrees to:

1. Review and process consumer intake and assessment documents completed by the Subrecipient Contractor, as applicable, to determine eligibility for service provision.
2. Maintain communication and correspondence concerning consumers' status.
3. Provide timely consultation and technical assistance to the Subrecipient Contractor as requested and as available.
4. Conduct quality-assurance procedures, which may include on-site visits, monitoring, and/or compliance assessments to ensure health, safety, and quality services are being provided.
5. Provide written policy, procedures and standard documents concerning client authorization to release information (both a general and medical/health related release), ability to contribute to the cost of services provided, quality survey instrument, and complaints/grievances and appeals to all consumers.
6. Employ a full-time manager and financial individual to oversee funds contracted through Non-Metro AAA.

3. TERM

This Agreement shall begin on July 1, 2024, and terminate on June 30, 2025, unless terminated pursuant to Paragraph 4, below or for any other reason allowed by law.

4. TERMINATION

- A. This Agreement may be terminated by the Agency or Subrecipient Contractor, with or without cause upon written notice delivered to the other party at least thirty (30) days

prior to the intended date of termination. By such termination, neither party may nullify obligations already incurred for performance prior to the date of termination.

The Agency may terminate this Agreement immediately, upon written notice to the Subrecipient Contractor, if the Subrecipient Contractor becomes unable to perform the services contracted for, as determined by the Agency, or if, during the term of this Agreement, the Subrecipient Contractor endangers program consumers, or if any of its officers, employees or agents is indicted for fraud, embezzlement or other crime due to misuse of public funds or due to the Appropriations paragraph herein, or if the Subrecipient Contractor fails to comply with any of the terms contained herein or is in breach of this Agreement as set forth in Section 6, below. This provision is not exclusive and does not waive the Agency's other legal rights and remedies caused by the Subrecipient Contractor's default or breach of this Agreement.

- B. Termination Management. Immediately upon receipt of notice of termination of this Agreement, the Subrecipient Contractor shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of the Agency; 2) comply with all directives issued by the Agency in the notice of termination as to the performance of work under this Agreement; and 3) take such action as the Agency shall direct for the protection, preservation, retention or transfer of all property titled to the Agency and client records generated under this Agreement and any property, inventory, or equipment purchased by the Subrecipient Contractor with contract funds shall become property of the Agency upon termination. Within fifteen (15) days of notice of termination, the Subrecipient Contractor shall furnish to the Agency a complete, detailed inventory of property, inventory and/or equipment purchased with funds provided under the existing and previous Agency agreements with the Subrecipient Contractor; the property listed in the inventory report including client records and a final closing of the financial records and books of accounts which were required to be kept by the Subrecipient Contractor under the paragraph of this Agreement regarding financial records.

5. APPROPRIATIONS

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the US Government or Legislature of New Mexico and utilized by the Agency 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 the Agency to the Subrecipient Contractor. The Agency's decision as to whether sufficient appropriations are available shall be accepted by the Subrecipient Contractor and shall be final. If the Agency proposes an amendment to the Agreement to unilaterally reduce funding, the Subrecipient Contractor shall have the option to terminate the Agreement or agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

6. STATUS OF SUBRECIPIENT CONTRACTOR

The Subrecipient Contractor, its agents, and employees are independent contractors performing professional services for the Agency and are not employees of the Agency. The Subrecipient

Contractor, its agents and employees shall not accrue leave, retirement, insurance, bonding, use of Agency vehicles, or any other benefits afforded to employees of the Agency as a result of this Agreement. The Subrecipient Contractor acknowledges that all sums received hereunder are reportable for income tax purposes.

7. ASSIGNMENT

The Subrecipient Contractor shall not assign or transfer any interest in this Agreement, assign any claims for money due, or to become due under this Agreement, without the prior written approval of the Agency.

8. SUBCONTRACTING

The Subrecipient Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the Agency.

9. RELEASE

Final payment of the amounts due under this Agreement shall operate as a release of the Agency, its officers and employees, and the State of New Mexico from all liabilities, claims, and obligations, whatsoever arising from or under this Agreement. The Subrecipient Contractor agrees not to purport to bind the Agency to any obligation not assumed herein unless the Subrecipient Contractor has express written authority to do so, and then only within the strict limits of that authority.

10. CONFIDENTIALITY

Any information provided to or developed by the Subrecipient Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization, by the Subrecipient Contractor without the prior written approval of the Agency. Disclosure of confidential information shall only be made in accordance with the Inspection of Public Records Act or the applicable state or federal laws or regulations. Subrecipient Contractor shall establish a method to guarantee the confidentiality of all information relating to clients in accordance with applicable federal, state and local laws, rules and regulations, as well as the terms of this Agreement. However, this provision shall not be construed as limiting the rights of the Agency or any other federal or state authorized representative to access client case records or other information relating to clients served under this Agreement.

11. PRODUCT OF SERVICE – COPYRIGHT

All materials developed or acquired, by the Subrecipient Contractor, under this Agreement, shall become the property of the Agency and shall be delivered to the Agency no later than the termination date of this Agreement. Nothing produced, in whole or in part, by the Subrecipient Contractor, under this Agreement, shall be the subject of an application for copyright or other claim of ownership, by or on behalf, of the Subrecipient Contractor.

12. CONFLICT OF INTEREST

The Subrecipient Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree, with the performance or services required under the Agreement. The Subrecipient Contractor certifies that the requirements

of the Governmental Conduct Act, Sections 10-16-1 through 10-16-18, NMSA 1978, regarding contracting with a public officer or state employee or former state employee have been followed.

13. AMENDMENT

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

14. MERGER

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

15. PENALTIES FOR VIOLATION OF LAW

The Procurement Code, Sections 13-1-28 through 13-1-199, NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.

16. APPLICABLE LAW

The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with Section 38-3-1 (G) NMSA 1978. By execution of this Agreement, Subrecipient Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

17. WORKERS COMPENSATION

The Subrecipient Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Subrecipient Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the Agency.

18. RECORDS AND FINANCIAL AUDIT

The Subrecipient Contractor shall maintain detailed time and expenditure records, including, but not limited to, client records, books, supporting documents pertaining to services provided, that indicate the date, time, nature and cost of services rendered during the Agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the Agency, the Aging and Long-Term Services Department, the Department of Finance and Administration and the State Auditor. The Agency shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Agency to recover excessive or illegal payments. If, pursuant to this Agreement, the Subrecipient Contractor receives federal funds subject to the Single Audit Act, the Subrecipient Contractor shall submit to the Agency an audit conducted by a certified public accountant in compliance with the Single Audit Act.

19. INDEMNIFICATION

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to the immunities and limitation of the New Mexico Tort Claims Act.

20. PARTICIPANT GRIEVANCE

The Subrecipient Contractor will establish a system through which applicants for, and recipients of services, may present grievances about the operation of the service program. The Subrecipient Contractor will advise applicants and recipients of their right to appeal denial of service and their right to a fair hearing of these respects. The Subrecipient Contractor shall notify the Agency of termination of services, to a client, as part of a monthly service report, on any services funded by this Agreement. The Agency reserves the right to perform follow-up investigations with the client to determine adequate performance and adherence to due process.

21. KEY PERSONNEL

The Agency shall be notified of changes in Key Personnel. The Agency considers the following positions as Key Personnel:

1. Program Director
2. Financial Manager
3. WellSky Aging & Disability User

The Subrecipient Contractor will maintain full-time Key Personnel sufficient to perform the Service Plan throughout the term of this agreement.

22. INVALID TERM OR CONDITION

If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.

23. ENFORCEMENT OF AGREEMENT

A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

24. NOTICES

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

AGENCY:

NCNMEDD Non-Metro AAA
Neil Segotta, AAA Director
644 Don Gaspar
Santa Fe, NM 87505

SUBRECIPIENT CONTRACTOR:

City of Alamogordo - Alamo Senior Center
Magdalena Morales, ASC Director
2201 Puerto Rico Avenue
Alamogordo, NM 88310

25. INSURANCE

The Subrecipient Contractor shall secure and maintain, during the term of this Agreement, at its own expense, comprehensive and general public liability insurance and/or other types of insurance as the Agency may require. The Subrecipient Contractor shall secure and maintain, during the term of this Agreement, at its own expense, workers' compensation insurance in the amounts required by the applicable laws of the State of New Mexico covering the Subrecipient Contractor's employees. All policies of liability insurance that Subrecipient Contractor is obligated to maintain, according to this Agreement, except for any policy of workers' compensation insurance, shall name Agency as an additional insured. The Subrecipient Contractor shall furnish to the Agency, directly from its insurance carrier, a memorandum or certification of all carried insurance before the payment of any monies as consideration for the services rendered hereunder shall be made. Upon such certificates and/or memoranda being furnished to the Agency, the same shall be annexed to this Agreement and by reference made a part hereof.

26. AUTHORITY

The individual(s) signing this Agreement on behalf of Subrecipient Contractor represents and warrants that he or she has the power and authority to bind Subrecipient Contractor, and that no further action, resolution, or approval from Subrecipient Contractor is necessary to enter into a binding contract.

27. SIGNATURES

For the faithful performance of the terms of this agreement, the parties affix their signatures and bind themselves effective July 1, 2024.

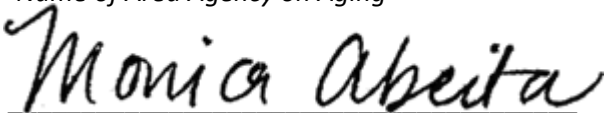
City of Alamogordo
Legal Name of Subrecipient Contractor

Signature

Printed/Typed Name of Signatory

Date

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



Signature

Monica Abeita, Executive Director

Printed/Typed Name of Signatory

July 1, 2024

Date

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 7/9/2024

Report Date:

Report No: 7.

Submitted By: Britney Ybarra

Subject: Consider, and act upon, grant funding from the Non-Metro Area Agency on Aging FY25 contract for Direct Purchase of Services for senior programs, the total amount budgeted is \$548,187.49. (*Magdalena Morales, ASC Manager and Veronica Ortega, Community Services Director*)

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

An aggregate amount of \$548,187.49 is to be derived from the following sources when performance units are met:

III-B Federal (Transportation): Contract amount: \$34,527.20

III-C1 Federal (Congregate Meals): Contract amount: \$69,447.05

III-C2 Federal (Home-delivered Meals): Contract amount: \$38,564.34

NMGAA (New Mexico General Appropriation) -State / HB-2: Contract amount: \$405,648.90

- IIIB State (Transportation): \$98,000.00
 - IIIB State (Fitness): \$32,000.00
 - III-C1 State (Congregate Meals): \$150,324.90
 - III-C2 State (Home-delivered Meals): \$125,324.00
-

Recommendation: Approve the grant funding.

Background: The Alamo Senior Center receives funding through the Non-Metro Area Agency on Aging for congregate meals, home-delivered meals, transportation, and fitness programs.

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

TITLE III FEDERAL AND STATE SUB-AWARD

This Agreement is made and entered into this 1st day of July 2024, by and between the North Central New Mexico Economic Development District (NCNMEDD) Non-Metro Area Agency on Aging (Non-Metro AAA), hereinafter referred to as the “Agency” and City of Alamogordo hereinafter referred to as the “Subrecipient Contractor.”

The Agency’s Older Adults Services program is designed to promote the development of a comprehensive and coordinated service delivery system to meet the needs of older individuals (age 60 and older). This agreement provides a mechanism for the creation of an individualized network of community resources on a client-by-client basis through the Older Americans Act (OAA), as amended, the State of New Mexico Aging and Long-Term Services Department, and the Agency.

1. SCOPE OF SERVICES

- A. Services: The Subrecipient Contractor agrees to provide service(s) to eligible consumers as identified in accordance with the Subrecipient Contractor application or Service Delivery Plan, all required assurances, licenses, and certifications, as applicable.
- B. Service Area: The Subrecipient Contractor agrees to provide service(s) to eligible consumers in the service area as identified in the Service Delivery Plan submitted May 2024.
- C. Deliverables: The Subrecipient Contractor shall provide services based on the assessed need of the community and individuals receiving services under this Agreement and as identified in the Subrecipient Contractor application or Service Delivery Plan and attached by reference. The service units and consumers detailed in the Service Delivery Plan and Budget sections are estimates. Budgeted services are to be provided in accordance with the Aging and Long-Term Services Department (ALTSD) Units of Service Definitions; to be monitored through the Subrecipient Contractor’s submission of monthly WellSky data, activity reports, and through Agency monitoring reviews. Final determination of service units and consumer performance measures shall be established by the ALTSD, and should the Contractor not meet the established units, reimbursement requests should reflect the same.
- D. Targeting: Target populations include persons aged 60 or older and their spouses of any age, younger disabled persons who reside with persons aged 60 or older, caregivers of any age who care for persons aged 60 or older, caregivers aged 60 or older who care for children or younger disabled persons, and the recipients of their care.

Per the Older Americans Act, an effort must be given to serving eligible persons with the greatest social or economic need, with particular attention to minority individuals with low incomes. Efforts must also be given to targeting individuals residing in rural and frontier areas, individuals with limited English proficiency, and individuals with Alzheimer's disease and related disorders, with severe disabilities or at-risk of institutionalization and their caregivers.

- E. Payment for Services: For the services determined by the Agency to be satisfactorily provided by Subrecipient Contractor hereunder, the Agency shall pay the Subrecipient Contractor, during the term, an aggregate amount, including gross receipts tax, not to exceed **\$548,187.49**. Said aggregate amount is to be derived from the following sources.

1. **\$34,527.20** from Title III-B of the OAA [Assistance Listing Number 93.044].
2. **\$69,447.05** from Title III-C1 of the OAA [Assistance Listing Number: 93.045].
3. **\$38,564.34** from Title III-C2 of the OAA [Assistance Listing Number: 93.045].
4. **\$ 0.00** from Title III-D of the OAA [Assistance Listing Number: 93.043].
5. **\$ 0.00** from Title III-E of the OAA [Assistance Listing Number: 93.052]; and
6. **\$405,648.90** from the NMGAA-State/HB-2

- F. Reimbursement Process: The Agency will provide payment for services to Subrecipient Contractor as follows:

1. An initial payment of 12.5% of State funds will be distributed to the Subrecipient Contractor. This initial payment must be accounted for by the Subrecipient Contractor, and expenditures must be allocated to these funds.
2. Subrecipient Contractor shall submit timely and accurate information necessary for reimbursement:
 - a. All service performance data should be verified and reconciled by the Subrecipient Contractor prior to submitting the Verification Statement and the Agency Summary Report (ASR) to the Non-Metro AAA office by the 5th business day of the month. The Agency Summary Report (ASR) is the official document used to initiate reimbursement of services provided by the Subrecipient Contractor and must be reviewed and certified by the Agency each month.
 - b. Subrecipient Contractors shall invoice the Agency on or before the 5th business day of the month for prior month expenditure using the OAA-SYS system provided by the Agency. The Agency may extend these dates on a case-by-case basis if the Subrecipient Contractor reports a hardship. However, the Agency will not accept, process, or pay invoices submitted fifteen (15) days or more

after the deadline(s) until the next reimbursement cycle if within the fiscal year.

- c. Invoicing shall include supporting documentation to validate reported expenses to include general ledger, purchase orders, and invoices.
3. Payment for services shall be consistent with all applicable federal and state laws and regulations.
4. Payments to the Subrecipient Contractor will be made after receipt of funds by the Agency.
5. Payments to the Subrecipient Contractor may be withheld or denied by the Agency for expenditures which are not authorized by, or are in excess of, the regulations, terms and conditions contained in this Agreement or for expenditures which are not properly documented or substantiated by the Subrecipient Contractor. The Subrecipient Contractor agrees to hold the Agency harmless against all audit exceptions arising from the Subrecipient Contractor's violation and shall make restitution to the Agency of such amounts of money due to the Subrecipient Contractor's non-compliance.
6. Subrecipient Contractor must submit a detailed statement accounting for all services performed and expenses incurred. Reimbursements shall be made by the Agency on a monthly basis upon receipt of monthly expenditures and reports furnished by the Subrecipient Contractor. If the Agency finds that the services are not acceptable, within thirty days after the Subrecipient Contractor's invoice, it shall provide the Subrecipient Contractor a letter of exception explaining the defect or objection to the services and outlining steps the Subrecipient Contractor may take to provide remedial action. Upon certification by the Agency that the services have been provided and accepted, payment shall be tendered to the Subrecipient Contractor within thirty days after the date of acceptance.
7. Payments to the Subrecipient Contractor are encouraged to be made electronically through the Automated Clearing House (ACH) Network.
8. This agreement does not guarantee a total level of reimbursement other than for individual units/services authorized, contingent upon availability of Federal and State funds.
9. Subrecipient Contractor agrees to bill Medicaid, or contract with the Agency to bill Medicaid, for Medicaid-eligible consumers enrolled in Medicaid-eligible services.
10. Subrecipient Contractor shall track and report all information needed for the State Program Report for Administration for Community Living (ACL) through the Older Americans Act Performance System (OAAPS). Subrecipient Contractor shall adopt the standard universal consumer assessment instrument provided by the Aging & Long-

Term Services Department to capture information for all data fields on the tool, as required by OAAPS and state and federal reporting requirements.

2. TERMS OF AGREEMENT

In addition to the other provisions contained in this Agreement, the parties agree to the following:

- A. The Subrecipient Contractor agrees to:
1. Provide services in accordance with Agency and State of New Mexico Aging and Long-Term Services Department policies and the OAA.
 2. Target services to older individuals with greatest economic and social need, including low-income individual, low-income minorities, older individuals at risk of institutional placement, individuals with limited English proficiency, and older individuals residing in rural areas, as applicable.
 3. Record timely and accurate consumer service delivery into WellSky Aging & Disabilities Database. Data should be recorded daily.
 4. Submit timely and accurate consumer/client assessment and reassessment documentation (including transmittals), on the day conducted, utilizing the assessment tool required by the Agency.
 5. Ensure consumer contact and demographic information is accurate in WellSky Aging & Disabilities database.
 6. Submit quarterly program narrative reports and financial reports, to include approved budget, year-to-date expenses, and year-to-date revenue, by the 15th business day of the month following the end of the quarter.
 7. Participate in Agency monitoring and annual compliance assessments.
 8. Encourage client contributions (program income) on a voluntary and confidential basis. Such contributions will be properly safeguarded and accurately accounted for as receipts and expenditures on Subrecipient Contractor's financial reports. Client contributions (program income) will be reported fully and in the service category where generated, as required, to the Agency. Subrecipient Contractor agrees to expend all program income to expand or enhance the program/service under which it is earned.
 9. Provide letters from local City or County governments to the Agency committing local funds to Older Adult programs. Any changes in local funds (increases or decreases) will be provided in writing to the Agency.
 10. Maintain communication and correspondence with the Agency concerning clients' status, emergency situations, and program operations.
 11. Submit emergency and contingency plans by the date and in the format required by the Agency to address unforeseen circumstances when service delivery is threatened.
 12. At a minimum, attend three (3) Agency training events per year (may include attendance at Non-Metro AAA Advisory Council meetings).
 13. Attend required Aging Network Training events and other special meetings of the Aging & Long-Term Services Department.

14. Subrecipient Contractor employees shall not solicit nor accept gifts or favors of monetary value by or on behalf of clients as a gift, reward, or payment.

B. The Agency agrees to:

1. Review and process consumer intake and assessment documents completed by the Subrecipient Contractor, as applicable, to determine eligibility for service provision.
2. Maintain communication and correspondence concerning consumers' status.
3. Provide timely consultation and technical assistance to the Subrecipient Contractor as requested and as available.
4. Conduct quality-assurance procedures, which may include on-site visits, monitoring, and/or compliance assessments to ensure health, safety, and quality services are being provided.
5. Provide written policy, procedures and standard documents concerning client authorization to release information (both a general and medical/health related release), ability to contribute to the cost of services provided, quality survey instrument, and complaints/grievances and appeals to all consumers.
6. Employ a full-time manager and financial individual to oversee funds contracted through Non-Metro AAA.

3. ASSURANCES

A. *Americans with Disabilities Act of 1990*

The Subrecipient Contractor shall comply with the requirements, established under the Americans with Disabilities Act, in meeting statutory deadlines under the Act as they pertain to operation for employment, public accommodations, transportation, state and local government operations and telecommunications.

B. *Section 504 of the Rehabilitation Act of 1973*

The Subrecipient Contractor shall provide that each program activity, when viewed in its entirety, is readily accessible to and usable by persons with disabilities in keeping with 45 CFR, Part 84.11, etc. Seq., and as provided for in Section 504 of the Rehabilitation Act of 1974, as amended. When structural changes are required, these changes shall be in keeping with 45 CFR, Part 74. The Subrecipient Contractor shall ensure that benefits and services available under the agreement are provided in a non-discriminatory manner as required by Title VI of the Civil Rights Act of 1964, as amended.

C. *Age Discrimination in Employment Act of 1967*

The Subrecipient Contractor shall comply with the Age Discrimination in Employment Act of 1967 (29 USC 621, etc. Seq.).

D. *Drug Free Workplace*

The Subrecipient Contractor shall comply with the Drug-Free Workplace Act of 1988.

E. *Certification Regarding Debarment*

The Subrecipient Contractor shall certify annually that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency.

F. *Certification Regarding Lobbying*

The Subrecipient Contractor shall certify annually that no Federal appropriated funds have been paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the subrecipient contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

G. *Financial Management*

The Subrecipient Contractor must implement financial management standards in accordance with the Federal standards outlined in the United States Department of Health and Human Services Federal Regulation 45 CFR Part 75, 2 CFR Uniform Grants Guidance Part 200 and New Mexico Fiscal Requirements.

H. *Budget Adjustment*

The Subrecipient Contractor shall submit to the Agency, as necessary, any budget adjustment request(s) for review and approval. Under no circumstances may a budget adjustment request(s) be submitted to the Agency later than March 15th unless authorized by the Agency in writing. The Agency shall review and approve or deny budget adjustment request(s) at its sole discretion.

I. *Incentive Compensation*

Use of federal and state funds for incentive compensation to employees based on cost reduction, efficient performance, suggestion awards, safety awards, etc. is unallowable and will not be recognized by the Agency as a reimbursable expense. The use of federal or state funds for staff recognition or employee gifts is also unallowable.

J. *Independent Audit*

The Subrecipient contractor shall provide a financial and compliance audit report(s) to the Agency covering the period of July 1, 2024, through June 30, 2025. The Subrecipient Contractor is considered an independent contractor and is subject to

audit requirements under Title 2, Subtitle A, Chapter II, Part 200 of Code of Federal Regulations and Government Audit Standards, regardless of the amount of federal funding the Subrecipient Contractor receives.

1. The Audit report(s) provided to the Agency must include a copy of the Auditor's management letter.
2. The audit report shall include a schedule of administrative and program expenses for each separate federal title or program (Title IIIB, Title IIIC-1, Title IIIC-2, Title IIID, Title IIIE, NSIP, etc.), which facilitates a reconciliation of audited costs to the final report.
3. Submittal of the audit report for government entities shall be within ten (10) working days after release by the New Mexico State Auditor's Office. For non-governmental entities, the audit report is due four (4) months after the end of the entity's fiscal year.

K. *Equal Opportunity Compliance*

The Subrecipient Contractor agrees to abide by all federal and state laws, rules, regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Subrecipient Contractor agrees to assure that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Subrecipient Contractor is found not to be in compliance with these requirements during the life of this Agreement, Subrecipient Contractor agrees to take appropriate steps to correct these deficiencies.

L. *Compliance with Aging and Long-Term Services Department Functions.*

The Subrecipient Contractor shall perform in accordance with the Federal Older Americans Act (OAA) and directives of the U.S. Administration on Aging; Rules, regulations, State Plan, policies and procedures established by the Aging and Long-Term Services Department, for the provision of services, and administration of programs funded under the OAA and the New Mexico State Legislature; New Mexico Administrative Code, Title 9, Chapter 2, Parts 1-24; The Aging & Long-Term Services Act, NMSA 1978, Sections 9-23-1 et seq.; The New Mexico Environment Department Food Establishment Rules and Regulations; Dietary Guidelines for Americans; Dietary Reference Intakes (DRIs); the approved Agency Area Plan, Agency Policy and Procedures; the approved Service Plan; State and Federal emergencies and public health/emergency orders enacted by the Governor of the State of New Mexico; Title II Part 200 of the Code of Federal Regulations; and the terms and conditions of this Agreement.

M. *Non-Discrimination Service Delivery.*

The Subrecipient Contractor, in determining (a) the services or other benefits provided under this Agreement, (b) the class of individuals to whom, or situation in which such services or other benefits will be provided under this program, or (c) the class of individuals to be afforded an opportunity to participate in the program, will not utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, religion, color, national origin, ancestry, sex, sexual preference, age or handicap, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program in respect to individuals of a particular race, religion, color, national origin, ancestry, sex, sexual preferences, age or handicap.

N. *Targeting and Outreach.*

The Subrecipient Contractor shall engage in targeting and outreach activities, as required by the OAA, to all potential recipients of services as referenced in section 1.D. The Subrecipient Contractor shall conduct ongoing community outreach to assess needs and inform potential recipients of available services. The Subrecipient Contractor shall report all activities in its quarterly program reports submitted to the Agency.

O. *Consumer Feedback.*

The Subrecipient Contractor shall utilize the standardized survey instrument required by the Agency to obtain and evaluate consumer opinions of the quality of services received.

P. *Emergency Preparedness Requirements.*

The Subrecipient Contractor shall monitor and notify the Agency of any situation which has the potential to be an emergency in which older adults or adults with disabilities may be adversely affected.

- a. Subrecipient Contractor shall complete and submit the Agency's Emergency Preparedness and Continuity of Operations Plan annually.
- b. Subrecipient Contractor shall provide and update emergency contact information for all emergency management personnel in the format provided by the Agency.
- c. Subrecipient Contractor agrees to notify the Agency of service modifications in the event of a holiday, emergency, or other situation as soon as those service modifications are known.
- d. Subrecipient Contractor agrees to notify the Agency of emergency situations and events as soon as they are known, regardless of service modification.
- e. Subrecipient Contractor shall ensure continuation of services during emergency events to the extent possible and will request assistance from the Agency in the event it cannot perform this requirement.
- f. Subrecipient Contractor agrees to perform well-check calls to consumers during emergency events, regardless of the open or closed status of facilities

and services. Subrecipient Contractor agrees to utilize well-check call scripts and systems provided by the Agency in this process. Subrecipient Contractor will request assistance from the Agency in the event it cannot perform this requirement.

4. TERM

This Agreement shall begin on July 1, 2024, and terminate on June 30, 2025, unless terminated pursuant to Paragraph 5, below or for any other reason allowed by law.

5. TERMINATION

- A. This Agreement may be terminated by the Agency or Subrecipient Contractor, with or without cause upon written notice delivered to the other party at least thirty (30) days prior to the intended date of termination. By such termination, neither party may nullify obligations already incurred for performance prior to the date of termination.

The Agency may terminate this Agreement immediately, upon written notice to the Subrecipient Contractor, if the Subrecipient Contractor becomes unable to perform the services contracted for, as determined by the Agency, or if, during the term of this Agreement, the Subrecipient Contractor endangers program consumers, or if any of its officers, employees or agents is indicted for fraud, embezzlement or other crime due to misuse of public funds or due to the Appropriations paragraph herein, or if the Subrecipient Contractor fails to comply with any of the terms contained herein or is in breach of this Agreement as set forth in Section 6, below. This provision is not exclusive and does not waive the Agency's other legal rights and remedies caused by the Subrecipient Contractor's default or breach of this Agreement.

- B. Termination Management. Immediately upon receipt of notice of termination of this Agreement, the Subrecipient Contractor shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of the Agency; 2) comply with all directives issued by the Agency in the notice of termination as to the performance of work under this Agreement; and 3) take such action as the Agency shall direct for the protection, preservation, retention or transfer of all property titled to the Agency and client records generated under this Agreement and any property, inventory, or equipment purchased by the Subrecipient Contractor with contract funds shall become property of the Agency upon termination. Within fifteen (15) days of notice of termination, the Subrecipient Contractor shall furnish to the Agency a complete, detailed inventory of property, inventory and/or equipment purchased with funds provided under the existing and previous Agency agreements with the Subrecipient Contractor; the property listed in the inventory report including client records and a final closing of the financial records and books of accounts which were required to be kept by the Subrecipient Contractor under the paragraph of this Agreement regarding financial records.

6. BREACH OF AGREEMENT BY SUBRECIPIENT CONTRACTOR

- A. In addition to the breach of any term, provision, covenant, agreement, or obligation of Subrecipient Contractor contained in this Agreement, the following constitute a breach of Subrecipient Contractor's obligations and duties hereunder:
1. The Subrecipient Contractor's failure to provide proof of insurance coverage sufficient to meet the requirements of this Agreement or any applicable federal, state, or local laws, rules, or regulations.
 2. The Subrecipient Contractor's failure to adequately safeguard its assets in such a manner that would adversely impact the interests of the intended recipients of the services to be performed, hereunder, and jeopardize their receipt of such services.
 3. Unless otherwise duly authorized in writing by the Agency, the Subrecipient Contractor's failure to meet line-item budgetary ceilings set forth in its approved budget for delivering the services contemplated hereunder.
- B. Upon a determination by the Agency that the Subrecipient Contractor shall be in breach of this Agreement, the Agency shall provide written notice to the Subrecipient Contractor specifying the facts and circumstances constituting the breach(es) and advising the Subrecipient Contractor that such breach(es) must be cured to the Agency's satisfaction within thirty (30) days from the date of such written notice. If such cure is not timely made, then the Agency may elect to implement one or more of the following intermediate sanctions:
1. The Agency may install a program monitor for a specified time period to closely observe the Subrecipient Contractor's efforts to comply with obligations remaining under this Agreement. Such monitor shall have authority to review any or all the Subrecipient Contractor's records, policies, procedures, and financial records germane to the Subrecipient Contractor's delivery of the services contemplated by this Agreement. Such monitor may also serve as a consultant to the Subrecipient Contractor to advise on the correction of the determined deficiencies. All costs associated with the Agency's selection and installation of such monitor shall be paid from the state and federal funds awarded to the Subrecipient Contractor hereunder.
 2. The Agency may appoint a temporary manager who shall have primary responsibility to oversee the operation of the Subrecipient Contractor's services contemplated by this Agreement. All costs associated with the Agency's selection and installation of such a temporary manager shall be paid from the compensation awarded to the Subrecipient Contractor.
 3. The Agency may deem the Subrecipient Contractor ineligible for the receipt of any additional funds to be paid to Subrecipient Contractor hereunder.
 4. The Agency may cancel, terminate, or suspend this Agreement in whole or in part.
 5. In addition to other remedies available to the Agency hereunder, the Agency may, in its discretion, establish a period of probation with specific objectives to be accomplished by the Subrecipient Contractor hereunder, or to be in compliance with applicable policies, procedures, laws, and regulations.

6. The Agency may pursue any other remedy as may be provided under applicable law.

7. APPROPRIATIONS

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the US Government or Legislature of New Mexico and utilized by the Agency 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 the Agency to the Subrecipient Contractor. The Agency's decision as to whether sufficient appropriations are available shall be accepted by the Subrecipient Contractor and shall be final. If the Agency proposes an amendment to the Agreement to unilaterally reduce funding, the Subrecipient Contractor shall have the option to terminate the Agreement or agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

8. STATUS OF SUBRECIPIENT CONTRACTOR

The Subrecipient Contractor, its agents, and employees are independent contractors performing professional services for the Agency and are not employees of the Agency. The Subrecipient Contractor, its agents and employees shall not accrue leave, retirement, insurance, bonding, use of Agency vehicles, or any other benefits afforded to employees of the Agency as a result of this Agreement. The Subrecipient Contractor acknowledges that all sums received hereunder are reportable for income tax purposes.

9. ASSIGNMENT

The Subrecipient Contractor shall not assign or transfer any interest in this Agreement, assign any claims for money due, or to become due under this Agreement, without the prior written approval of the Agency.

10. SUBCONTRACTING

The Subrecipient Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the Agency.

11. RELEASE

Final payment of the amounts due under this Agreement shall operate as a release of the Agency, its officers and employees, and the State of New Mexico from all liabilities, claims, and obligations, whatsoever arising from or under this Agreement. The Subrecipient Contractor agrees not to purport to bind the Agency to any obligation not assumed herein unless the Subrecipient Contractor has express written authority to do so, and then only within the strict limits of that authority.

12. CONFIDENTIALITY

Any information provided to or developed by the Subrecipient Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization, by the Subrecipient Contractor without the prior written approval of the Agency. Disclosure of confidential information shall only be made in accordance with the Inspection of Public Records Act or the applicable state or federal laws or regulations. Subrecipient Contractor shall

establish a method to guarantee the confidentiality of all information relating to clients in accordance with applicable federal, state and local laws, rules and regulations, as well as the terms of this Agreement. However, this provision shall not be construed as limiting the rights of the Agency or any other federal or state authorized representative to access client case records or other information relating to clients served under this Agreement.

13. PRODUCT OF SERVICE – COPYRIGHT

All materials developed or acquired, by the Subrecipient Contractor, under this Agreement, shall become the property of the Agency and shall be delivered to the Agency no later than the termination date of this Agreement. Nothing produced, in whole or in part, by the Subrecipient Contractor, under this Agreement, shall be the subject of an application for copyright or other claim of ownership, by or on behalf, of the Subrecipient Contractor.

14. CONFLICT OF INTEREST

The Subrecipient Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree, with the performance or services required under the Agreement. The Subrecipient Contractor certifies that the requirements of the Governmental Conduct Act, Sections 10-16-1 through 10-16-18, NMSA 1978, regarding contracting with a public officer or state employee or former state employee have been followed.

15. AMENDMENT

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

16. MERGER

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

17. PENALTIES FOR VIOLATION OF LAW

The Procurement Code, Sections 13-1-28 through 13-1-199, NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.

18. APPLICABLE LAW

The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with Section 38-3-1 (G) NMSA 1978. By execution of this Agreement, Subrecipient Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

19. WORKERS COMPENSATION

The Subrecipient Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Subrecipient Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the Agency.

20. RECORDS AND FINANCIAL AUDIT

The Subrecipient Contractor shall maintain detailed time and expenditure records, including, but not limited to, client records, books, supporting documents pertaining to services provided, that indicate the date, time, nature and cost of services rendered during the Agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the Agency, the Aging and Long-Term Services Department, the Department of Finance and Administration and the State Auditor. The Agency shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Agency to recover excessive or illegal payments. If, pursuant to this Agreement, the Subrecipient Contractor receives federal funds subject to the Single Audit Act, the Subrecipient Contractor shall submit to the Agency an audit conducted by a certified public accountant in compliance with the Single Audit Act.

21. INDEMNIFICATION

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to the immunities and limitation of the New Mexico Tort Claims Act.

22. PARTICIPANT GRIEVANCE

The Subrecipient Contractor will establish a system through which applicants for, and recipients of services, may present grievances about the operation of the service program. The Subrecipient Contractor will advise applicants and recipients of their right to appeal denial of service and their right to a fair hearing of these respects. The Subrecipient Contractor shall notify the Agency of termination of services, to a client, as part of a monthly service report, on any services funded by this Agreement. The Agency reserves the right to perform follow-up investigations with the client to determine adequate performance and adherence to due process.

23. KEY PERSONNEL

The Agency shall be notified of changes in Key Personnel. The Agency considers the following positions as Key Personnel:

1. Program Director
2. Financial Manager
3. WellSky Aging & Disability User

The Subrecipient Contractor will maintain full-time Key Personnel sufficient to perform the Service Plan throughout the term of this agreement.

25. INVALID TERM OR CONDITION

If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.

26. ENFORCEMENT OF AGREEMENT

A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

27. NOTICES

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

AGENCY:

NCNMEDD Non-Metro AAA
Neil Segotta, AAA Director
644 Don Gaspar
Santa Fe, NM 87505

SUBRECIPIENT CONTRACTOR:

City of Alamogordo - Alamo Senior Center
Magdalena Morales, ASC Director
2201 Puerto Rico Avenue
Alamogordo, NM 88310

28. INSURANCE

The Subrecipient Contractor shall secure and maintain, during the term of this Agreement, at its own expense, comprehensive and general public liability insurance and/or other types of insurance as the Agency may require. The Subrecipient Contractor shall secure and maintain, during the term of this Agreement, at its own expense, workers' compensation insurance in the amounts required by the applicable laws of the State of New Mexico covering the Subrecipient Contractor's employees. All policies of liability insurance that Subrecipient Contractor is obligated to maintain, according to this Agreement, except for any policy of workers' compensation insurance, shall name Agency as an additional insured. The Subrecipient Contractor shall furnish to the Agency, directly from its insurance carrier, a memorandum or certification of all insurance carried before the payment of any monies as consideration for the services rendered hereunder shall be made. Upon such certificates and/or memoranda being furnished to the Agency, the same shall be annexed to this Agreement and by reference made a part hereof.

29. AUTHORITY

The individual(s) signing this Agreement on behalf of Subrecipient Contractor represents and warrants that he or she has the power and authority to bind Subrecipient Contractor, and that no further action, resolution, or approval from Subrecipient Contractor is necessary to enter into a binding contract.

30. SIGNATURES

For the faithful performance of the terms of this agreement, the parties affix their signatures and bind themselves effective July 1, 2024.

City of Alamogordo

Legal Name of Subrecipient Contractor

Signature

Printed/Typed Name of Signatory

Date

NCNMEDD Non-Metro Area Agency on Aging

Name of Area Agency on Aging

Monica Abeita

Signature

Monica Abeita, Executive Director

Printed/Typed Name of Signatory

July 1, 2024

Date

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 7/9/2024

Report Date: 07/02/2024

Report No: 8.

Submitted By: Julia Reynolds

Subject: Consider, and act upon, a \$2,500.00 1-time award from AmeriCorp Senior Companion and Foster Grandparent Programs for travel related for J. Rene' Reynolds, SVP Specialist and Magdalena Morales, ASC Manager to attend AmeriCorps Seniors National Convening in Baltimore MD from July 30 to Aug 1, 2024. *(Magdalena Morales, ASC Manager and Veronica Ortega, Community Services Director)*

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact: Rev

Fund: 075.000.0000.0000.40701 - \$5,000.00

SCCP25.GRNT.FEDR - \$2,500.00

SCFG25.GRNT,FEDR - \$2,500.00

Exp

Fund: 075.300.8020.0000.56005 - \$5,000.00

SCCP25.MISC.TRVL.FEDR - \$2,500.00

SCFG25.MISC.TRVL.FEDR - \$2,500.00

Recommendation: Approve Grant Funding

Background:

Notice of Grant Award

Corporation for National and Community Service

250 E Street SW, Suite 300
Washington, DC 20525-0001
(202) 606-5000

Foster Grandparent Program

Grantee

City of Alamogordo
1376 Ninth St Alamogordo NM 88310-5855

EIN: 856000099
UEI: GK8LNMMJ3XN1

Award Information

Agreement No.:	23SFDNM013	Performance Period:	07/01/2023 - 06/30/2026
Amendment No.:	1	Budget Period:	07/01/2024 - 06/30/2026
CFDA No.:	94.011	Grant Year:	2

Purpose

The purpose of this award is to assist the grantee in carrying out a national service program as authorized by the Domestic and Volunteer Service Act of 1973, as amended (42 U.S.C. Chapter 22).

Funding Information

Year 2	Previously Awarded This Year	This Award/ Amendment	Total Current Year
Total Obligated by CNCS	\$0	\$2,500	\$2,500
Grantee's Unobligated Balance (Carryover)	\$0	\$0	\$0
Total Available	\$0	\$2,500	\$2,500

Cumulative Funding for Project Period

Total Awarded in Previous Amendments	\$0
Total CNCS Funds Awarded to Date	\$2,500

Funding Source and Amount

2024--OPE1-P71-OPO-26000-4101	\$2,500.00
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Special Conditions

Alamogordo/Otero County FGP does not have a current single audit in the FAC. A special condition is added on the award for the grantee to submit the single audit to the FAC by September 30, 2024, for this award or the grant may be placed on manual hold.

Award Description

This award funds the approved 2024-25 FGP program. Your 2024-25 statutory match is 10% and your budgetary match is 96.96%.

This award is approved to add \$2,500 in one-time additional funds for travel related to training in FY 24.

Terms of Acceptance: By accepting funds under this grant, recipient agrees to comply with General Terms and Conditions found at <https://americorps.gov/sites/default/files/document/FY2024-General-Terms-Conditions-508-20230919.pdf> and the Program Terms and Conditions found at <https://americorps.gov/sites/default/files/document/20240502-2024-FGP-SCP-Program-Specific-508TC.pdf>. Recipient also agrees to comply with assurances and certifications made in the grant application, supporting documents, and with applicable federal statutes, regulations and guidelines.

Notice of Grant Award

250 E Street SW, Suite 300
Washington, DC 20525-0001
(202) 606-5000

Foster Grandparent Program

Grantee

City of Alamogordo
1376 Ninth St Alamogordo NM 88310-5855

EIN: 856000099
UEI: GK8LNMMJ3XN1

Award Information

Agreement No.:	23SFDNM013	Performance Period:	07/01/2023 - 06/30/2026
Amendment No.:	1	Budget Period:	07/01/2024 - 06/30/2026
CFDA No.:		Grant Year:	2

Corporation for National and Community Service:



06/27/2024

City of Alamogordo
Legal Applicant

Signature

Award Date

Catherine Curtis
Senior Grants Officer

Magdalena Morales
Project Director

Daisy Gallardo, 202-815-4248
Grants Officer

Julia R. Reynolds
Certifying Official/Executive Officer

Maryon Bradshaw
Program Officer

Notice of Grant Award**Corporation for National and Community Service**

250 E Street SW, Suite 300
Washington, DC 20525-0001
(202) 606-5000

Senior Companion Program**Grantee**

City of Alamogordo
1376 Ninth St Alamogordo NM 88310-5855

EIN: 856000099
UEI: GK8LNMMJ3XN1

Award Information

Agreement No.:	23SCDNM001	Performance Period:	07/01/2023 - 06/30/2026
Amendment No.:	1	Budget Period:	07/01/2024 - 06/30/2026
CFDA No.:	94.016	Grant Year:	2

Purpose

The purpose of this award is to assist the grantee in carrying out a national service program as authorized by the Domestic and Volunteer Service Act of 1973, as amended (42 U.S.C. Chapter 22).

Funding Information

Year 2	Previously Awarded This Year	This Award/ Amendment	Total Current Year
Total Obligated by CNCS	\$0	\$2,500	\$2,500
Grantee's Unobligated Balance (Carryover)	\$0	\$0	\$0
Total Available	\$0	\$2,500	\$2,500

Cumulative Funding for Project Period

Total Awarded in Previous Amendments	\$0
Total CNCS Funds Awarded to Date	\$2,500

Funding Source and Amount

2024--OPE1-P77-OPO-26000-4101	\$2,500.00
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Special Conditions

Alamagordo/Otero County SCP does not have a current single audit in the FAC. A special condition is added on the award for the grantee to submit the single audit to the FAC by September 30, 2024 for this award or the grant may be placed on manual hold.

Award Description

This award funds the approved 2024–25 SCP program. Your 2024–25 statutory match is 10% and your budgetary match is 96.95%.

This award is approved to add \$2,500 in one-time additional funds for travel related to training in FY 24.

Terms of Acceptance: By accepting funds under this grant, recipient agrees to comply with General Terms and Conditions found at <https://americorps.gov/sites/default/files/document/FY2024-General-Terms-Conditions-508-20230919.pdf> and the Program Terms and Conditions found at <https://americorps.gov/sites/default/files/document/20240502-2024-FGP-SCP-Program-Specific-508TC.pdf>. Recipient also agrees to comply with assurances and certifications made in the grant application, supporting documents, and with applicable federal statutes, regulations and guidelines.

Notice of Grant Award

250 E Street SW, Suite 300
Washington, DC 20525-0001
(202) 606-5000

Senior Companion Program Grantee

City of Alamogordo
1376 Ninth St Alamogordo NM 88310-5855

EIN: 856000099
UEI: GK8LNMMJ3XN1

Award Information

Agreement No.:	23SCDNM001	Performance Period:	07/01/2023 - 06/30/2026
Amendment No.:	1	Budget Period:	07/01/2024 - 06/30/2026
CFDA No.:		Grant Year:	2

Corporation for National and Community Service:



06/27/2024

City of Alamogordo
Legal Applicant

Signature Award Date

Catherine Curtis
Senior Grants Officer

Magdalena Morales
Project Director

Daisy Gallardo, 202-815-4248
Grants Officer

Julia R. Reynolds
Certifying Official/Executive Officer

Maryon Bradshaw
Program Officer

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 7/9/2024

Report Date: 07/02/2024

Report No: 9.

Submitted By: Julia Reynolds

Subject: Consider, and act upon, contract #25-624-4000-0014 between the City of Alamogordo and the State of New Mexico Aging and Long-Term Services Department for the FY25 Senior Companion and Foster Grandparent Program Grants. Senior Companion Program \$69,782.50. Foster Grandparent Program \$69,525.00. *(Magdalena Morales, ASC Manager and Veronica Ortega, Community Services Director)*

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact: Rev Fund:

075.000.0000.0000.40715 / SCCP25.GRNT.STTE Senior Companion Program Grant Budget \$69,782.00

075.000.0000.0000.40715 / SCFG25.GRNT.STTE Foster Grandparent Program Grant Budget \$69,525.00

Exp Fund:

075.000.0000.0000.40715 / SCCP25.GRNT.STTE Senior Companion Program Grant Budget \$69,782.00

075.000.0000.0000.40715 / SCFG25.GRNT.STTE Foster Grandparent Program Grant Budget \$69,525.00

Recommendation:

Background:

Contract ID#25-624-4000-0014

STATE OF NEW MEXICO

AGING & LONG-TERM SERVICES DEPARTMENT
INTERGOVERNMENTAL AGREEMENT #25-624-4000-0014

THIS AGREEMENT is made and entered into by and between the State of New Mexico, **Aging and Long-Term Services Department**, hereinafter referred to as the "Department," and **City of Alamogordo**, hereinafter referred to as the "Contractor," and is effective as of the date set forth below upon which it is executed by the Department and collectively as the "Parties."

IT IS AGREED BETWEEN THE PARTIES:

1. Scope of Work.

A. The Contractor shall perform the work outlined in the Scope of Work, which is hereby incorporated and made a part of this contract as Attachment 1.

2. Compensation.

A. The Department shall pay to the Contractor in full payment for services satisfactorily performed based upon deliverables as outlined in the Scope of Work. **The total amount payable to the Contractor under this Agreement, including gross receipts tax, travel, and expenses, shall not exceed \$139,307.50 as listed in Attachment 2, Budget. This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The parties do not intend for the Contractor to continue to provide services without compensation when the total compensation amount is reached. Contractor is responsible for notifying the Department when the services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for services provided in excess of the total compensation amount without this Agreement being amended in writing prior to those services in excess of the total compensation amount being provided.**

B. Payment is subject to availability of funds pursuant to the Appropriations Paragraph set forth below and to any negotiations between the Parties from year to year pursuant to Paragraph 1, Scope of Work, and to approval by the Department. All invoices MUST BE received by the Department no later than fifteen (15) days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date will not be paid.

C. Contractor must submit a detailed statement accounting for all services performed and expenses incurred. Reimbursements shall be made by the Department on a monthly basis upon receipt of monthly expenditures and reports furnished by the Contractor. If the Department finds that the services are not acceptable, within thirty days after the date of receipt of written notice from the Contractor that payment is requested, it shall provide the Contractor a letter of exception explaining the defect or objection to the services, and outlining steps the Contractor may take to provide remedial action. Upon certification by the Department that the services have been received

Contract ID#25-624-4000-0014

and accepted, payment shall be tendered to the Contractor within thirty days after the date of acceptance. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. However, the Department shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein.

For purchases funded by state or federal grants to the Contractor, if the Contractor has not received the funds from the federal or state funding Department, but has already certified that the services or items of tangible personal property have been received and accepted, payment shall be tendered to the Contractor within five working days of receipt of funds from that funding Department.

3. Term.

THIS AGREEMENT SHALL BECOME EFFECTIVE UNTIL APPROVED BY THE AGENCY. This agreement shall terminate on **June 30, 2025**, unless terminated pursuant to paragraph 4 (Termination), or paragraph 5 (Appropriations) or for any other reason allowed by law. In accordance with Section 13-1-150 NMSA 1978, no contract term for a professional services contract, including extensions and renewals, shall exceed four years, except as set forth in Section 13-1-150 NMSA 1978.

4. Termination.

A. Grounds. The Department may terminate this Agreement for convenience or cause. The Contractor may only terminate this Agreement based upon the Department's uncured, material breach of this Agreement.

B. Notice; Department Opportunity to Cure.

1. Except as otherwise provided in Paragraph (4)(B)(3), the Department shall give Contractor written notice of termination at least thirty (30) days prior to the intended date of termination.

2. Contractor shall give Department written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the Department's material breaches of this Agreement upon which the termination is based and (ii) state what the Department must do to cure such material breaches. Contractor's notice of termination shall only be effective (i) if the Department does not cure all material breaches within the thirty (30) day notice period or (ii) in the case of material breaches that cannot be cured within thirty (30) days, the Department does not, within the thirty (30) day notice period, notify the Contractor of its intent to cure and begin with due diligence to cure the material breach.

3. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor (i) if the Contractor becomes unable to perform the services contracted for, as determined by the Department; (ii) if, during the term of this Agreement, the Contractor is suspended or debarred by the State Purchasing Agent; or (iii) the Agreement is terminated pursuant to Paragraph 5, "Appropriations", of this Agreement.

C. Liability. Except as otherwise expressly allowed or provided under this Agreement, the Department's sole liability upon termination shall be to pay for acceptable work performed prior to the Contractor's receipt or issuance of a notice of termination; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such

Contract ID#25-624-4000-0014

work within thirty (30) days of receiving or sending the notice of termination. This provision is not exclusive and does not waive the Department's other legal rights and remedies caused by the Contractors default/breach of this Agreement.

D. Termination Management. Immediately upon receipt by either the Department or the Contractor of notice of termination of this Agreement, the Contractor shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of the Department; 2) comply with all directives issued by the Department in the notice of termination as to the performance of work under this Agreement; and 3) take such action as the Department shall direct for the protection, preservation, retention or transfer of all property titled to the Department and records generated under this Agreement. Any non-expendable personal property or equipment provided to or purchased by the Contractor with contract funds shall become property of the Department upon termination and shall be submitted to the Department as soon as practicable.

5. 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 the Department to the Contractor. The Department's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the Department proposes an amendment to the Agreement to unilaterally reduce funding, the Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

6. Status of Contractor.

The Contractor and its agents and employees are independent contractors performing professional services for the Department and are not employees of the State of New Mexico. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax, unless the contract is between two public entities. The Contractor agrees not to purport to bind the State of New Mexico unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

7. Assignment.

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the Department.

8. Subcontracting.

The Contractor shall not subcontract any portion of the services to be performed under this

Contract ID#25-624-4000-0014

Agreement without the prior written approval of the Department. No such subcontract shall relieve the primary Contractor from its obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment from the Department.

9. Release.

Final payment of the amounts due under this Agreement shall operate as a release of the Department, its officers and employees, and the State of New Mexico from all liabilities, claims and obligations whatsoever arising from or under this Agreement.

10. Confidentiality.

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the Department.

Disclosure of confidential information shall only be made in accordance with the Inspection of Public Records Act or the applicable state or federal law or regulations.

11. Product of Service -- Copyright.

All materials developed or acquired by the Contractor under this Agreement shall become the property of the State of New Mexico and shall be delivered to the Department no later than the termination date of this Agreement. Nothing developed or produced, in whole or in part, by the Contractor under this Agreement shall be the subject of an application for copyright or other claim of ownership by or on behalf of the Contractor.

12. Conflict of Interest; Governmental Conduct Act.

A. The Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement.

B. The Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978. Without in anyway limiting the generality of the foregoing, the Contractor specifically represents and warrants that:

1) in accordance with Section 10-16-4.3 NMSA 1978, the Contractor does not employ, has not employed, and will not employ during the term of this Agreement any Department employee while such employee was or is employed by the Department and participating directly or indirectly in the Department's contracting process;

2) this Agreement complies with Section 10-16-7(A) NMSA 1978 because (i) the Contractor is not a public officer or employee of the State; (ii) the Contractor is not a member of the family of a public officer or employee of the State; (iii) the Contractor is not a business in which a public officer or employee or the family of a public officer or employee has a substantial interest; or (iv) if the Contractor is a public officer or employee of the State, a member of the family of a public officer or employee of the State, or a

Contract ID#25-624-4000-0014

business in which a public officer or employee of the State or the family of a public officer or employee of the State has a substantial interest, public notice was given as required by Section 10-16-7(A) NMSA 1978 and this Agreement was awarded pursuant to a competitive process;

3) in accordance with Section 10-16-8(A) NMSA 1978, (i) the Contractor is not, and has not been represented by, a person who has been a public officer or employee of the State within the preceding year and whose official act directly resulted in this Agreement and (ii) the Contractor is not, and has not been assisted in any way regarding this transaction by, a former public officer or employee of the State whose official act, while in State employment, directly resulted in the Department's making this Agreement;

4) this Agreement complies with Section 10-16-9(A) NMSA 1978 because (i) the Contractor is not a legislator; (ii) the Contractor is not a member of a legislator's family; (iii) the Contractor is not a business in which a legislator or a legislator's family has a substantial interest; or (iv) if the Contractor is a legislator, a member of a legislator's family, or a business in which a legislator or a legislator's family has a substantial interest, disclosure has been made as required by Section 10-16-9(A) NMSA 1978, this Agreement is not a sole source or small purchase contract, and this Agreement was awarded in accordance with the provisions of the Procurement Code;

5) in accordance with Section 10-16-13 NMSA 1978, the Contractor has not directly participated in the preparation of specifications, qualifications or evaluation criteria for this Agreement or any procurement related to this Agreement; and

6) in accordance with Section 10-16-3 and Section 10-16-13.3 NMSA 1978, the Contractor has not contributed, and during the term of this Agreement shall not contribute, anything of value to a public officer or employee of the Department.

C. Contractor's representations and warranties in Paragraphs A and B of this Article 12 are material representations of fact upon which the Department relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the Department if, at any time during the term of this Agreement, Contractor learns that Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the Department and notwithstanding anything in the Agreement to the contrary, the Department may immediately terminate the Agreement.

D. All terms defined in the Governmental Conduct Act have the same meaning in this Article 12(B).

13. Amendment.

A. This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and all other required signatories.

Contract ID#25-624-4000-0014

B. If the Department proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, the Contractor shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the Agreement, pursuant to the termination provisions as set forth in Article 4 herein, or to agree to the reduced funding.

14. Merger.

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

15. Penalties for violation of law.

The Procurement Code, Sections 13-1-28 through 13-1-199, NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.

16. Equal Opportunity Compliance.

The Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Contractor assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

17. Applicable Law.

The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with Section 38-3-1 (G) NMSA 1978. By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

18. Workers Compensation.

The Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the Department.

Contract ID#25-624-4000-0014

19. Records and Financial Audit.

The Contractor shall maintain detailed time and expenditure records that indicate the date; time, nature and cost of services rendered during the Agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the Department, the Department of Finance and Administration and the State Auditor. The Department shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Department to recover excessive or illegal payments.

If, pursuant to this Agreement, the Contractor receives federal funds subject to the Single Audit Act, the Contractor shall submit to the Department an audit conducted by a certified public accountant in compliance with the Single Audit Act.

20. Indemnification.

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to the immunities and limitation of the New Mexico Tort Claims Act.

21. Invalid Term or Condition.

If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.

22. Enforcement of Agreement.

A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

23. Notices.

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the Department: Robert Morrison
Aging and Long-Term Services Department
2550 Cerrillos Rd
Santa Fe, NM 87505

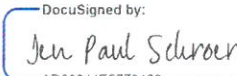
To the Contractor: Magdalena Morales
City of Alamogordo
2201 Puerto Rico Ave.
Alamogordo, NM 88310

Contract ID#25-624-4000-0014

24. Authority.

If Contractor is other than a natural person, the individual(s) signing this Agreement on behalf of Contractor represents and warrants that he or she has the power and authority to bind Contractor, and that no further action, resolution, or approval from Contractor is necessary to enter into a binding contract.

EXECUTED AND AGREED TO by signatures below.

By:  DocuSigned by:
AD20344E5770498 Date: 5/9/2024
Jen Paul Schroer, Cabinet Secretary
Aging and Long-Term Services Department

By:  DocuSigned by:
4E5EA79388A248F Date: 5/8/2024
Anastasia Martin, General Counsel – Certifying legal sufficiency
Aging & Long-Term Services Department

By:  DocuSigned by:
10A0F739685045D Date: 5/8/2024
Latishia Ortiz, ASD Director
Aging & Long-Term Services Department

By:  DocuSigned by:
04F44842E0494A5 Date: _____
Rick Holden, City Manager
City of Alamogordo

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 7/9/2024

Report Date: 07/03/2024

Report No: 10.

Submitted By: Rachel Hughs

Subject: Consider, and act upon, Resolution 2024-48, amending the fee schedule for copies of public records inspected and distributed under the New Mexico Inspection of Public Records Act. *(Rachel, Hughs, City Clerk)* **(Roll Call Vote Required)**

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation: Approve the Resolution..

Background:

The fees for making copies of public records have not been updated in years.

The changes to the fees for copies

- Adding the actual fees for 11x17 or larger.
- Adding flash drives as a new method of providing cumbersome records.
- Increasing the media storage fee from \$5 to \$7 each.
- Decreasing the fax fee from \$1 to .50 cents.
- Adding the language of tax fees, however, tax has always been added.

Attached is the current fee schedule.

RESOLUTION NO. 2024-48

**AMENDING THE FEE SCHEDULE FOR COPIES OF
PUBLIC RECORDS INSPECTED AND DISTRIBUTED UNDER
THE NEW MEXICO INSPECTION OF PUBLIC RECORDS ACT**

WHEREAS, NMSA 1978, § 14-2-1, states every person the right to inspect public records of this state, with certain exceptions, and;

WHEREAS, the City of Alamogordo is committed to ensuring the accessibility of public records to citizens, and;

WHEREAS, NMSA 1978, § 14-2-7(A)(B), states each public body shall designate at least one custodian of public records who shall receive and respond to requests to inspect public records; and,

WHEREAS, the Alamogordo Police Department Administrative Manager is the Custodian of Public Records for the Alamogordo Police Department, Animal Control, and Code Enforcement; the Alamogordo Municipal Court Administrator is the Custodian of Public Records for Municipal Court; and the City Clerk is the Custodian of Public Records for all other records for the City, and each custodian shall receive and respond to public records requests that pertain to them; and,

WHEREAS, NMSA 1978, § 14-2-7 (E), states the custodian of public records shall post in a conspicuous location of the administrative and on the publicly available website of each public body office a notice describing the right to inspect a public body's records, the procedures for requesting the inspection of public records, including the contact information for the custodian of public records, the procedure for requesting copies of public records, the reasonable fees for copying public records, and the responsibility of the public body to make available public records for inspection; and,

WHEREAS, the fees for copying public records requested under the Inspection of Public Records Act have not been updated in years and do not reflect the cost of inflation; and,

WHEREAS, adding a new storage device method for providing copies of cumbersome records will be cost-effective to the requester and the city; and,

NOW, THEREFORE BE IT RESOLVED, by the City Commission of the City of Alamogordo that the Office of the City Clerk, the Alamogordo Police Department, and Municipal Court shall post the Notice to Inspect Public Records which describes (1) the right to inspect a public body's record, (2) the procedures for requesting the inspection of public records, (3) procedures for requesting copies of public records, including the contact information for the custodian of public records, and (4) the reasonable fees for copying public records in Exhibit "A",

and (5) the responsibility of the public body to make available public records for inspection.

PASSED, APPROVED, AND ADOPTED this _____ day of _____, 2024.

CITY OF ALAMOGORDO, NEW MEXICO,
A NEW MEXICO MUNICIPAL CORPORATION

Susan L. Payne, Mayor

SEAL

ATTEST:

Rachel Hughs, City Clerk

APPROVED AS TO FORM:

Ashley Smith, City Attorney



City of
ALAMOGORDO

Exhibit A

NOTICE OF RIGHT TO INSPECT PUBLIC RECORDS

§ 14-2-7(E) post in a conspicuous location at the administrative office,
and on the publicly available website, if any, of each public body.

The Inspection of Public Records Act: By law, under the Inspection of Public Records Act (IPRA), every person has the right to inspect public records of the City of Alamogordo, New Mexico. The Act makes compliance with requests to inspect public records an integral part of the routine duties of the officers and employees of the City of Alamogordo. It is the responsibility of the City to make non-exempt public records available for inspection.

Submitting Requests: Requests to inspect public records may be submitted to the records custodian orally or in writing. However, the procedures and penalties prescribed by the Act apply only to written requests. A written request must contain the name, address, and, telephone number of the person making the request. The request must describe the records sought in sufficient detail to enable the records custodian to identify and locate the requested records. Requested public records containing information that is exempt and nonexempt from disclosure shall be separated by the custodian prior to inspection, and the nonexempt information shall be made available for inspection.

Requests may be submitted to the City Clerk by the following methods:

- Online at NextRequest Portal at (add the link when it goes live) or,
- By email at rhughes@ci.alamogordo.nm.us, or
- In-person or by mail to the Office of the City Clerk at 1376 E. Ninth Street, Alamogordo, NM 88310, or
- By phone (575) 439-4100 or by fax (575) 439-4396.

Requests specifically for Alamogordo Police Department (APD), Animal Control, or Code Enforcement records may be submitted directly to APD by the following methods:

- Online at NextRequest Portal at (add the link when it goes live), or
- By email at apdrecords@ci.alamogordo.nm.us, or
- In-person or by mail to the APD at 700 Virginia Ave, Alamogordo, NM 88310, or
- By phone (575) 439-4300 press 2 or by fax (575) 439-4312.

Requests for the Municipal Court may be submitted directly to Municipal Court by the following methods:

- Online at NextRequest Portal at (add the link when it goes live) or,
- By email at municipalcourt@ci.alamogordo.nm.us, or
- In-person or by mail to Municipal Court at 1376 E. Ninth Street, Alamogordo, NM 88310, or
- By phone (575) 439-4255 or by fax (575) 439-4212.

Response to Requests: The City must permit inspection immediately or as soon as practicable, but no later than fifteen (15) calendar days after the records custodian receives the inspection request. If inspection is not permitted within three (3) business days, the person making the request will receive a written response explaining when the records will be available for inspection or when the City will respond to the request. If any of the records sought are not available for public inspection, the person making the request is entitled to a written response from the records custodian explaining the reasons inspection has been denied. The written denial shall be delivered or mailed within fifteen (15) calendar days after the records custodian received the request for inspection.

Fee Schedule for copies of Public Records: If a person requesting inspection would like a copy of a public record, a reasonable fee may be charged and must be paid before copies are made.

Copy of records per page (11x17 or smaller)	\$.50
Copy of records per page 22 x 34 or larger (normally plats and plans).	Between \$3.00 and \$42.75
Records that are readily available electronically and are not cumbersome.	No Charge.
Records that are available electronically, which are cumbersome or must be put on a disc or flash drive (storage media provided by the city).	\$7.00 per storage device.
Mailed records, in addition to the records cost.	Actual postage rates.
Faxed records per page, in addition to the records cost.	\$.50
Tax will be added, in addition to the records cost.	Tax rate.

NOTICE OF RIGHT TO INSPECT PUBLIC RECORDS

By law, under the Inspection of Public Records Act, every person has the right to inspect public records of the City of Alamogordo, New Mexico. The Act also makes compliance with requests to inspect public records an integral part of the routine duties of the officers and employees of the City of Alamogordo, New Mexico.

Requests to inspect public records should be submitted to the records custodian, located at the City Clerk's Office, Alamogordo City Hall, 1376 E. Ninth Street, Alamogordo, NM 88310. City Clerk's contact information is: telephone number (575) 439-4100, fax (575) 439-4396, email rhughs@ci.alamogordo.nm.us

A person desiring to inspect public records may submit a request to the records custodian orally or in writing. However, the procedures and penalties prescribed by the Act apply only to written requests. A written request must contain the name, address, telephone number and email address of the person making the request. The request must describe the records sought in sufficient detail to enable the records custodian to identify and locate the requested records.

The records custodian must permit inspection immediately or as soon as practicable. If inspection is not permitted within 3 business days, the person making the request will receive a written response explaining when the records will be available for inspection or when the public body will respond to the request. If any of the records sought are not available for public inspection, the person making the request is entitled to a written response from the records custodian explaining the reasons inspection has been denied. The written denial shall be delivered or mailed within 15 calendar days after the records custodian received the request for inspection. If more time is needed after 15 days to complete a request, the person making the request will receive a written response explaining when the records will be available for inspection.

If a person requesting inspection would like a copy of a public record, a reasonable fee may be charged.

Copy of records per page 11X17 or smaller	\$\$.50
Copies of records per page larger than 11X17	Cost to be determined based on size of page
Records being requested by email that is available electronically and readily available that is not cumbersome	\$0.00
Records being requested by CD/DVD that is available electronically and readily available	\$5.00 per CD/DVD
Mailed records	In addition to the records cost, actual postage rates will be charged
Faxed records	In addition to the records cost, an additional fee of \$1.00 per page will be charged

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 7/9/2024

Report Date: 07/03/2024

Report No: 11.

Submitted By: Stephanie Hernandez

Subject: Consider, an act upon, first publication of Ordinance 1705, approving a loan from the New Mexico Finance Authority regarding the Yearout Contract and EPC project. *(Evelyn Huff, Finance Director and Chris Muirhead)* **(Roll Call Vote Required)**

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation: Approve for first publication.

Background:

CITY OF ALAMOGORDO, NEW MEXICO
ORDINANCE NO. 1705

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 NOT TO EXCEED \$5,000,000, TOGETHER WITH INTEREST THEREON, FOR THE PURPOSE OF FINANCING (1) ACQUIRING, CONSTRUCTING AND IMPROVING ENERGY EFFICIENCY PROJECTS ASSOCIATED WITH CITY FACILITIES, (2) FUNDING A LOAN AGREEMENT RESERVE ACCOUNT, AND (3) PAYING COSTS OF ISSUANCE OF THE LOAN; APPROVING THE DELEGATION OF AUTHORITY TO MAKE CERTAIN DETERMINATIONS REGARDING THE LOAN PURSUANT TO THE SUPPLEMENTAL PUBLIC SECURITIES ACT; PROVIDING FOR THE PAYMENT OF THE BONDS FROM THE REVENUES OF THE 1/4 OF ONE PERCENT (0.25%) INCREMENT OF MUNICIPAL GROSS RECEIPTS TAX IMPOSED ON ALL PERSONS ENGAGING IN BUSINESS IN THE CITY PURSUANT TO SECTION 7-19D-9 NMSA 1978 AND CITY ORDINANCE NO. 620-81 ADOPTED _____, 1981 ("MUNICIPAL GROSS RECEIPTS TAX"); PROVIDING FOR THE DISTRIBUTIONS OF THE REVENUES OF THE MUNICIPAL 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; 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 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 Project take place by executing and delivering the Loan Agreement; and

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

WHEREAS, the City has imposed a one-fourth of one percent (1/4%) increment of municipal gross receipts tax imposed on all persons engaging in business in the City pursuant to City Ordinance No. 620-81, adopted _____, 1981, with an effective date of January 1 1982, which tax equals, subject to the exemptions specified in Section 7-19D-11 NMSA 1978, one-fourth of one percent (1/4%) of the gross receipts of all persons engaging in business in the City for the month in which the tax is distributed to the City, which provides for the Pledged Revenues; and

WHEREAS, pursuant to Sections 7-1-6.1 NMSA 1978 and Section 7-1-6.46, the City receives monthly distributions from the New Mexico Taxation and Revenue Department in lieu of gross receipts tax revenue that the City would have received but for the deductions provided by Sections 7-9-92 and 7-9-93 NMSA 1978, which are included within 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 an 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 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 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 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, pursuant to Sections 6-14-8 through 6-14-12 NMSA 1978, as amended (the “Supplemental Public Securities Act”), the Commission is authorized to adopt an ordinance delegating to one or more of its members, Governmental Unit officers, or Governmental Unit employees the authority to sign a contract for the purchase or sale of public securities or to accept a binding bid for public securities and to determine the sale for public securities to be issued so long as such sale is within the parameters established by an authorizing ordinance adopted in conformity with the Supplemental Public Securities Act; and

WHEREAS, in order to, among other things, allow the Governmental Unit flexibility in setting the pricing date of the Loan and optimize debt service costs to the Governmental Unit, the Governing Body desires to grant to the Mayor, Manager, Finance Director or any other employee of the Village 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, (vi) the redemption and tender provisions, (vii) the procurement of municipal bond insurance and any related covenants or agreements, (viii) the creation of any capitalized interest or debt service reserve funds, including the size and funding of such funds, and (ix) 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 (the “Parameters,” as further described herein); and

WHEREAS, the Governmental Unit will approve the specific terms of the sale of the Loan in the Sale Certificate; 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 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):

“Act” means the general laws of the State, including Sections 3-31-1 through 3-31-12, NMSA 1978, as amended, Sections 6-14-8 through 6-14-12, 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 the Pledged Revenues for any one Fiscal Year.

“Authorized Officers” means the Mayor, City Manager, City Clerk, and City Finance Director of the Governmental Unit.

“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 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 provides for the financing of the 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.

“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.

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

“Ordinance” means this Ordinance as adopted by the Governing Body on June 6, 2024, 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 derived from (i) the one-fourth of one percent (1/4%) increment of municipal gross receipts tax imposed on all persons engaging in business in the City by City Ordinance No. 620-81, adopted _____, 1981, with an effective date of January 1 1982, which tax equals, subject to the exemptions specified in Section 7-19D-11 NMSA 1978, one-fourth of one percent (1/4%) of the gross receipts of all persons engaging in business in the City for the month in which the tax is distributed to the City and (ii) the distribution to the City made pursuant to Section 7-1-6.46 NMSA 1978, as that distribution relates to the one-fourth of one percent (1/4%) increment of municipal gross receipts tax imposed on all persons engaging in

business in the City by Ordinance No. 620-81, which revenues are reduced pursuant to the deductions under Sections 7-9-92 and 7-9-93 NMSA 1978; provided that the City intends that Section 3-31-6(C) NMSA 1978 applies expressly to the amount of revenues pledged pursuant to this Ordinance (the City is not pledging and the term “Pledged Revenues” does not include the state-shared gross receipts tax or any other local option gross receipts tax income received by the City).

“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 disbursement to the Governmental Unit for payment of the costs of the Project.

“Project” means acquiring, constructing, installing, and improving energy efficiency projects associated with City facilities and paying Expenses related to issuance of the Series 2024 Bonds, all within the Governmental Unit, as described in the Term Sheet.

“Sale Certificate” means one or more certificates executed by the Mayor, Manager or Finance Director dated on or before the date of delivery of the Loan, setting forth the following final terms of the Loan: (i) the interest and principal payment dates; (ii) the principal amounts, denominations and maturity amortization; (iii) the sale prices; (iv) the interest rate or rates; (v) the interest payment periods; (vi) the redemption and tender provisions; (vii) the creation of any capitalized interest fund or a debt service reserve account, including the size and funding of such fund(s); (viii) the amount of underwriting discount, if any; and (ix) the final terms of agreements, if any, with agents or service providers required for the purchase, sale, issuance and delivery of the Loan, all subject to the parameters and conditions contained in this Ordinance; provided that in no event shall the Sale Certificate specify a net effective interest rate on the Loan in excess of the statutory maximum of twelve percent (12%) per annum.

“State” means the State of New Mexico.

“Term Sheet” means Exhibit “A” to the 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 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 Project, the Loan Agreement, and the Intercept Agreement. The Project and the method of financing the Project through execution and delivery of the Loan Agreement and the Intercept Agreement are hereby authorized and ordered. The 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 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 Project from all sources other than the Loan are not sufficient to defray the cost of the 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 Project by the execution and delivery of the Loan Agreement.

E. The 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 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 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 be less than 12% per annum, the maximum rate permitted by State law as specified in the Sale Certificate.

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

A. Authorization. This Ordinance has been adopted by the affirmative vote of a three-fourths 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 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 a special, limited obligation of the Governmental Unit to pay a principal amount of not to exceed \$5,000,000, 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 Project, (ii) fund the Loan Agreement Reserve Account and (iii) pay the Expenses. The terms of the Loan shall be approved in the Sale Certificate. The Governmental Unit shall use the proceeds of the Loan to finance the Project. The final maturity of the Loan shall not be greater than twenty years.

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 an aggregate principal amount of not to exceed \$5,000,000, 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.

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 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 the deposit of the proceeds of the Loan Agreement in the Program Account and Loan Agreement Reserve Account.

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

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

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

B. Completion of the Project. Upon the Completion Date, the Governmental Unit shall execute and send to the Finance Authority a certificate stating that payment for the 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 if the amount in the Finance Authority Debt Service Account 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 account 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 constitutes 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 agreements 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 the Supplemental Public Securities Act, Section 6-14-8 et seq., NMSA 1978, the Mayor and Manager are each hereby delegated authority to execute the Sale Certificate and to determine any or all of the final terms of the Loan, subject to the parameters and conditions contained in this Ordinance. The Mayor or Manager shall present the Sale Certificate 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 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 August __, 2024. 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 NOT TO EXCEED \$5,000,000, TOGETHER WITH INTEREST THEREON, FOR THE PURPOSE OF FINANCING (1) ACQUIRING, CONSTRUCTING AND IMPROVING ENERGY EFFICIENCY PROJECTS ASSOCIATED WITH CITY FACILITIES, (2) FUNDING A LOAN AGREEMENT RESERVE ACCOUNT, AND (3) PAYING COSTS OF ISSUANCE OF THE LOAN; APPROVING THE DELEGATION OF AUTHORITY TO MAKE CERTAIN DETERMINATIONS REGARDING THE LOAN PURSUANT TO THE SUPPLEMENTAL PUBLIC SECURITIES ACT; PROVIDING FOR THE PAYMENT OF THE BONDS FROM THE REVENUES OF THE 1/4 OF ONE PERCENT (0.25%) INCREMENT OF MUNICIPAL GROSS RECEIPTS TAX IMPOSED ON ALL PERSONS ENGAGING IN BUSINESS IN THE CITY PURSUANT TO SECTION 7-19D-9 NMSA 1978 AND CITY ORDINANCE NO. 620-81 ADOPTED _____, 1981 ("MUNICIPAL GROSS RECEIPTS TAX"); PROVIDING FOR THE DISTRIBUTIONS OF THE REVENUES OF THE MUNICIPAL 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; 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 ____ DAY OF AUGUST, 2024.

CITY OF ALAMOGORDO, NEW MEXICO,
A NEW MEXICO MUNICIPAL CORPORATION

Susan L. Payne, Mayor

SEAL

ATTEST:

Rachel Hughs, City Clerk

APPROVED AS TO FORM:

Ashley Smith, City Attorney

City of Alamogordo Energy Savings Project

Certified Scopes and Savings Presentation

June 25, 2024

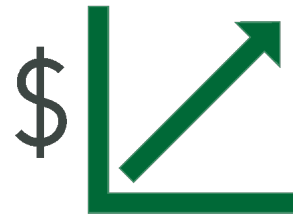
Project Background

ALAMOGORDO PUBLIC LIBRARY

Objectives



Improve comfort levels in City buildings and reduce the amount of time spent by City staff addressing cold/hot calls.



Mitigate escalating utility costs.



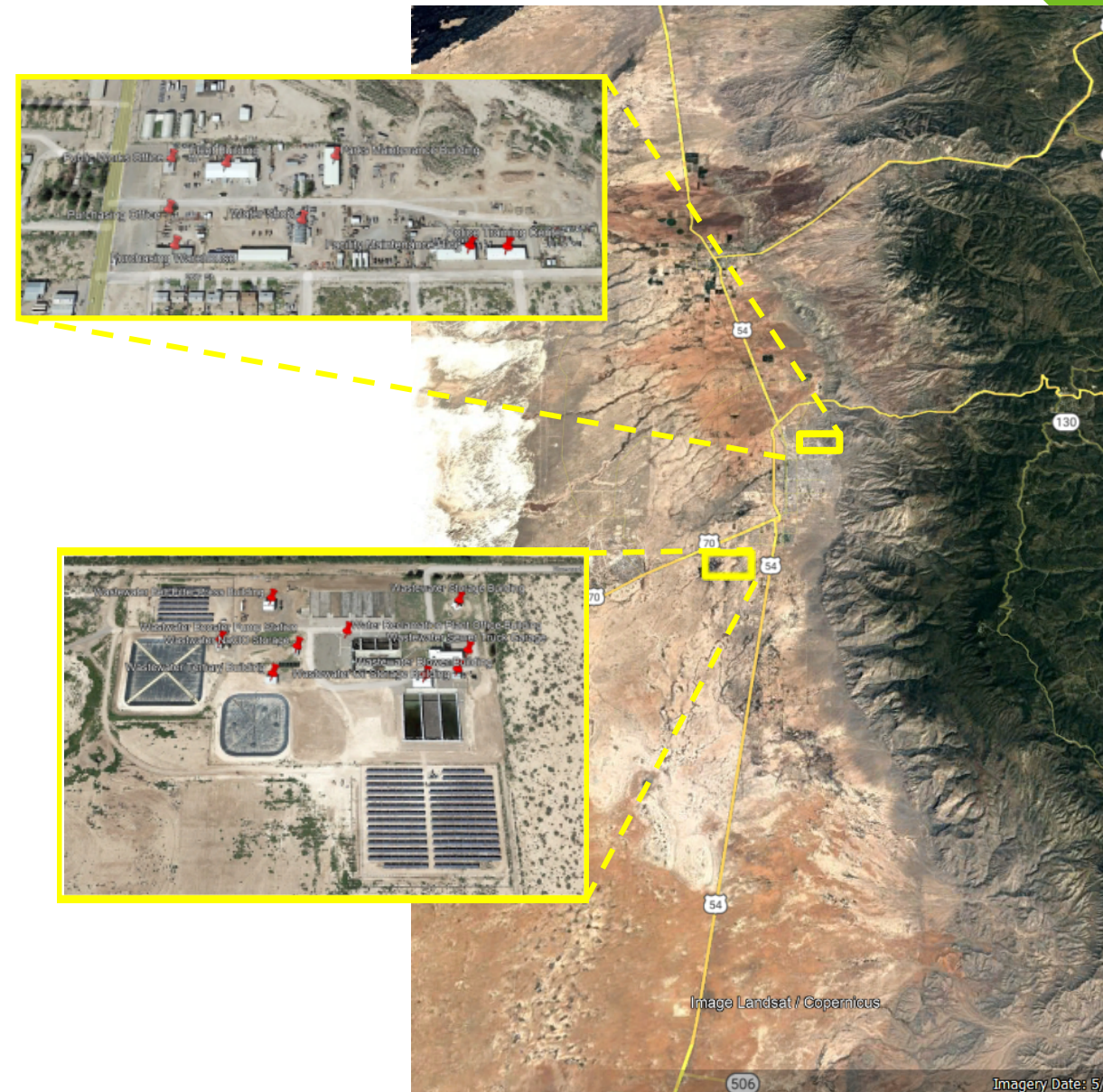
Improve amenities for staff and constituents.

112 sites included in audit

373,565 ft² of building area audited

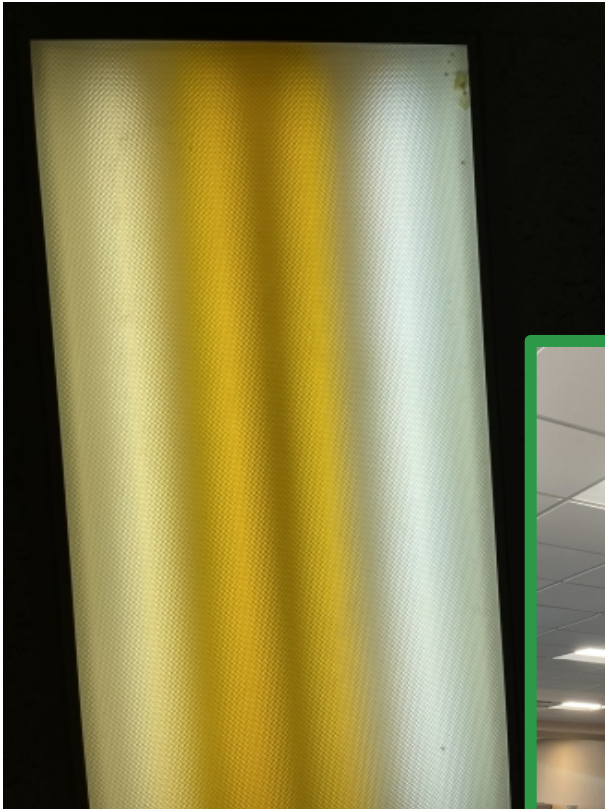
167 utility meters evaluated

213 cost/benefit analyses performed



Project Scope

LED Lighting

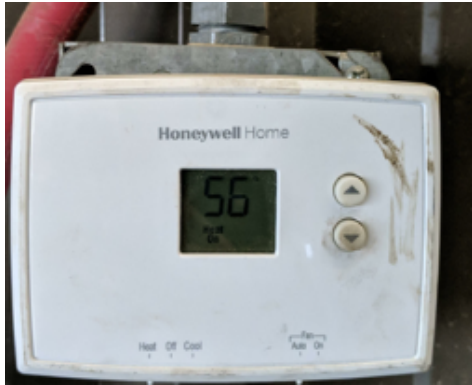


Police Department



- Replacing, relamping, and retrofitting **1,300+ fixtures** at 19 sites
- High-End Trim (Occupied), Dimming, and Daylight Harvesting

HVAC Controls



Fleet Building



Senior Center

- Replacing **123 thermostats** at 26 sites
- This system allows for
 - Scheduling
 - Remote monitoring
 - Programmable dead-band

High Efficiency, Low Voltage Transformers



Fire Station 5

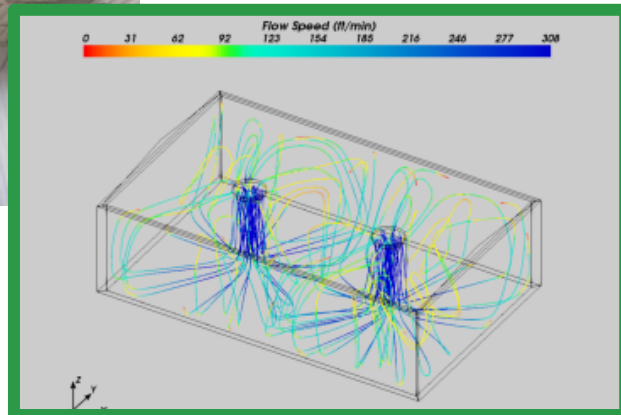
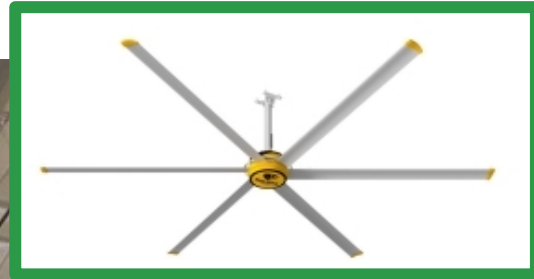


- Replacing **19 transformers** totaling 825 kVA.
- Modern high-efficiency transformers that meeting current DOE regulations and improve energy system resiliency.

Air Destratification

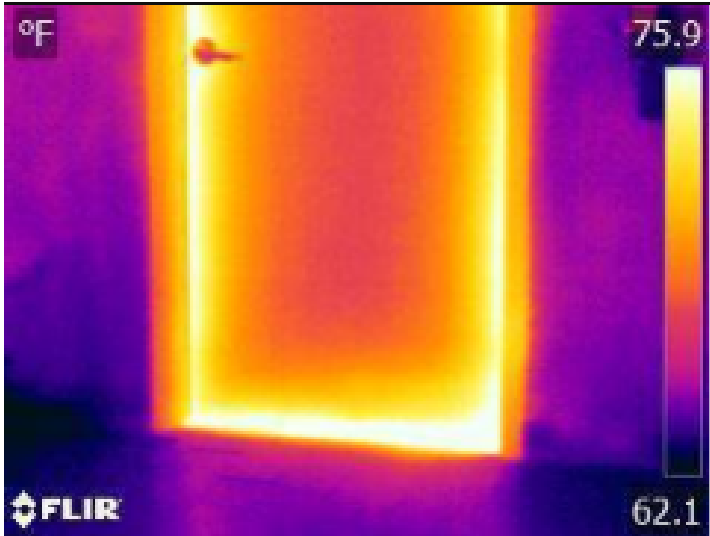


Family Rec Center

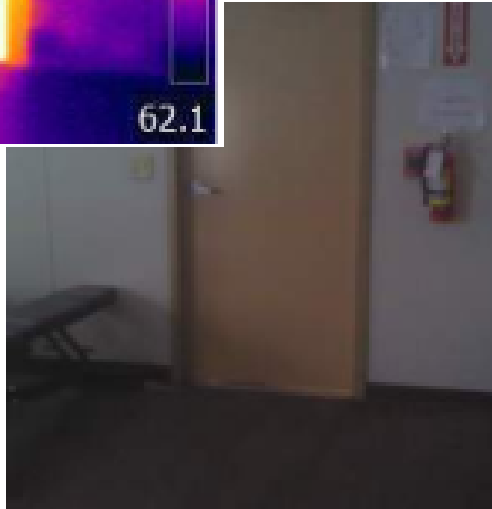


- Install **2 Destratification Fans** at the Family Recreation Center
- Improve air flow for more efficient heating/cooling
 - 100% fan speed can cause a person to feel up to 12 degrees colder
 - Air temperature can raise by up to 10 degrees on a 20-ft ceiling
 - Reduce setpoint in winter, raise it in summer

Building Weatherization

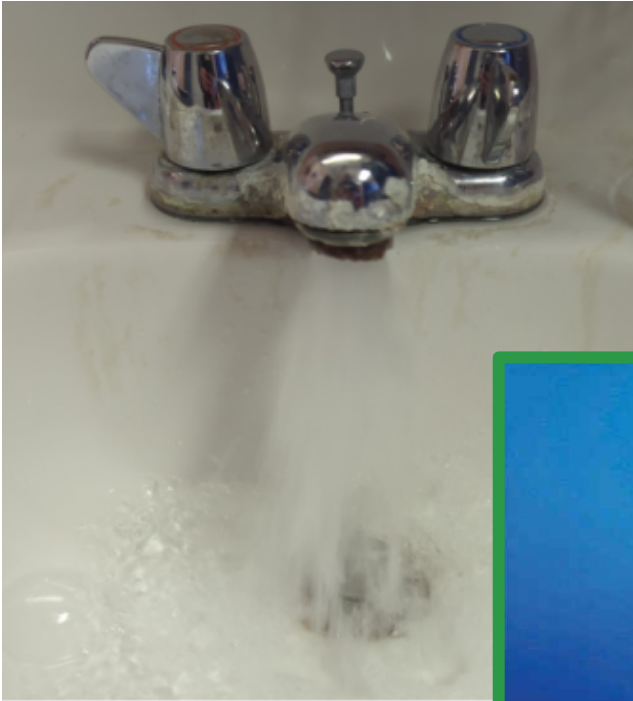


Senior Center –
Exercise Room



- **Remediate ~47.3 ft²** of wall cracks and gaps around window and door frames and vents at 19 facilities.
- Install/replace window seals, door sweeps, and astragals
- Seal gaps around outlets, lights, water connections, etc.

Water Conservation



Fire Station 7



- Reduce water consumption for **8 sites** in anticipation of rate increase.
 - Component replacements, system tuning, toilet and sink retrofits.
- **45,000 gallons** of water saved annually.

Renewable Energy – Solar PV



Prather Well

Location	Size of Array (kW)
Fire Station 1	24
Fire Station 5	27
Fire Station 6	11
Fleet Building	19
Police Training Center	10
Public Library	64.5
Purchasing Warehouse	22
Griggs Booster Pump	19
Hooser Booster Pump	12
Prather Well 1	77
TOTAL	285.5

Sports Lighting



Griggs Fields



- Replacing Sports Lights at **4 of Griggs Fields** with LED Technology

- Fields 1, 2, 3 and 7
- Includes Wireless and Remote Controls

Project Financials

Project Financials

	20-Year Term
Turn-Key Project Cost	\$4,586,309
Year 1 Total Annual Savings	\$123,351
Estimated Inflation Reduction Act Direct Payment	\$712,550
Grant Funding	\$76,060
Estimated Rebates	\$27,374
Annual Interest Rate	4.500%
Upfront Capital Contribution	\$1,750,000
Useful Life of Project	23 Years
Savings Over Useful Life	\$5,477,955

Timeline Going Forward

Implementation

- Construction Kick-Off Meeting
 - Within a few weeks of contract execution
- Pre-Construction Phase – 3 months
- Construction Phase – 12 months
- Performance Assurance Phase
 - Post-construction monitoring phase where actual project performance is measured against guaranteed values.



Gary Verlinden
Project Manager



Chris Conway
Superintendent



Tara Trafton
Account Executive

Thank you!

Tara Trafton

Account Executive

tara.trafton@yearoutenergy.com

YEAROUT
ENERGY

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 7/9/2024

Report Date: 07/03/2024

Report No: 12.

Submitted By: Josh Rardin

Subject: Discussion regarding recent break-ins. *(Josh Rardin, Commissioner, and Gary Trinkle, Citizen)*

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation:

Background: