Alamogordo City Commission

NOTICE OF MEETING

Regular Meeting Agenda

July 12, 2016 - 6:30 PM
City Hall, City Commission Chambers
1376 E. Ninth St.

Richard Boss .... Mayor
Al Hernandez .... Mayor Pro-Tem, District 5
Jason Baldwin .... District 1
Nadia Sikes ....District 2
Susan Payne ....District 3
Jenny Turnbull ....District 4
Erica Martin .... District 6

Maggie Paluch .... Acting City Manager
Stephen Thies ....City Attorney
Nancy Jacobs ....City Clerk

MISSION STATEMENT as Adopted by the City Commission on March 24, 1995.
The City of Alamogordo is a Municipal Corporation that exists solely for the purpose of providing the best possible services to our customers, the citizens of Alamogordo. We are committed to providing these services with honesty, integrity, compassion, fairness, and a commitment to excellence.

We are committed to the long-term financial stability and responsible growth of the City and all decisions will be driven by our commitment to provide the best services possible in a financially sound and responsible manner given the economic realities facing the City.

In accordance with Section 10-15-1.D, NMSA 1978 (2010 Cumulative Supplement), this agenda has been posted on the bulletin board located in the east/west lobby of the City Hall and in the glass case located outside a the north entrance of the City Hall, distributed to the appropriate news media, and posted on the City website: http://ci.alamogordo.nm.us within the required time frame. As a courtesy, the entire Agenda Packet has also been posted on the City of Alamogordo website: http://ci.alamogordo.nm.us

The Mayor and City Commission request that all cell phones be turned off or set to vibrate. Members of the audience are requested to step outside the Commission Chambers to respond to or to conduct a phone conversation. The Alamogordo Commission Chambers is wheelchair accessible. Other special assistance for disabled attendees must be requested 48 hours in advance by contacting the City Clerk's Office at 575-439-4205.

CALL TO ORDER & ROLL CALL

Announce the presence of a Quorum.

INVOCATION & PLEDGE OF ALLEGIANCE

APPROVAL OF AGENDA

PUBLIC COMMENT

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

CITY MANAGER'S REPORT

REMARKS AND INQUIRIES BY THE CITY COMMISSION

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

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

1. Approve the minutes for the June 28, 2016 Regular Meeting. *(Nancy Jacobs, City Clerk)*

2. Approve the statement related to the Executive Session held on June 28, 2016. *(Nancy Jacobs, City Clerk)*

3. Consider, and act upon, approval of a Grant Agreement for Project #13-1723, Bonito Lake Watershed Restoration and Improvements to roads, facilities, campgrounds and site. *(Veronica Ortega, Community Services Director)*

4. Consider, and act upon, approval of Change Order #4 to RMCI, Inc. related to Public Works Bid No. 2015-003 Water Reclamation Facility Upgrade Phase 2, in an amount not to exceed $34,571.80, excluding NMGRT. *(Nancy Beshaler, Project Manager)*

5. Consider, and act upon, final publication of Ordinance No. 1518 amending section 5-01-035 of the City Code concerning alcoholic beverage dispenser's licenses. *(Stephen Thies, City Attorney)* **(Roll Call Vote required)**

6. Consider, and act upon, the final publication of Ordinance No. 1519 amending certain sections of the Uniform Traffic Ordinance (UTO) regarding Off-Highway vehicles. *(Stephen Thies, City Attorney)* **(Roll Call Vote required)**

7. Consider, and act upon, the final publication of Ordinance No. 1520, authorizing the execution of a Loan Agreement and Intercept Agreement by and between the City of Alamogordo and the New Mexico Finance Authority (NMFA) for the principal amount of $2,710,000 for refinancing of the Joint Water & Sewer Bonds, Series 2005. *(Julianne Hall, Acting Finance Director)* **(Roll Call Vote required)**

8. Consider, and act upon, the final publication of Ordinance No. 1521, authorizing the execution of a Loan Agreement and Intercept Agreement by and between the City of Alamogordo and the New Mexico Finance Authority (NMFA) for the principal amount of $5,130,000 for refinancing of the NMFA State Shared Gross Receipts Tax Loan, Series 2008. *(Julianne Hall, Acting Finance Director)* **(Roll Call Vote required)**

9. Consider, and act upon, the final publication of Ordinance No. 1522, authorizing the execution of a Loan Agreement and Intercept Agreement by and between the City of Alamogordo and the New Mexico Finance Authority (NMFA) for the principal amount of $2,755,000 for refinancing of the NMFA Municipal Gross Receipts Tax Loan, Series 2008 *(Julianne Hall, Acting Finance Director)* **(Roll Call Vote required)**

ITEMS REMOVED FROM CONSENT AGENDA

NEW BUSINESS

10. Consider, and act upon, first publication of Ordinance No. 1523 adopting Article 26-04-130 Short-Term Rental of Dwelling Units Residentially Zoned Property. *(Stephen Thies, City Attorney)*

11. Consider, and act upon, first publication of Ordinance No. 1524 amending Section 17-08-010 to define Panhandling and adding new section 17-08-015 regulating panhandling activities within the City of Alamogordo. *(Stephen Thies, City Attorney)*

12. Consider, and act upon, first publication of Ordinance No. 1525 amending Section 18-01-030 of the Code of Ordinances concerning Municipal Court conditional discharge. *(Stephen Thies, City Attorney)*

13. Consider, and act upon, first publication of Ordinance No. 1526 amending Section 24-01-020 of the Code of Ordinances pertaining to reckless driving, by strengthening the penalty for such crime. *(Stephen Thies, City Attorney)*

14. Consider, and act upon, the transfer of quitclaim deed to Betty Dare Good Samaritan Center. *(Stephen Thies, City Attorney)*

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

PUBLIC COMMENT (Continued if needed)...

EXECUTIVE SESSION (Roll Call Vote Required)

16. Recess into Executive Session in compliance with Section 10-15-1(H), NMSA 1978 (as amended), to discuss Limited personnel issues (George Straface evaluation results & bonus). **(Roll Call Vote required)**

RECONVENE INTO OPEN SESSION

ADJOURNMENT

AGENDA REPORT
CITY OF ALAMOGORDO
CITY COMMISSION

Meeting Date: 07/12/2016 **Report Date:** 7/7/2016 **Report No:** 1.

Submitted By: Nancy Jacobs, City Clerk

Subject: Approve the minutes for the June 28, 2016 Regular Meeting. *(Nancy Jacobs, 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., COMMISSION CHAMBERS
JUNE 28, 2016

RICHARD BOSS, MAYOR
JASON BALDWIN, COMMISSIONER
NADIA SIKES, COMMISSIONER
JENNY TURNBULL, COMMISSIONER
SUSAN PAYNE, COMMISSIONER
AL HERNANDEZ, MAYOR PRO-TEM
ERICA MARTIN, COMMISSIONER
MAGGIE PALUCH, ACTING CITY MANAGER
STEPHEN THIES, CITY ATTORNEY
NANCY JACOBS, CITY CLERK

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

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

APPROVAL OF AGENDA

Mayor Boss withdrew Item no. 5 from the Agenda.

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

PRESENTATIONS

1. Presentation of awards of appreciation to the Family Recreation Center lifeguard crew for their valiant teamwork in a time of crisis. *(Maggie Paluch, Acting City Manager)*

Acting City Manager Paluch presented Mickeyla Wyckoff, Lifeguard from the Recreation Center with an award for her heroic lifesavings skills.

David Wheeler, Admin. Supervisor, and Paramedic Supervisor Mark Koscielski, who responded to the call from AMR presented Mickeyla Wyckoff with an Award of Excellence plaque. They also gave her a CPR Safe Pin that was only given to someone that saved a life.

Mayor Boss gave a proclamation to the Recreation Center lifeguard team for demonstrating their proficiency in a crisis situation.

2. Presentation to recognize Finance Director LeeAnn Nichols on the event of her retirement from the City of Alamogordo. *(Richard Boss, Mayor)*

Mayor Boss presented a plaque to Finance Director Nichols in appreciation of her service to the City and read some thoughts. Acting City Manager Paluch thanked her for building a strong Finance team.

PUBLIC COMMENT

None

CITY MANAGER'S REPORT

Acting City Manager Paluch made the following remarks:
1. She gave an update on the bowling alley demolition on South Florida. The building was deteriorating and had to be torn down; the property will be used for staging in the Florida realignment project.

2. She announced the City had been approved for a US Economic and Development Admin. Grant of $800,000 for Griggs Field Detention Basin project. There will be a press conference at Griggs Field on July 7th at 10 am.
3. She said the 4^{th} of July parade was on July 2^{nd} at 10 am and the Fireworks Extravaganza at the Space Museum was on the 4^{th} at 9:15 pm.

REMARKS AND INQUIRIES BY THE CITY COMMISSION

None.

CONSENT AGENDA

3. Approve the Minutes for the June 14, 2016 Regular Meeting. ***(Nancy Jacobs, City Clerk)***

4. Approve the statement related to the Executive Session held on June 23, 2016. ***(Nancy Jacobs, City Clerk)***

5. Consider, and act upon, award of PW Bid No. 2016-010 for $271,109.59 (excluding NMGRT) to Preslar's Dirtworks LLC related to the FEMA 4197 Debris Removal project. ***(Nancy Beshaler, Project Manager)*** **WITHDRAWN**

7. Consider, and act upon, the approval of Resolution No. 2016-24 requesting written approval from the Local Government Division of the Department of Finance & Administration, State of New Mexico for the revised budget figures computed as of June, 28 2016. ***(Kathy Gilsdorf, Budget Analyst)*** **(Roll Call Vote required)**

8. Consider, and act upon, Resolution No. 2016-27 requesting approval of HUD Form 52574 - PHA Board Resolution Approving Operating Budget for the Fiscal Year 2017 budget. ***(Evelyn Huff, Housing Authority Manager)*** **(Roll Call Vote required)**

Community Services Director Ortega asked to remove Item no. 6 from the Consent Calendar.

Mayor Pro-Tem Hernandez moved to approve items 3, 4, 7, and 8 of the consent calendar. Commissioner Baldwin seconded the motion. Roll call was taken for Items no. 7 & 8. Motion carried with a vote of 7-0-0.

ITEMS REMOVED FROM CONSENT AGENDA

6. Consider, and act upon, Resolution No. 2016-25 amending the fees for services at the Desert Lakes Golf Course. ***(Veronica Ortega, Community Services Director)*** **(Roll Call Vote required)**

Community Services Director Ortega asked the Commission to disregard the fiscal impact in the agenda item. The $23,121 was the estimated additional revenue and that amount would fluctuate based on usage at the Golf Course. She previously had it separated with a City share and the Golf Course share and that was not correct - the full $23,000 was City share.

Mayor Boss asked Community Services Director Ortega if it was the same ratio based on the activity at the Golf Course. She answered yes.
Mayor Pro-Tem Hernandez moved to approve Resolution No. 2016-25 amending the fees for services at the Desert Lakes Golf Course. Commissioner Sikes seconded the motion. Roll call vote was taken. Motion carried with a vote of 6-0-1. Commissioner Baldwin abstained from voting.

UNFINISHED BUSINESS

9. Consider, and act upon, the payment of an incentive compensation to previous Interim City Manager George Straface. ***(Steven Thies, City Attorney)***

City Attorney Thies said when they hired Dr. George Straface in October of 2015, one of the items placed in the contract was an incentive compensation provision. He explained Dr. Straface discussed a number of goals and objectives he sought to achieve during his tenure and based on the Commission's conclusion, if he reached those goals he would receive incentive compensation up to $15,000. If he did not serve a period of at least six months, that amount would be prorated based on the amount of months he served. He requested the Commission to consider based on a review whether Dr. George Straface met the goals and objectives, and whether he should be paid the $15,000 incentive compensation.

Mayor Pro-Tem Hernandez asked City Attorney Thies how many months Dr. Straface had worked. He was told eight months.

Paul Sanchez made the following comments:
Mr. Sanchez asked if Dr. Straface created a survey given to City employees, and had the Commission received the results of that survey. Mayor Boss stated they did not do the survey themselves but a Commissioner had made the survey and reported back to them. Mr. Sanchez said the contract was specific in stating Dr. Straface was supposed to have written the survey, have it approved by the Commission, and have it returned to them. Mr. Sanchez asked if Dr. Straface had not done the survey himself.

City Attorney Thies said Dr. Straface met with all the different departments and had each of the employees complete five questions, and if the employees were unable to meet face to face with him, they were given the opportunity to answer the questions. He compiled the results and distributed them to the directors and the Commission. City Attorney Thies said Dr. Straface had completed the survey and provided the results to the Commission prior to the March election. Mr. Sanchez asked City Clerk Jacobs to put the contract on the screen and stated the survey City Attorney Thies was discussing was done at the beginning of his tenure not at the end of his tenure.

Mayor Boss asked City Attorney Thies if the Commission had the authority to make a decision in consideration of the contract. He answered the contract didn't require Dr. Straface to comply with each and every one of the goals and objectives. If they thought he didn't comply with one or more of the goals they could reduce the $15,000.

Mr. Sanchez read from the contract on the screen stating the City Commission shall use the evaluation criteria set forth in attachment A to this agreement when evaluating whether Dr. Straface has achieved the above described goals. Further, Dr. Straface will provide the results of a city staff survey for use by the Commission in its evaluation. Straface shall present the language of the staff survey to the Commission for its review and approval prior to submitting the survey to city staff. Upon successful achievement of the above described goals, Straface will be entitled to receive the incentive payment of up to $15,000. Mr. Sanchez made his objection very clear and said he didn't care if they gave Dr. Straface the entire $15,000 as he did an excellent job, however, the contract had requirements that had not been met.

Mayor Boss informed City Attorney Thies he and Mayor Pro-Tem Hernandez had not seen the survey and asked the rest of the Commission if they had seen it. Commissioners Baldwin, Sikes, and Turnbull said they had and Mayor Pro-Tem Hernandez stated he just didn't remember it. Commissioner Martin said the survey was done before the election. Mayor Boss stated the three newest elected officials had not seen it.

Commissioner Sikes moved to table acting upon the payment of a incentive compensation to previous Interim City Manager George Straface. Commissioner Turnbull seconded the motion. Motion carried with a vote of 5-1-0. Mayor Pro-Tem Hernandez voted nay.

NEW BUSINESS

10. Consider, and act upon, the award of the Family Fun Center Project to one of two bidding contractors evaluated by an Independent Design Consultant. ***(Stephen Thies, City Attorney)***

City Clerk Jacobs called the Independent Design Consultant Howard Ellman of Dynamic Designs in order for the commissioners to ask questions. While waiting to connect with Mr. Ellman, Commissioner Sikes asked for someone to explain to the audience why the Commission had to have an outside opinion for the two bids. Mayor Boss explained they were going nowhere with this project and he requested they find a qualified architect because he was not happy with the drawings or estimated cost of the project, and he was told city employees did not want to do it.

Mr. Ellman spoke on the scoring of the project based on the design. Commissioner Martin asked him to give a description of his qualifications. He said his company had created the first entertainment center in the early 80’s and designed family entertainment centers all over the country. Commissioner Payne asked him if he was comfortable about his scoring on this project. He answered White Sands Construction by far corresponded to the RFP and Stardust Lanes had not, and the biggest element that affected Stardust Lanes’ score was the business financial claim. He stated he was very comfortable with his scoring on this project.

City Attorney Thies said the Commission had the scoring in front of them and requested they award the project. He gave the timeline of the project if approved – finalize the initial contract, further discussions to finalize the cost and design. He requested to appoint a sub-committee for the project that would include two or three commissioners and city staff.

Commissioner Turnbull asked City Attorney Thies what the roll of the commissioners would be on the sub-committee; she was concerned about them making decisions. He answered there were designs that needed to be tweaked and the commissioners would have some input in that, but the final product would be brought to the full Commission for their approval.

Mayor Pro-Tem Hernandez asked City Attorney Thies if the same the scoring used originally was used this time. The city attorney answered they did. Mayor Pro-Tem Hernandez asked if he knew what they had scored for the previous contractor. He said he did not but it was approximately 60 percent of the available points. Mayor Pro-Tem Hernandez wished they had scored the other contractor in the past to vindicate city staff for the excellent job they did. Commissioner Sikes agreed with Mayor Pro-Tem Hernandez.

Commissioner Baldwin voiced his concern with the commission being a part of this, but volunteered to be on the sub-committee. Commissioner Payne agreed he would be a great volunteer. Commissioner Baldwin didn’t think it was a practice they needed to get into. Mayor Boss didn’t understand why they had a problem and stated this was the city employee’s job. Commissioner Payne agreed with Mayor Boss that this was what city staff got paid for. She said she appreciated them, but they did not have an option.

Mayor Pro-Tem Hernandez gave staff the recognition they deserved and said they should be vindicated, because of the fact they scored it similar to what the contractor did. Mayor Boss didn’t agree with him and thought they needed to get more experience. He said this was no reflection on city staff. Mayor Pro-Tem Hernandez said they had done projects way over $6 million and they had done it without any other expertise other than staff. Mayor Boss stated it was not city staff’s fault; it was because they hired another architect with no experience in designing family fun centers.

Commissioner Payne stated a member of the audience a few months ago said perception was everything and she agreed. She said she was sorry staff thought they were thrown under the bus, but the truth was if things had been done properly to begin with they would not be in this position. She said they needed to move forward.

Mayor Boss asked if they were going to make a decision on selecting one of the two bidders. Mayor Pro-Tem Hernandez said absolutely. Commissioner Baldwin said they were there to award the project and wanted to move forward.

Paul Sanchez commented on the following:
Mr. Sanchez noted Commissioner Sikes was not present at the commission meeting when they decided to use a separate contractor for the scoring. He asked if Mr. Ellman was the same contractor that did the drawings. Mayor Boss answered no and confirmed with City Attorney Thies. Mr. Sanchez noted a significant difference in what Mr. Ellman said and what he scored.

Commissioner Turnbull clarified she was not in favor of a sub-committee for the project; she trusted staff to do it. Mayor Boss agreed with her.

Acting City Manager Paluch asked the commissioners what their involvement would be if they weren't on the sub-committee. Commissioner Martin said there are people in the community that would serve as an asset to the committee and suggested people fill out an application. The commissioners could vote on who they wanted.

Commissioner Baldwin told Acting City Manager Paluch to do whatever was normal for the process, and if there were big changes they would bring it back to the Commission for discussion. Commissioner Payne agreed with him.

Mayor Pro-Tem Hernandez moved to approve the award of the Family Fun Center Project to White Sands Construction, Inc. for the amount of $5,897,999.88. Commissioner Baldwin seconded the motion. Motion carried with a vote of 7-0-0.

City Attorney City Attorney Thies reminded the Commission this was the preliminary price based on value engineering and it could go up or down. Mayor Boss stated they understood. City Attorney Thies said the initial contract executed with White Sands Construction would contain the $5,897,999.88.

11. Consider, and act upon, a request from Mr. Tyler Johnson for refund of payment of a Utility Lien placed on 2305 Baylor Avenue. *(Stephen Thies, City Attorney)*

City Attorney Thies informed the Commission Mr. Johnson discovered there was a lien on 2305 Baylor Ave. when he was selling the property. He paid the lien and was now requesting a refund in the amount of $832.41. Mr. Johnson was not in the audience.

Commissioner Payne asked City Attorney Thies for clarification. He explained the lien was filed in the name of Housing and Urban Development and at the time when they made the lien, it showed in HUD's name. She asked if that was before Mr. Johnson owned the property and he answered that was his understanding. She asked if he was able to purchase the property with the lien still on it. City Attorney Thies said it was not unusual for title companies to call utility companies and ask if there were any unpaid bills. They deal with it at the closing of the property but in this case they didn't check with City Hall. Commissioner Payne asked if it was filed in a timely manner. He answered the process had gotten a lot better and added the lien was filed a couple of months after Mr. Johnson purchased the property.

Commissioner Martin asked how Mr. Johnson was able to have service for a year and a half with the outstanding balance on the property. City Attorney Thies answered state law prohibits them from terminating someone's service when they didn't accrue the charge; their recourse was to file a lien.

Paul Sanchez commented on the following:
Mr. Sanchez asked why the Utility Department didn't tell the property owner there was a lien as the current owner. He said there have been many water issues and asked how many thousands of dollars were waived because whatever department was not keeping a timely check on them.

Commissioner Payne asked City Attorney Thies to elaborate when he said you could get your water turned back on even if there was a lien on the home. City Attorney Thies explained state law prohibits them from withholding services for someone that requests an account and did not owe the City money; a third party could not be held responsible.

Commissioner Turnbull moved to approve a request from Mr. Tyler Johnson for refund of payment of a Utility Lien placed on 2305 Baylor Avenue. Commissioner Sikes seconded the motion. Motion carried with a vote of 7 -0-0.

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

Mayor Boss read the openings and reappointed Manuel Gonzales, Jr. to the Airport Advisory Board. No one was opposed.

PUBLIC COMMENT

None

EXECUTIVE SESSION (Roll Call Vote Required)

13. Adjourn into Executive Session in compliance with Section 10-15-1(H), NMSA 1978 (as amended), to discuss: purchase, acquisition or disposal of real property (Scenic Drive Extension), threatened or pending litigation (Wendy Irby vs. City of Alamogordo), and limited personnel matters (City Manager applicants preliminary selection). (Roll Call Vote required)

Mayor Pro-Tem Hernandez moved to adjourn into Executive Session in compliance with Section 10-15-1(H), NMSA 1978 (as amended), to discuss: purchase, acquisition or disposal of real property (Scenic Drive Extension), threatened or pending litigation (Wendy Irby vs. City of Alamogordo), and limited personnel matters (City Manager applicants preliminary selection) at 7:53 p.m. Commissioner Baldwin seconded the motion. Roll call vote was taken. Motion carried with a vote of 7-0-0.

ADJOURNMENT

Mayor Richard Boss

ATTEST:

City Clerk Nancy E. Jacobs

(Prepared by Rachel Hughs, Deputy City Clerk)
Approved at the Regular Meeting held on July 12, 2016.

AGENDA REPORT
CITY OF ALAMOGORDO
CITY COMMISSION

Meeting Date: 07/12/2016 **Report Date:** 7/5/2016 **Report No:** 2.

Submitted By: Nancy Jacobs, City Clerk

Subject: Approve the statement related to the Executive Session held on June 28, 2016. *(Nancy Jacobs, City Clerk)*

Fiscal Impact:
Amount Budgeted:
Fund:

Additional Fiscal Impact:

Recommendation: Approve the following statements authorizing them to be included in the minutes of July 12, 2016: "The Governing Body of the City of Alamogordo, New Mexico, hereby states that on June 28, 2016, a Closed Executive Session was held and matters discussed in the closed meeting were limited only to: purchase, acquisition or disposal of real property (Scenic Drive Extension), threatened or pending litigation (Wendy Irby vs. City of Alamogordo), and limited personnel matters (City Manager applicants preliminary selection).

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

AGENDA REPORT
CITY OF ALAMOGORDO
CITY COMMISSION

Meeting Date: 07/12/2016 **Report Date:** 7/7/2016 **Report No:** 3.

Submitted By: Veronica Ortega,
Community Services Director

Subject: Consider, and act upon, approval of a Grant Agreement for Project #13-1723, Bonito Lake Watershed Restoration and Improvements to roads, facilities, campgrounds and site. *(Veronica Ortega, Community Services Director)*

Fiscal Impact: $74,000.00
Amount Budgeted: $74,000.00
Fund: 088/Bonito Lake-Other Grants

Additional Fiscal Impact:

Recommendation: Approve the Grant Agreement

Background: This is the grant agreement between the City of Alamogordo and the Department of Finance and Administration. City Commission recently approved the MOU (Memorandum of Understanding) between the City of Alamogordo and Lincoln County to have these funds reverted back to the City.

Funds will be used to hire a consultant who will produce a timeline for the re-opening of Bonito Lake Campground. These funds must be used within a one-year time period or they will revert back to DFA. Bob Johnson, Contract Coordinator will facilitate the consultant aspect.

STATE OF NEW MEXICO
DEPARTMENT OF FINANCE AND ADMINISTRATION
FUND 89200 CAPITAL APPROPRIATION PROJECT

THIS AGREEMENT is made and entered into as of this____day of__________, 20___, by and between the Department of Finance and Administration, State of New Mexico, acting through the Local Government Division, Bataan Memorial Building, Room 202, Santa Fe, New Mexico, 87501, hereinafter called the "Department" or abbreviation such as "LGD", and the **City of Alamogordo**, hereinafter called the "Grantee." This Agreement shall be effective as of the date it is executed by the Department.

RECITALS

WHEREAS, in the Laws of 2013, Chapter 226, Section 31, Para. 126 the Legislature made an appropriation to the Department, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

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

WHEREAS, pursuant to Sections 9-6-5 and 9-6-5.1 NMSA 1978, the Secretary of the Department of Finance and Administration has the power and the authority to (i) maintain long-range estimates and plans for capital projects and develop standards for measuring the need for, and utility of, proposed projects; (ii) contract for, receive and utilize any grants or other financial assistance made available by the United States government or by any other source, public or private; (iii) provide planning and funding assistance to units of local government, council of government organizations, Indian tribal governments situated within New Mexico, and to nonprofit entities having for their purpose local, regional or community betterment; (iv) incident to any such programs, may enter into contracts and agreements with such units of local government, council of government organizations, Indian tribal governments, nonprofit entities and the federal government; and (v) delegate such authority to the Local Government Division as being necessary and appropriate to such delegation;

AGREEMENT

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

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

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

13-1723 $74,000.00 Appropriation Reversion Date: 30-JUN-17
Laws of 2013, Chapter 226, Section 31, Paragraph 126 seventy-four thousand dollars ($74,000) to plan, design, renovate, construct and equip watershed restoration and improvements to roads, facilities, campgrounds and the site for the Bonito Lake watershed in Lincoln county;.

The Grantee's total reimbursements shall not exceed the appropriation amount Seventy Four Thousand Dollars (**$74,000.00**) (the "Appropriation Amount") minus the allocation for Art in Public Places ("AIPP amount")[1], if applicable, Zero Dollars (**$0.00**), which equals Two Hundred Fifty Thousand Dollars (**$74,000.00**) (the "Adjusted Appropriation Amount").

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

This project is referred to throughout the remainder of this Agreement as the “Project”; the information contained in Article I(A) is referred to collectively throughout the remainder of this Agreement as the “Project Description”. The Grantee shall reference the Project's number in all correspondence with and submissions to the Department concerning the Project, including, but not limited to, Requests for Payment and reports.

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

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

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

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

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

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

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

[1] The AIPP amount is "an amount of money equal to one percent or two hundred thousand dollars ($200,000), whichever is less, of the amount of money appropriated for new construction or any major renovation exceeding one hundred thousand dollars ($100,000)." Section 13-4A-4 NMSA 1978.
[2] "Reimburse" as used throughout this Agreement includes Department payments to the Grantee for invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee.

a. must be approved by the applicable oversight entity (if any) in accordance with law; or

b. if no oversight entity is required to approve of the transaction, the Department must approve of the transaction as complying with law.

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

(vi) The Grantee's submittal of documentation of all Third Party Obligations and amendments thereto (including terminations) to the Department and the Department's issuance and the Grantee's receiving of a Notice of Obligation for a particular amount in accordance with the terms of this Agreement as follows:

a. The Grantee shall submit to the Department one copy of all Third Party Obligations and amendments thereto (including terminations) as soon as possible after execution by the Third Party but prior to execution by the Grantee.

b. Grantee acknowledges and agrees that if it chooses to enter into a Third Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such expenditures.

c. The Department may, in its absolute discretion, issue to Grantee a Notice of Obligation for the particular amount of that Third Party Obligation that only obligates the Department to reimburse Grantee's expenditures made on or before the Reversion Date or an Early Termination Date. The current Notice of Obligation form is attached to this Agreement as Exhibit 3.

d. The date the Department sends, by mail or email, the Notice of Obligation is the date that the Department's Notice of Obligation is effective. After that date, the Grantee is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third Party Obligation and request the Third Party begin work.

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

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

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

ARTICLE III. NOTICE PROVISIONS AND GRANTEE AND DEPARTMENT DESIGNATED REPRESENTATIVES

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

The Grantee and the Department hereby designate the persons listed below as their official representative concerning all matters related to this Agreement:

Grantee: City of Alamogordo
Name: Cynde Sagenkahn
Title: Grants Coordinator
Address: 1376 E. Ninth St., Alamogordo, NM, 88310
Email: csagenkahn@ci.alamogordo.nm.us
Telephone: 575-439-4245
FAX: 575-439-4103

Department: DFA/Local Government Division
Name: Ms. Karen Ramage
Title: Project Manager
Address: Bataan Memorial Bldg Rm 202, Santa Fe, New Mexico, 87501
Email: karen.ramage@state.nm.us
Telephone: 505-827-4963
FAX: 505-824-4948

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

ARTICLE IV. REVERSION DATE, TERM, EARLY TERMINATION

A. As referenced in Article I(A), the applicable law establishes a date by which Project funds must be expended by Grantee, which is referred to throughout the remainder of this Agreement as the "Reversion Date." Upon being duly executed by both parties, this Agreement shall be effective as of the date of execution by the Department. It shall terminate on **June 30, 2017**, the Reversion Date, unless Terminated Before Reversion Date ("Early Termination") pursuant to Article V herein.

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

ARTICLE V. EARLY TERMINATION

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

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

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

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

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

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

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

ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS

A. The Department may choose, in its absolute discretion, to direct the Grantee to suspend entering into new and further obligations.

(i) The Grantee shall immediately suspend entering into new or further written obligations with third parties upon the date the Grantee receives written notice given by the Department; and

(ii) The Department is, upon the date the Grantee receives written notice given by the Department, suspending issuance of any new or further Notice of Obligation under this Agreement; and

(iii) The Department may direct the Grantee to implement a corrective action plan in accordance with Article VI(D) herein.

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

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

D. Corrective Action Plan in the Event of Suspension

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

ARTICLE VII. AMENDMENT

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

ARTICLE VIII. REPORTS

A. Paper Periodic Reports

In order that the Department may adequately monitor Project activity, the Grantee shall submit to the Department Paper Periodic Reports for the Project. Paper Periodic Reports shall be submitted on a form prescribed by the Department. The Paper Periodic and Paper Final Report form are attached hereto as Exhibit 1. The Department shall provide the Grantee with a minimum of thirty (30) days' advance written notice of any change to the Periodic Report format or content.

The Paper Periodic Report shall be due monthly on the last day of each month, beginning with the first full month following execution of this Agreement by the Department and ending upon the submission of a Paper Final Report for the Project. The Department may, in its discretion, change the reporting period from time to time by giving Grantee a minimum of thirty (30) days' advance, written notice of any change to the reporting period; provided, however, that in no event shall the reporting period be less than one month.

B. Paper Final Report

The Grantee shall submit to the Department a Final Report for the Project. The Final Report shall be submitted on a form provided by the Department and contain such information as the Department may require. The Periodic and Final Report form is attached hereto as Exhibit 1. The Department shall provide Grantee with a minimum of thirty (30) days' advance, written notice of any change to the Final Report format or content. The Paper Final Report must be submitted within twenty (20) days after the Project's Reversion Date or within twenty (20) days of the date of Early Termination, which ever first occurs.

C. Paperless Reporting

In addition to the paper reports described in subparagraphs A and B of this Article, the Grantee shall report periodic and final Project activity by entering such Project information as the Department may require directly into a database maintained by the Department. The Department shall give Grantee a minimum of thirty (30) days' advance written notice of any changes to the information the Grantee is required to report on a paperless basis. The Paperless Report shall be due monthly on the last day of each month, beginning with the first full month following execution of this Agreement by the Department and ending upon the submission of a Final Report for the Project. The Paperless Final Report along with a Paper Final Report must be submitted within twenty (20) days after the Project's Reversion Date or within twenty (20) days of the date of Early Termination, which ever first occurs.

D. Requests for Additional Information/Project Inspection

During the term of this Agreement and during the period of time during which the Grantee must maintain records pursuant to Article VIII, the Department may (i) request such additional information regarding the Project as it deems necessary and (ii) conduct, at reasonable times and upon reasonable notice, onsite inspections of the Project. Grantee shall respond to such requests for additional information within a reasonable period of time, as established by the Department. Requests made pursuant to this subparagraph D are in addition to and not in lieu of the periodic and final reporting described in subparagraphs A through C of this article VIII.

ARTICLE IX. REQUEST FOR PAYMENT PROCEDURES AND DEADLINES

A. The Grantee shall request payment by submitting a Request for Payment, in the form attached hereto as Exhibit 2. Payment requests are subject to the following procedures:

(i) The Grantee must submit one original and one copy of each Request for Payment; and

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

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

B. **Deadlines**

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

(i) Twenty (20) days from the end of the calendar quarter in which the expenditure was incurred or liability of the Grantee was incurred as evidenced by an unpaid invoice received by the Grantee from a third party contractor or vendor, if total unreimbursed expenditures or liabilities at calendar quarter end exceed $25,000; or
(ii) July 15 of each year for all unreimbursed expenditures incurred during the previous fiscal year; or
(iii) Twenty (20) days from date of Early Termination; or
(iv) Twenty (20) days from the Reversion Date.

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

ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS; REPRESENTATIONS AND WARRANTIES

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

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

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

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

(iv) The Grantee shall not at any time convert any property acquired or developed with the Project’s funds to uses other than those specified in the Project Description without the Department's express, advance written approval.

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

B. The Grantee hereby represents and warrants the following:

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

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

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

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

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

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

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

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

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

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

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

ARTICLE XII. IMPROPERLY REIMBURSED FUNDS

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

ARTICLE XIII. LIABILITY

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

ARTICLE XIV. SCOPE OF AGREEMENT

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

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

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

“The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, the **City of Alamogordo** may immediately terminate this Agreement by giving Contractor written notice of such termination. The **City of Alamogordo**'s decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. Contractor hereby waives any rights to assert an impairment of contract claim against the **City of Alamogordo**, the Department of Finance and Administration, Local Government Division (DFA/LGD), or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the **City of Alamogordo** or DFA/LGD.”

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

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

“This contract is funded in whole or in part by funds made available under Department of Finance and Administration, Local Government Division (DFA/LGD) Grant Agreement. Should DFA/LGD early terminate the grant agreement, the **City of Alamogordo** may early terminate this contract by providing Contractor written notice of such termination. In the event of termination pursuant to this paragraph, the **City of Alamogordo**'s only liability shall be to pay Contractor for acceptable goods delivered and services rendered before the termination date."

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

ARTICLE XVII. COMPLIANCE WITH UNIFORM FUNDING CRITERIA

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

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

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

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

ARTICLE XVIII. SEVERANCE TAX BOND PROJECT AND GENERAL OBLIGATION BOND PROJECT CLAUSES

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

B. Grantee acknowledges and agrees that this Agreement is subject to the BOF's Bond Project Disbursements rule, 2.61.6 NMAC, as such may be amended or re-codified.

[THIS SPACE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, the Grantee and the Division do hearby execute this Grant Agreement as of the date of the first above written.

THIS GRANT AGREEMENT has been approved by:

City of Alamogordo

____ ______________
Signature of Official with Authority to Bind Grantee Date

____
(Type or Print Name)

STATE OF NEW MEXICO)
)ss
COUNTY OF _____________)

The foregoing instrument was acknowledged before me this _____ day of _____________, 20_____,
by ________________________

____
seal Notary Public

My Commission Expires: __________________

DEPARTMENT OF FINANCE AND ADMINISTRATION
LOCAL GOVERNMENT DIVISION

By: ____ ______________
Rick Lopez, Director Date

STATE OF NEW MEXICO)
)ss
COUNTY OF SANTA FE)

The foregoing instrument was acknowledged before me this _____ day of _____________, 20_____,
by ________________________

____
seal Notary Public

My Commission Expires: __________________

STATE OF NEW MEXICO
CAPITAL GRANT PROJECT
PAPER PERIODIC/FINAL REPORT
EXHIBIT 1

☐ **PERIODIC REPORT** ☐ **FINAL REPORT**

Grantee: ______________________________

Project Number: ______________________________ **Reporting Period:** ____________________

1. Please provide a detailed status of project referenced above.

A. Third Party Obligations
Purchase Order or Contract # ______________________________

Name of Contractor or Vendor: ______________________________

Amount of Third Party Obligation: __________________________

Date Executed: ____

Termination Date: ____

B. Project Phase
Bonds Sold ☐ Plan/Design ☐ Bid Documents ☐ Construction ☐
(provide anticipated date of commencement and completion for each phase)

2. Grant Amount adjusted for AIPP if applicable: ____________________

Total Amount of all Notices of Obligation to Reimburse: ________________

Total Grant Amount Expended by Grantee to Date: _________________________

Grant Balance as of this Date: ____

Amount of Other Unexpended Funding Sources: ______________________

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

☐ **FINAL REPORT**
I hereby certify that the aforementioned Capital Grant Project funds have been completed and funds were expended in accordance with all requirements of the Grant Agreement, and in compliance with all other applicable state/regulatory requirements.

__________________________ __________________________
Grantee Representative/Title Date

STATE OF NEW MEXICO
CAPITAL GRANT PROJECT
Request for Payment Form
Exhibit 2

I. Grantee Information

(Make sure information is complete & accurate)

A. Grantee: ____________________
B. Address: ____________________

Complete Mailing, including Suite, if applicable

____
City State Zip

C. Phone No: ____________________
D. Grant No: ____________________
E. Project Title: ____________________
F. Grant Expiration Date: ____________________

II. Payment Computation

A. Grant Amount: ____________________
B. AIPP Amount (If Applicable) ____________________
C. Funds Requested to Date: ____________________
D. Amount Requested this Payment: ____________________
E. Grant Balance: $0.00
F. ☐ GF ☐ GOB ☐ STB (attach wire if 1st draw)
G. Payment Request No. ____________________

III. Fiscal Year Expenditure Period Ending:

(check one)

(Jan-Jun) ☐
(Jul-Dec) ☐

Fiscal Year

IV. Certification:

Under penalty of law, I hereby certify to the best of my knowledge and belief, the above information is correct; expenditures are properly documented, and are valid expenditures or actual receipts; and that the grant activity is in full compliance with Article IX, Sec. 14 of the New Mexico Constitution known as the "anti donation" clause.

____
Grantee Fiscal Officer
or Fiscal Agent (if applicable)

____
Printed Name
Date: ____________________

SWORN TO AND SUBSCRIBED
before me on this_______day
of_____________, 20_____

Notary Public ____________________
My Commission expires ___________

____
Grantee Representative

____
Printed Name
Date: ____________________

SWORN TO AND SUBSCRIBED
before me on this_______day
of_____________, 20_____

Notary Public ____________________
My Commission expires ___________

(Department Use Only)

Vendor Code: ____________________ **Fund No.:** ____________________
Loc No.: ____________________

Division Fiscal Officer Date	Division Project Manager Date
I certify that the Grantee financial and vendor file information agree with the above submitted information	I certify that the Grantee records and related appropriation laws agree with the above submitted information.

STATE OF NEW MEXICO
CAPITAL GRANT PROJECT
NOTICE OF OBLIGATION TO REIMBURSE GRANTEE
EXHIBIT 3

DATE: ____________________________

TO: Granteee Representative: _____________________________

FROM: Department Representative: _____________________________

SUBJECT: Notice of Obligation to Reimburse Grantee
Project Number: 13-1723

As the designated representative of the Department for the Grant Agreement number 13-1723 entered into between Grantee and the Department, I certify that the Grantee has submitted to the department the following third party obligation executed in writing, by the third party's authorized representative:

Third Party Obligation (includes purchase orders and contract)#: ______________________
Vendor of Contractor: ____
Third party Obligation amount: ______________
Termination Date: ______________________________

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

Grant Amount adjusted for AIPP if applicable: ______________
The Amount of this notice of Obligation to Reimburse: ______________
The Total Amount of all Previously Issued Notices of Obligation: ______________
The Total Amount of all Notices of Obligation to Reimburse as of this Date: ______________

Department Representative: _____________________________

Title: _____________________________

Signature: _____________________________

Date: _____________________________

AGENDA REPORT
CITY OF ALAMOGORDO
CITY COMMISSION

Meeting Date: 07/12/2016 **Report Date:** 7/7/2016 **Report No:** 4.

Submitted By: Maggie Paluch, Assistant City Manager

Subject: Consider, and act upon, approval of Change Order #4 to RMCI, Inc. related to Public Works Bid No. 2015-003 Water Reclamation Facility Upgrade Phase 2, in an amount not to exceed $34,571.80, excluding NMGRT. *(Nancy Beshaler, Project Manager)*

Fiscal Impact: $37,337.54
Amount Budgeted: $38,060.65
Fund: 113-9399-990.67-73 (PW0809)

Additional Fiscal Impact:

Recommendation: Approve change order #4 to RMCI, Inc. related to Public Works Bid No. 2015-003 Water Reclamation Facility Upgrade Phase 2, in an amount not to exceed $34,571.80, excluding NMGRT.

Background: This project is the final phase of improvements to the Waste Water Treatment Plant. Change order 4 is the final close-out change order which accounts for quantity underruns and overruns and some modifications to the contract. There is a $50,671 cost savings due to quantity adjustments. Modifications to the contract cost $85,243.25 which results in a net increase to the contract of $34,571.80.

CONTRACT CHANGE ORDER
CHANGE ORDER NO. 4

Water Reclamation Facility Upgrade Phase 2 (PW0809)
Public Works Bid No. 2015-003

DATE: **July 12, 2016**

CONTRACTOR: RMCI, Inc.
6211 Chappell Road NE
Albuquerque, NM 87113

OWNER: City of Alamogordo
1376 E. Ninth Street
Alamogordo, NM 88310

THE FOLLOWING CHANGES ARE HEREBY MADE TO THE CONTRACT DOCUMENTS:

1. Adjust bid items for final quantities

Bid Item #	Item	$ Adjustment
3a	Chlorine Contact Chamber Bypass Allowance	-$15,000.00
4.10	Concrete Repair & Coatings (Sludge Beds)	$92,966.25
Alt. 1b	Concrete Repair & Interior Coating (Drain Lift Stn)	-$28,000.00
Alt 5	Concrete Repair and Coatings (Basins)	-$82,575.20
Allowance	Testing	-$18,062.50

Cost (Savings) = -$50,671.45

2. Proposal #20, Drain Lift Station Zebron Coatings. An alternative coating system was used for the Drain Lift Station, in lieu of the system specified in item Alt. 1b. The original allowance provided for structural reconstruction of the lift station if necessary. After inspection, the lift station was found to be in good structural condition so only surface coatings were needed.

   Cost = $13,588.00

3. Proposal #7.1, Add two stop gates. The plant operator requested two additional stop gates in the Filter Building. One gate is located in the influent trough to direct flows into the new filter and prevent debris accumulation in the trough in front of the future filter basins. The other gate is located in the effluent trough and will allow for diverting flows during maintenance operations.

   Cost = $13,019.00

4. Proposal #18, Tertiary Filter Lift Station Electric. Additional electrical connections were required to tie-in the existing tertiary filter lift station to the new panel in the Filter Building.

   Cost = $1,402.00

5. Proposal #19, Effluent Pipe Changes. The Filter Building effluent piping layout was modified to allow for separate discharges to the two Effluent Reservoirs, allowing for more flexibility in

managing effluent collection.

Cost = $7,292.50

6. Proposal #21, Replace Conductors. The conductors feeding the four filter control panels required larger wire sizes.

   Cost = $412.00

7. Proposal #22.1, Septage Receiving Station, Wash Water, Drain Line, Heat Trace.The wash water lines at the septage receiving facility were protected with heat tracing tape and insulation to prevent freezing.

   Cost = $3,519.00

8. Proposal #23, Add Filter Grating. Additional grating and supports were required around the new filter to allow better access for maintenance of the unit.

   Cost = $9,195.00

9. Proposal #24, Replacement Chlorine Pumps. The existing chlorine feed pumps were in need of repair and replacement. Two (2) each replacement pumps and repair kits were delivered to the plant operator.

   Cost = $3,263.55

10. Proposal #25, Bird Spikes on Basin Lights. Spikes were installed on the new basin lights to prevent damage to the units by bird droppings.

    Cost = $556.00

11. Proposal #27 (revised), Chlorine Programming. To automatically alternate pumps and automatically start back-up pump if chlorine level does not rise.

    Cost = $5,655.00

12. Proposal #29, Add two Exhaust Fans on the south wall of the Filter Building

    To mitigate increase in moisture and chlorine in the filter building – includes structural framing, coating of the framing, conduit & wiring, and 2 fans

    Cost = $27,341.20

TOTAL CHANGE ORDER COST = $34,571.80 + $2,765.74 tax = **$37,337.54**

CONTRACT CHANGE ORDER
CHANGE ORDER NO. 4

Water Reclamation Facility Upgrade Phase 2 (PW0809)
Public Works Bid No. 2015-003

REVISED CONTRACT AMOUNT

***excludes New Mexico Gross Receipts Tax**

1. Original Contract Amount $3,318,100.00*
2. Total Contract Amount Including Previously Approved Change Orders.. $3,358,528.64*
3. Amount of this Change Order (Increase) .... $ 34,571.80*
4. Total Revised Contract Amount, To Date.. $3,393,100.44*
5. Original Contract Substantial Completion Date..December 6, 2015
6. New Contract Substantial Completion Date Due to this Change Order........March 3, 2016

*without NMGRT

The work covered by this change order shall be performed under the same terms and conditions as that included in the original contract.

CONTRACT CHANGE ORDER
CHANGE ORDER NO. 4

Water Reclamation Facility Upgrade Phase 2 (PW0809)
Public Works Bid No. 2015-003

CHANGE ORDER ACCEPTED AND APPROVED:

BY: ______________________ June 29, 2016
Contractor Date

CHANGE ORDER RECOMMENDED:

BY: ______________________ 6-29-2016
Engineer Date

CHANGE ORDER APPROVED BY MAYOR:

BY: ______________________ ____________
Mayor Date

BY: ______________________ ____________
City Attorney Date

RMCI INC
GENERAL CONTRACTOR

BID SUMMARY

Project: Alamogordo Water Reclamation Facility Phase 2
Location: Alamogordo, NM
Architect: BHI
Bid Date: 25-Jun-16
RMCI Estimate: Zebron Coating for Existing Lift Station PR #20

QUANTITY PRICING SHEETS	INITIALS	DATE
PRICED BY:		
CHECKED BY:		
APPROVED BY:		

COST CODE	DESCRIPTION	QUANTITY	UNIT	- LABOR - UNIT $	UNIT MAN-HOUR	TOTAL MAN-HOURS	WAGE RATE	AMOUNT	76% BURDEN AMOUNT	- EQUIPMENT - UNIT $	AMOUNT	- MATERIAL - UNIT $	AMOUNT	- SUBCONTRACT - UNIT $	AMOUNT	- OTHERS - UNIT $	AMOUNT	TOTAL AMOUNT
2	**Zebron Coating for Existing Lift Station**																	
	Zebron Coating for Existing Lift Station																	
	Zebron Coating 8' diameter x 18' deep (Bogan Brothers)	1	ls									0.00	$0	9,867.13	$9,867			$9,867
	Grout for patching	15	ea									15.00	$225					$225
	Manhole work by RMCI w/confined space	10	ch	56.00			56.00	$560	$427	53.00	$530							$1,517
	subsistence	30	MH													6.00	$180	$180
	Take Off Qty	**1**	**ls**				560.00	**$560**	**$427**	530.00	**$530**	225.00	**$225**	**9,867.13**	**$9,867**	180.00	**$180**	**$11,789**
	Bond & Insurance @ 2%																	$236
	Contractor's Fee @13%																	$1,563
																		$0
	BID QUANTITY	**1**	**ls**	**########**			560.00	**$560**	**$427**	530.00	**$530**	225.00	**$225**	**9,867.13**	**$9,867**	180.00	**$180**	**$13,586**

RMCI INC
GENERAL CONTRACTOR

Project:	City of Alamogordo Water Reclamation Facility Upgrade Phase II
Location:	Alamogordo, NM
Engineer:	Bohannan Huston
Date:	25-Jun-16
Proposal:	Proposal #007.1 RFI003 Stop Gates for Influent & Effluent Troughs

QUANTITY PRICING SHEETS
PRICED BY: Mike Base
CHECKED BY:
APPROVED BY:

COST CODE	DESCRIPTION / Credits and Debits	QUANTITY	UNIT	- LABOR - UNIT $	WAGE RATE	AMOUNT	Labor Burden	- EQUIPMENT - UNIT $	AMOUNT	- MATERIAL - UNIT $	AMOUNT	- SUBCONTRACT - UNIT $	AMOUNT	- OTHERS - UNIT $	AMOUNT	TOTAL AMOUNT
	In Channel installation															
	HD Supply Plasti-Fab 3'-0" wide x 4'-5" high	2 00	EA			-	-		-	4 525 00	9,050 00		-		-	$9,050.00
						-	-		-		-		-		-	
	Drill in additional anchors (2-1/2" embedment)	22 00	EA			-	-		-	10 00	220 00		-		-	$220.00
	Carpenter layout & drill (.3 MH/hole)	-	HR		20 86	-	-	13 87	-		-		-		-	
	Carpenter install anchor (1 MH/hole)	2 20	HR		20 86	45 89	32 48		-		-		-		-	$78.37
						-	-		-		-		-		-	
	Install stop Gate include drill & grout	2 00	EA			-	-		-		-		-		-	
	Carpenter	54 00	HR		20 86	1,126 44	797 18	0 00	-		-		-		-	$1,923.62
	Non shrink Grout (50# bag)	2 00	EA			-	-		-	11 59	23 18		-		-	$23.18
						-	-		-		-		-		-	
						-	-		-		-		-		-	
	SUBTOTAL					$1,172 33	$829 66		$0 00		$9,293.18		$0 00		$0 00	$11,295.17
																$11,295.17
	TOTAL					$11,295 17										
	CONTRACTORS OVERHEAD & PROFIT	13%				$1,468 37										
	BOND & INSURANCE	2%				$255 27										
	TOTAL					**$13,018.81**										
	Time Extension		cd													

RMCI INC
GENERAL CONTRACTOR

Project:	City of Alamogordo Water Reclamation Facility Upgrade Phase II
Location:	Alamogordo, NM
Engineer:	Bohannan Huston
Date:	25-Jun-16
Proposal:	Proposal #018 RFI#045 Tertiary Filter Lift Station electric

QUANTITY PRICING SHEETS
PRICED BY: Paul Engelstad
CHECKED BY:
APPROVED BY:

COST CODE	DESCRIPTION	QUANTITY	UNIT	- LABOR -				- EQUIPMENT -		- MATERIAL -		- SUBCONTRACT -		- OTHERS -		TOTAL AMOUNT
	Credits and Debits			UNIT $	WAGE RATE	AMOUNT	Labor Burden	UNIT $	AMOUNT	UNIT $	AMOUNT	UNIT $	AMOUNT	UNIT $	AMOUNT	
	Add breaker to panel E, reroute conduit to new paneland pull new conductors to tertiary filter lift station	1.00	LS			-	-		-		-	1,216.75	1,216.75		-	$1,216.75
						-	-		-		-		-		-	
						-	-		-		-		-		-	
						-	-		-		-		-		-	
						-	-		-		-		-		-	
						-	-		-		-		-		-	
						-	-		-		-		-		-	
						-	-		-		-		-		-	
						-	-		-		-		-		-	
						-	-		-		-		-		-	
						-	-		-		-		-		-	
						-	-		-		-		-		-	
						-	-		-		-		-		-	
						-	-		-		-		-		-	
						-	-		-		-		-		-	
						-	-		-		-		-		-	
						-	-		-		-		-		-	
						-	-		-		-		-		-	
						-	-		-		-		-		-	
						-	-		-		-		-		-	
						-	-		-		-		-		-	
						-	-		-		-		-		-	
						-	-		-		-		-		-	
	Safety 5% Labor	0.00%				-	-		-	0.00	-		-		-	
	Misc. Materials @ 5% Labor	0.00%				-	-		-	0.00	-		-		-	
						-	-		-		-		-		-	
	SUBTOTAL					$0.00	$0.00		$0.00		$0.00		$1,216.75		$0.00	$1,216.75
																$1,216.75
	TOTAL					$1,216.75										
	CONTRACTORS OVERHEAD & PROFIT	13%				$158.18										
	BOND & INSURANCE	2%				$27.50										
	TOTAL					$1,402.43										
	Time Extension		cd													

PR19 1/2

COST CODE	DESCRIPTION	QUANTITY	UNIT	- LABOR - UNIT $	UNIT MAN-HOUR	TOTAL MAN-HOURS	WAGE RATE	AMOUNT	76% BURDEN AMOUNT	- EQUIPMENT - UNIT $	AMOUNT	- MATERIAL - UNIT $	AMOUNT	- SUBCONTRACT - UNIT $	AMOUNT	- OTHERS - UNIT $	AMOUNT	TOTAL AMOUNT
2	Tertiary filter system improvements: Relocation and installation of Effluent valves and piping, Cip PR019 Proposed																	
	Using C900 pipe from bldg to BFV then re-use UltraCorr yard piping																	
	Pipe materials	1	ls									0.00	$0					
	30" UltraCorr gaskets	4	EA									15.00	$60					$60
	30" MegaFlange adapters for C905	3	ea									1,552.94	$4,659					$4,659
	30" FL gaskets	4	ea									24.03	$96					$96
	30" SS FL bolts kts	4	ea									70 00	$280					$280
	30" UltraCorr to C905 adapter	0	ea									950 00	$0					
	30" MJ plug	1	ea									1,315 48	$1,315					$1,315
	30" MJ bolt & gasket	1	ea									32.51	$33					$33
	Concrete for thrust blocks	6	cy									125 00	$750					$750
	30" C905 pipe	10	lf									73 05	$731					$731
	TBC new 30" Effluent	16	ch	121 30			121.30	$1,941	$1,480	144.20	$2,307							$5,728
	Cut in to relocate existing 30" valve in bypass - 1 ea	8	ch	121 30			121.30	$970	$740	144 20	$1,154							$2,864
	Thrust blocks	8	ch	121 30			121.30	$970	$740	144 20	$1,154							$2,864
	valve box to grade	2	ea	75 00			75.00	$150	$114	25.20	$50	25.00	$50					$365
	subsistence	192	mh													6.00	$1,152	$1,152
	Take Off Qty	1	ls				4,031.60	$4,032	$3,074	4,664.80	$4,665	7,973.43	$7,973	0.00	$0	1,152.00	$1,152	$20,896
	BID QUANTITY	1	ls	########			4,031.60	$4,032	$3,074	4,664.80	$4,665	7,973.43	$7,973	0.00	$0	1,152.00	$1,152	$20,896

less As Bid

-14569

Increase 6327.00

Fee 13% 822.51

Bond 2% 142.99

7292.50

P R 19~~3~~ 2/2

RMCI INC
GENERAL CONTRACTOR

BID SUMMARY

Project: Alamogordo Water Reclamation Facility Phase 2
Location: Alamogordo, NM
Architect: BHI
Bid Date: 25-Jun-16
RMCI Estimate: Filter Bldg effluent piping AS BID PR 019 As Bid

QUANTITY PRICING SHEETS	INITIALS	DATE
PRICED BY:		
CHECKED BY:		
APPROVED BY:		

COST CODE	DESCRIPTION	QUANTITY	UNIT	- LABOR -					76%	- EQUIPMENT -		- MATERIAL -		- SUBCONTRACT -		- OTHERS -		TOTAL AMOUNT
				UNIT $	UNIT MAN-HOUR	TOTAL MAN-HOURS	WAGE RATE	AMOUNT	BURDEN AMOUNT	UNIT $	AMOUNT	UNIT $	AMOUNT	UNIT $	AMOUNT	UNIT $	AMOUNT	
2	Tertiary filter system improvements: Relocation and Installation of Effluent valves and piping, Cip																	
	AS BID																	
	yard piping																	
	Pipe materials	1	ls									0 00	$0					
	30" C905 pipe	40	lf									73 05	$2,922					$2,922
	30" MJ 90	1	ea									2,017 28	$2,017					$2,017
	30" MJ solid sleeve	1	ea									1,093 62	$1,094					$1,094
	30" megalug	4	ea									784 99	$3,140					$3,140
	1x8 Bolt & nut for 30"	80	ea									3 79	$303					$303
	TBC new 30" Effluent	8	ch	121 30			121 30	$970	$740	144 20	$1,154							$2,864
	relocate existing 30" valves - 2 ea	4	ch	121 30			121 30	$485	$370	144 20	$577							$1,432
	valve box to grade	2	ea	75 00			75 00	$150	$114	25 20	$50	25 00	$50					$365
	subsistance	72	mh													0 00	$432	$432
	Take Off Qty	1	ls				1,605.60	$1,606	$1,224	1,780 80	$1,781	9,526.26	$9,526	0.00	$0	432.00	$432	$14,589
	BID QUANTITY	1	ls	########			1,605.60	$1,606	$1,224	1,780.80	$1,781	9,526.26	$9,526	0.00	$0	432.00	$432	$14,589

RMCI INC
GENERAL CONTRACTOR

BID SUMMARY

Project: Alamogordo Water Reclamation Facility Phase 2
Location: Alamogordo, NM
Architect: BHI
Bid Date: 25-Jun-16
RMCI Estimate: PR#021 RFI 49 response replace conductors

QUANTITY PRICING SHEETS	INITIALS	DATE
PRICED BY:		
CHECKED BY		
APPROVED BY:		

COST CODE	DESCRIPTION	QUANTITY	UNIT	- LABOR -					76%	- EQUIPMENT -		- MATERIAL -		- SUBCONTRACT -		- OTHERS -		TOTAL AMOUNT
				UNIT $	UNIT MAN-HOUR	TOTAL MAN-HOURS	WAGE RATE	AMOUNT	BURDEN AMOUNT	UNIT $	AMOUNT	UNIT $	AMOUNT	UNIT $	AMOUNT	UNIT $	AMOUNT	
2	**Replace conductors from Panel "E" to filter controller panels**																	
	Replace conductors																	
	Freeman Electric proposal dated 1/20/16	1	ls									0.00	$0	357.79	$358			$358
	subsistence																	
	Take Off Qty	1	ls				0.00	$0	$0	0.00	$0	0.00	$0	357.79	$358	0.00	$0	$358
	Bond & Insurance @ 2%																	$7
	Contractor's Fee @13%																	$47
	BID QUANTITY	1	ls	412.39			0.00	$0	$0	0.00	$0	0.00	$0	357.79	$358	0.00	$0	$0 $412

RMCI INC
GENERAL CONTRACTOR

Project:	City of Alamogordo Water Reclamation Facility Upgrade Phase II
Location:	Alamogordo, NM
Engineer:	Bohannan Huston
Date:	25-Jun-16
Proposal:	Proposal #022.1 Heat Trace and Insulation (by RMCI) for Septage Receiving Facility

QUANTITY PRICING SHEETS
PRICED BY: Mike Base
CHECKED BY:
APPROVED BY:

COST CODE	DESCRIPTION	QUANTITY	UNIT	- LABOR -				- EQUIPMENT -		- MATERIAL -		- SUBCONTRACT -		- OTHERS -		TOTAL AMOUNT
	Credits and Debits			UNIT $	WAGE RATE	AMOUNT	Labor Burden	UNIT $	AMOUNT	UNIT $	AMOUNT	UNIT $	AMOUNT	UNIT $	AMOUNT	
	Freeman Electric Cost Estimate #4 dated 1/28/16	1.00	LS			-	-		-	0.00	-	2,071.80	2,071.80		-	$2,071.80
	Merit Insulation Quotation dated 2/19/16	-	LS			-	-		-		-	1,390.00	-		-	
	Insulation By RMCI					-	-		-		-		-		-	
	Tom Higgins (Supt)	4.00	HR		37.02	148.08	104.80		-		-		-		-	$252.88
	Andrew Sweeney (Laborer) per diem	4.00	HR		16.52	66.08	46.76		-		-		-	6.00	24.00	$136.84
	Dustin Hammond (Laborer)	6.00	HR		14.03	84.18	59.57		-		-		-		-	$143.75
	Pedro Cardenas (Laborer) per diem	6.00	HR		17.00	102.00	72.19		-		-		-	6.00	36.00	$210.19
	One Ton Truck	2.00	HR			-	-	57.42	114.84		-		-		-	$114.84
	Insulation Materils (Lowes)	1.00	LS			-	-		-	105.62	105.62		-		-	$105.62
	Aluminum Tape (Home Deport)	1.00	LS			-	-		-	17.01	17.01		-		-	$17.01
						-	-		-		-		-		-	
						-	-		-		-		-		-	
						-	-		-		-		-		-	
	Subsistence	-	HR			-	-		-		-		-	6.00	-	
						-	-		-		-		-		-	
	SUBTOTAL					$400.34	$283.32		$114.84		$122.63		$2,071.80		$60.00	$3,052.93
																$3,052.93
	TOTAL					$3,052.93										
	CONTRACTORS OVERHEAD & PROFIT	13%				$396.88										
	BOND & INSURANCE	2%				$69.00										
	TOTAL					**$3,518.81**										
	Time Extension		cd													

RMCI INC
GENERAL CONTRACTOR

Project: City of Alamogordo Water Reclamation Facility Upgrade Phase II
Location: Alamogordo, NM
Engineer: Bohannan Huston
Date: 25-Jun-16
Proposal: Proposal #023 Disk Filter Grating

QUANTITY PRICING SHEETS
PRICED BY: Mike Base
CHECKED BY:
APPROVED BY:

COST CODE	DESCRIPTION / Credits and Debits	QUANTITY	UNIT	- LABOR - UNIT $	WAGE RATE	AMOUNT	Labor Burden	- EQUIPMENT - UNIT $	AMOUNT	- MATERIAL - UNIT $	AMOUNT	- SUBCONTRACT - UNIT $	AMOUNT	- OTHERS - UNIT $	AMOUNT	TOTAL AMOUNT
	CPM Proposal dated 02/02/16	1.00	LS			-	-		-	6,489.00	6,489.00		-		-	$6,489.00
						-	-		-		-		-		-	
	Drill in additional anchors (4-1/2" embedment)	22.00	EA			-	-		-		-		-		-	
	Carpenter layout & drill (.3 MH/hole)	6.60	HR		20.86	137.68	97.43	13.87	91.54		-		-	1.00	6.60	$333.25
	Carpenter install chemical anchor (.1 MH/hole)	2.20	HR		20.86	45.89	32.48		-		-		-		-	$78.37
						-	-		-		-		-		-	
	Install cross braces	1.00	LS			-	-		-		-		-		-	
	Install beams and angle (310 Lb @ 0.06 MH)/LB)	19.00	HR		20.86	396.34	280.49	0.00	-		-		-	1.00	19.00	$695.83
	Grating Installation					-	-		-		-		-		-	
	Filter Basins -70 SF Carpenter (.07 MH/SF)	5.00	HR		20.86	104.30	73.81	0.00	-		-		-	1.00	5.00	$183.11
	subsistence	33.00	HR			-	-		-		-		-	6.00	198.00	$198.00
						-	-		-		-		-		-	
	SUBTOTAL					$684.21	$484.21		$91.54		$6,489.00		$0.00		$228.60	$7,977.56
																$7,977.56
	TOTAL					$7,977.56										
	CONTRACTORS OVERHEAD & PROFIT	13%				$1,037.08										
	BOND & INSURANCE	2%				$180.29										
	TOTAL					$9,194.94										
	Time Extension		cd													

RMCI INC
GENERAL CONTRACTOR

Project: City of Alamogordo Water Reclamation Facility Upgrade Phase II
Location: Alamogordo, NM
Engineer: Bohannan Huston
Date: 25-Jun-16
Proposal: Proposal #024 Replacement Chlorine Pumps

QUANTITY PRICING SHEETS
PRICED BY: Mike Base
CHECKED BY:
APPROVED BY:

COST CODE	DESCRIPTION	QUANTITY	UNIT	- LABOR -				- EQUIPMENT -		- MATERIAL -		- SUBCONTRACT -		- OTHERS -		TOTAL AMOUNT
	Credits and Debits			UNIT $	WAGE RATE	AMOUNT	Labor Burden	UNIT $	AMOUNT	UNIT $	AMOUNT	UNIT $	AMOUNT	UNIT $	AMOUNT	
	Furnish Replacement Pumps					-	-		-		-		-		-	
	PULSAtron Series E Pump w/4-20mA Input, 190 GPD, 50 psi, LPK7MA-WTC3 per USA BlueBook	2.00	EA		0.00	-	-		-	1,239.95	2,479.90		-		-	$2,479.90
	Pulsafeeder KOPkit, PVC, Teflon & Ceramic, K7WTC3 repair kit per USA BlueBook	2.00	EA		0.00	-	-		-	153.80	307.60		-		-	$307.60
	UPS Ground delivery	1.00	EA			-	-	0.00	-	43.97	43.97		-		-	$43.97
						-	-		-		-		-		-	
						-	-		-		-		-		-	
	subsistence	-	HR			-	-		-		-		-	6.00	-	
						-	-		-		-		-		-	
	SUBTOTAL					$0.00	$0.00		$0.00		$2,831.47		$0.00		$0.00	$2,831.47
																$2,831.47
	TOTAL					$2,831.47										
	CONTRACTORS OVERHEAD & PROFIT	13%				$368.09										
	BOND & INSURANCE	2%				$63.99										
	TOTAL					**$3,263.55**										
	Time Extension		cd													

RMCI INC
GENERAL CONTRACTOR

Project:	City of Alamogordo Water Reclamation Facility Upgrade Phase II	QUANTITY PRICING SHEETS
Location:	Alamogordo, NM	
Engineer:	Bohannan Huston	PRICED BY: Mike Base
Date:	25-Jun-16	CHECKED BY:
Proposal:	Proposal #025 Bird Spikes on four new Basin lights	APPROVED BY:

COST CODE	DESCRIPTION	QUANTITY	UNIT	- LABOR -				- EQUIPMENT -		- MATERIAL -		- SUBCONTRACT -		- OTHERS -		TOTAL AMOUNT
	Credits and Debits			UNIT $	WAGE RATE	AMOUNT	Labor Burden	UNIT $	AMOUNT	UNIT $	AMOUNT	UNIT $	AMOUNT	UNIT $	AMOUNT	
	Install Bird repellant spikes strips to new basin lights					-	-		-		-		-		-	
	Mark Reeves (Foreman) per diem	5 00	HR		26 92	134.60	95.26		-		-		-		-	$229.86
	Dustin Hammond (Laborer)	4 00	HR		14 03	56.12	39 72		-		-		-		-	$95.84
	Foreman pick up	5 00	HR			-	-	23 21	116 05		-		-		-	$116.05
	10 oz. polyurethane construction adhesive	1 00	EA			-	-		-	7 48	7 48		-		-	$7.48
	10 ft x 5 in stainless steel bird spike	1 00	LS			-	-		-	29.97	29 97		-		-	$29.97
	tax on materials 8%	0 08	LS			-	-		-	37 45	3 00		-		-	$3.00
						-	-		-		-		-		-	
						-	-		-		-		-		-	
	subsistence	-	HR			-	-		-		-		-	6 00	-	
						-	-		-		-		-		-	
	SUBTOTAL					$190 72	$134 97		$116 05		$40 45		$0 00		$0 00	$482 19
																$482.19
	TOTAL					$482.19										
	CONTRACTORS OVERHEAD & PROFIT	13%				$62 68										
	BOND & INSURANCE	2%				$10 90										
	TOTAL					**$555.77**										
	Time Extension		cd													

RMCI INC
GENERAL CONTRACTOR

Project: City of Alamogordo Water Reclamation Facility Upgrade Phase II
Location: Alamogordo, NM
Engineer: Bohannan Huston
Date: 25-Jun-16
Proposal: Proposal #027 REVISED Additonal Work Punchlist Item 20

QUANTITY PRICING SHEETS
PRICED BY: Mike Base
CHECKED BY:
APPROVED BY:

COST CODE	DESCRIPTION	QUANTITY	UNIT	- LABOR -				- EQUIPMENT -		- MATERIAL -		- SUBCONTRACT -		- OTHERS -		TOTAL AMOUNT
	Credits and Debits			UNIT $	WAGE RATE	AMOUNT	Labor Burden	UNIT $	AMOUNT	UNIT $	AMOUNT	UNIT $	AMOUNT	UNIT $	AMOUNT	
	Program chlorine control panel to alternate pumpsand automatically start pump if chlorine level does not rise.	1 00	LS		0 00	-	-		-	0 00	-		-		-	
	JCH - program panel, add to screens and trending system	1.00	LS		0 00	-	-		-	3 400 00	3,400 00		-		-	$3,400.00
	Freeman Electric	-	EA			-	-	0 00	-	0.00	-	1 991 50	-		-	
	Flowmeter	-	EA			-	-		-	1 407 47	-		-		-	
	Insertion Sensor fiting	-	EA			-	-		-	172 00	-		-		-	
	Install flowmeter & fitting	-	CH		45 00	-	-	23 21	-	5 00	-		-	12 00	-	
	Supoervison for subcontractos	20 00	HR		27 00	540 00	382 16	23 21	464 20				-	6 00	120 00	$1,506.36
	subsistence	-	HR			-	-		-		-		-	6 00	-	
						-	-		-		-		-		-	
	SUBTOTAL					$540 00	$382 16		$464 20		$3,400 00		$0 00		$120 00	$4,906 36
																$4,906.36
	TOTAL					$4,906 36										
	CONTRACTORS OVERHEAD & PROFIT	13%				$637 83										
	BOND & INSURANCE	2%				$110.88										
	TOTAL					**$5,655.07**										
	Time Extension		cd													

RMCI INC
GENERAL CONTRACTOR

Project: City of Alamogordo Water Reclamation Facility Upgrade Phase II
Location: Alamogordo, NM
Engineer: Bohannan Huston
Date: 25-Jun-16
Proposal: Proposal #029 Add Exhaust Fans

QUANTITY PRICING SHEETS
PRICED BY: Mike Base
CHECKED BY:
APPROVED BY:

COST CODE	DESCRIPTION	QUANTITY	UNIT	- LABOR -				- EQUIPMENT -		- MATERIAL -		- SUBCONTRACT -		- OTHERS -		TOTAL AMOUNT
	Credits and Debits			UNIT $	WAGE RATE	AMOUNT	Labor Burden	UNIT $	AMOUNT	UNIT $	AMOUNT	UNIT $	AMOUNT	UNIT $	AMOUNT	
	Furnish & install backdraft dampers on three roof turbines					-	-		-		-		-		-	
	RMCI Supervision (2+3+2 days)	56 00	HR		26 92	1,507 52	1,066 87	23 21	1,299 76		-		-	7 00	392 00	$4,268.15
	Comfort Systems (furnish & install 2 exhaust fans)	1 00	LS		0 00	-	-		-		-	10,984 33	10,984 33		-	$10,984.33
	Freeman Electric (conduit & wiring)	1 00	LS			-	-		-		-	5,300 83	5,300 83		-	$5,300.83
	Star Building (framing members)	1 00	LS			-	-		-	356 95	356 95		-		-	$356.95
	Devcorp (Framing & building modifications)	1 00	LS			-	-		-		-	2,003 06	2,003 06		-	$2,003.06
	Bogan Brother (shop paint framing members)	1 00	LS									810 00	810 00			$810.00
						-	-		-		-		-		-	
						-	-		-		-		-		-	
						-	-		-		-		-		-	
	SUBTOTAL					$1,507 52	$1,066 87		$1,299 76		$356 95		$19,098 22		$392 00	$23,721 32
																$23,721.32
	TOTAL					$23,721 32										
	CONTRACTORS OVERHEAD & PROFIT	13%				$3,083 77										
	BOND & INSURANCE	2%				$536 10										
	TOTAL					**$27,341.20**										
	Time Extension		cd													

AGENDA REPORT
CITY OF ALAMOGORDO
CITY COMMISSION

Meeting Date: 07/12/2016 **Report Date:** 7/7/2016 **Report No:** 5.

Submitted By: Stephen Thies, City Attorney

Subject: Consider, and act upon, final publication of Ordinance No. 1518 amending section 5-01-035 of the City Code concerning alcoholic beverage dispenser's licenses. *(Stephen Thies, City Attorney)* **(Roll Call Vote required)**

Fiscal Impact:
Amount Budgeted:
Fund:

Additional Fiscal Impact:

Recommendation: Approve Ordinance No. 1303 for final publication. **(Roll Call Vote required)**

Background: The City of Alamogordo enacted Ordinance No. 1303 on or about January 22, 2008, which regulates alcoholic beverages and amended on or about April 14, 2015 with Ordinance No. 1492. The City Commission would like to streamline the process for obtaining temporary alcoholic beverage dispenser's licenses. To expedite the process, the City Clerk will have the authority to approve and issue temporary alcoholic beverage dispenser's licenses.

The City Commission approved for first publication on June 14, 2016.

ORDINANCE NO. 1518

AMENDING SECTION 5-01-035 OF CHAPTER 5 – ALCOHOLIC BEVERAGES TO ALLOW THE CITY CLERK TO APPROVE TEMPORARY ALCOHOLIC BEVERAGE DISPENSER'S LICENSES.

WHEREAS, the City of Alamogordo enacted Ordinance No. 1303 on or about January 22, 2008, which regulates alcoholic beverages; and,

WHEREAS, the City Commission of the City of Alamogordo deems it advisable for the City Clerk to have the authority to approve and issue temporary alcoholic beverage dispenser's licenses; and

BE IT ORDAINED by the City Commission of the City of Alamogordo New Mexico that Section 5-01-035 the *Code of Ordinances* be amended to read as follows:

CHAPTER 5
ALCOHOLIC BEVERAGES
Article 5-01

Section 5-01-035 – Temporary alcoholic beverage dispenser's license is hereby amended to read as follows:

5-01-035. - Temporary alcoholic beverage dispenser's license.

A.. *License authorized.* The governing body of the city has deemed it advisable to allow and license limited public sale of alcoholic beverages at retail and consumption on the sale premises of alcoholic beverages approved by the city clerk in specific areas of the public parks of said city, and, during community-wide celebrations, on certain other public places. Such sale shall be by responsible persons duly licensed under the Code of Ordinances, and shall be allowed for limited periods of time, as hereinafter specifically provided.

B. *License created.* There is hereby created a license, to be denominated a temporary alcoholic beverage dispenser's license. A person to whom the city has issued a current valid temporary alcoholic beverage dispenser's license will hereinafter be referred to as a temporary alcoholic beverage dispenser's licensee.

C. *Area designated.* A temporary alcoholic beverage dispenser's license shall designate specifically an area in a city park, or alternatively, other public places in the city, which area shall be used for the purposes of the license, and which area will hereinafter be referred to as a temporary alcoholic beverage dispenser's.

D. *No other area to be used.* No alcoholic beverages may be sold at retail or consumed in any city park of the city, or on any other public places of said city, whether in the central business district or otherwise, except that a temporary alcoholic beverage dispenser's licensee may use the temporary alcoholic beverage dispenser's designated on the temporary alcoholic beverage dispenser's license for purposes of retail sale, and consumption by adult consumers of alcoholic beverages on the premises of the temporary alcoholic beverage dispenser's; and provided further:

1. That such sale and consumption shall be limited to the designated temporary alcoholic beverage dispenser's.

2. The licensee must comply with all applicable laws and ordinances.

3. The licensee must have all of the qualifications set out in the Code of Ordinances and state statutes for an alcoholic beverage dispenser's license.

4. The licensee must pay a license fee of fifty dollars ($50.00) for each temporary alcoholic beverage dispenser's location.

5. The licensee must hold a current license from the city for the sale of alcoholic beverages or beer at retail for consumption on the premises.

E. *Duration.* The duration of a temporary alcoholic beverage dispenser's license shall not exceed three (3) days. No person shall be issued more than three (3) temporary alcoholic beverage dispenser's licenses during any calendar month. No temporary alcoholic beverage dispenser's license shall be transferred by the temporary alcoholic beverage dispenser's licensee to whom it was originally issued.

F. *Compliance with other regulations.* Each temporary alcoholic beverage dispenser's, while in operation shall comply with all of the requirements of this chapter of the Code of Ordinances relating to dealers in alcoholic beverages.

G. Nothing in this section shall be construed as prohibiting the city from using a premise or area designated on a governmental liquor license for the retail and consumption by adults of alcoholic beverages in any city park, or on any other public place.

DONE this _______ day of _______________, 2016.

CITY OF ALAMOGORDO, NEW MEXICO
a New Mexico municipal corporation

By:___________________________________
Richard Boss, Mayor

ATTEST:

____
Nancy Jacobs, City Clerk

APPROVED AS TO FORM:

____
Stephen P. Thies, City Attorney

First publication approval: 06/14/2016
First publication: 06/19/2016
Final publication approval: 07/12/2016
Final publication: 07/17/2016
Effective date: 07/22/2016

AGENDA REPORT
CITY OF ALAMOGORDO
CITY COMMISSION

Meeting Date: 07/12/2016 **Report Date:** 7/7/2016 **Report No:** 6.

Submitted By: Stephen Thies, City Attorney

Subject: Consider, and act upon, the final publication of Ordinance No. 1519 amending certain sections of the Uniform Traffic Ordinance (UTO) regarding Off-Highway vehicles. *(Stephen Thies, City Attorney)* **(Roll Call Vote required)**

Fiscal Impact:
Amount Budgeted:
Fund:

Additional Fiscal Impact:

Recommendation: Approve Ordinance No. 1519 for final publication. **(Roll Call Vote required)**

Background: The State Legislature amended the use of off-highway and all-terrain vehicles. This caused a rewrite of Section 12-7-9.2 of the Uniform Traffic Ordinance (UTO). A new section has been added to include requirements that 1) the vehicle has headlights and one or more taillights, mirrors, brakes and mufflers; 2) the operator have a valid driver's license, instruction permit or provisional license and an off-highway motor vehicle safety permit; 3) the operator must be insured; 4) the operator is wearing eye protection and a safety helmet. The UTO has been adopted by Ordinance, so this Ordinance is required to update the UTO.

This ordinance was approved for first publication by the City Commission on June 14, 2016.

ORDINANCE NO. 1519

2016 AMENDMENT TO THE UNIFORM TRAFFIC ORDINANCE (UTO)

WHEREAS, the Uniform Traffic Ordinance, with a few exceptions, provides for traffic regulation needs of the City.

WHEREAS, it is in the best interest of the citizens of the City that health, safety and welfare be protected through a generally recognizable set of traffic laws; and,

BE IT THEREFORE ORDAINED by the City Commission of the City of Alamogordo, New Mexico that the *Code of Ordinances of the City of Alamogordo, New Mexico* is hereby amended as follows:

SECTION ONE

24-01-10. Uniform Traffic Ordinance--Adopted.
Except as otherwise provided in this chapter the 2010 New Mexico Uniform Traffic Ordinance, a traffic code, with its amendments through July 2016 is adopted by reference pursuant to Section 3-17-6, NMSA 1978 (As Amended).

SECTION TWO

24-01-030. Same--Amendments.
The following amendments to the 2010 New Mexico Uniform Traffic Ordinance are adopted:

(j) **12-7-9.2 Operation of Off-Highway Motor Vehicles on Streets or Highways - Prohibited Areas.**

A. No person shall operate an off-highway motor vehicle on any limited access street at any time or any paved street or highway, walking trails, or city parks, except as provided in Subsection B and C of this section.

B. Off-highway motor vehicles may cross streets or highways, except limited access highways or freeways, if the crossings are made after coming to a complete stop prior to entering the street. Off-highway motor vehicles shall yield the right of way to oncoming traffic and shall begin a crossing only when it can be executed safely and then crossing in the most direct manner, as close to a perpendicular angle as possible.

C. On paved streets or highways owned and controlled by the City of Alamogordo if:

(1) the vehicle has one or more headlights and one or more taillights that comply with the Off-Highway Motor Vehicle Act;

(2) The vehicle has brakes, mirrors and mufflers;

(3) The operator has a valid driver's license, instruction permit or provisional license and an off-highway motor vehicle safety permit;

(4) The operator is insured in compliance with the provisions of the Mandatory Financial Responsibility Act;

(5) The operator of the vehicle is wearing eye protection and a safety helmet that comply wit the Off-Highway Motor Vehicle Act.

(6) The vehicle is equipped with a functioning stoplight;

(7) The vehicle has front and rear turn-signal lamps; and

(8) The vehicle is equipped with a horn in good working order and capable of emitting sound audible under normal conditions from a distance of not less than 200 feet.

For the purpose of this provision, an "off-highway motor vehicle" shall mean a motor vehicle designed by the manufacturer for operation exclusively off the highway or road and includes:

(i) "recreational off-highway vehicle," which means a motor vehicle designed for travel on four or more non-highway tires for recreational use by one or more persons, and having:

a. A steering wheel for steering control;
b. Non-straddle seating;
c. Maximum speed capability greater than thirty-five miles per hour;
d. Gross vehicle weight rating no greater than one thousand seven hundred and fifty pounds;
e. Less than eight hundred inches in overall width, exclusive of accessories;
f. Engine displacement of less than one thousand cubic centimeters; and
g. Identification by means of a seventeen-character vehicle identification number (VIN); or

(ii) By rule of the New Mexico Department of Game and Fish, any other vehicles that may enter the market and fit the general profile of vehicles operated off the highway for recreational purposes.

D. A person shall not operate an off-highway motor vehicle on state game commission-owned, -controlled or –administered land except as specifically allowed pursuant to Chapter 17, Article 6 NMSA 1978.

E. A person shall not operate an off-highway motor vehicle on land owned, controlled or administered by the state parks division of the Energy, Minerals and Natural Resources Department, pursuant to Chapter 16, Article 2 NMSA 1978, except in areas designated by and permitted by rules adopted by the secretary of Energy, Minerals and Natural Resources.

F. Unless authorized, a person shall not:

(1) remove, deface or destroy any official sign installed by a state, federal, local or private land management agency; or

(2) install any off-highway motor vehicle-related sign. (66-3-1011 NMSA)

SECTION THREE

The provisions of this ordinance are intended to be severable and, should any portion herein be declared null void or of no effect, it is the intention of the City Commission that the remainder of the ordinance shall remain in full effect as if the voided portion had not been enacted.

DONE this ___________ day of ______________, 2016

CITY OF ALAMOGORDO, NEW MEXICO
a New Mexico municipal corporation

By:__________________________________
Richard A. Boss, Mayor

ATTEST:

____
Nancy E. Jacobs, City Clerk

APPROVED AS TO FORM:

____
Stephen P. Thies, City Attorney

First publication approval: 06/14/2016
First publication: 06/19/2016
Final publication approval: 07/12/2016
Final publication: 07/17/2016
Effective date: 07/22/2016

AGENDA REPORT
CITY OF ALAMOGORDO
CITY COMMISSION

Meeting Date: 07/12/2016 **Report Date:** 7/7/2016 **Report No:** 7.

Submitted By: LeeAnn Nichols, Finance Director

Subject: Consider, and act upon, the final publication of Ordinance No. 1520, authorizing the execution of a Loan Agreement and Intercept Agreement by and between the City of Alamogordo and the New Mexico Finance Authority (NMFA) for the principal amount of $2,710,000 for refinancing of the Joint Water & Sewer Bonds, Series 2005. *(LeeAnn Nichols, Finance Director)* **(Roll Call Vote required)**

Fiscal Impact: $ 2,710,000
Amount Budgeted: $0.00
Fund:

Additional Fiscal Impact:

Recommendation: Approve Ordinance No. 1520 for final publication. **(Roll Call Vote required)**

Background: At the regular Commission meeting of April 26, 2016, the City Commission approved the application to NMFA for the refinancing of the 2005 Water & Sewer Bond in the amount of $2,710,000.

The NMFA Loan total amount is $2,710,000 at a true interest rate of 1.678% for a term of 9 years, maturing 6/1/2025 and a delivery date of 8/19/2016.

A presentation of the Loan issue was presented by the City's Financial Advisor, Erik Harrigan, Director of RBC Capital Markets, LLC. Chris Muirhead, Bond Counsel with Modrall Sperling, will also be present for any legal questions pertaining to the Loan and Intercept Agreement.

This ordinance was approved for first publication by the City Commission on June 14, 2016.

CITY OF ALAMOGORDO, NEW MEXICO
ORDINANCE NO. 1520

AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT BY AND BETWEEN THE CITY OF ALAMOGORDO, NEW MEXICO (THE "GOVERNMENTAL UNIT") AND THE NEW MEXICO FINANCE AUTHORITY, EVIDENCING A SPECIAL, LIMITED OBLIGATION OF THE GOVERNMENTAL UNIT TO PAY A PRINCIPAL AMOUNT OF $2,710,000, TOGETHER WITH INTEREST THEREON, FOR THE PURPOSE OF DEFRAYING THE COST OF REFUNDING OUTSTANDING BONDS AND PAYING A LOAN PROCESSING FEE AND EXPENSES; PROVIDING FOR THE PLEDGE AND PAYMENT OF THE PRINCIPAL AND INTEREST DUE UNDER THE LOAN AGREEMENT SOLELY FROM THE NET REVENUES TO BE DERIVED FROM THE OPERATION OF THE GOVERNMENTAL UNIT'S JOINT WATER AND SEWER SYSTEM; APPROVING THE FORM AND TERMS OF, AND OTHER DETAILS CONCERNING 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.

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

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

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

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

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

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

WHEREAS, other than the Net Revenues, no revenues collected by the Governmental Unit shall be pledged to the Loan Agreement; and

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

WHEREAS, the Governing Body hereby determines that the improvements originally financed with the proceeds of the City of Alamogordo Joint Water and Sewer Improvement Revenue Bonds, Series 2005, were and are to be used for governmental purposes of the Governmental Unit and will not be used for purposes which would cause the Loan Agreement to be deemed a "private activity bond" as defined by the Internal Revenue Code of 1986, as amended; and

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

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE GOVERNMENTAL UNIT:

Section 1. Definitions. As used in this Ordinance, the following capitalized 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):

"2005 Bond Ordinance" means City Ordinance No. 1225 adopted on January 11, 2005.

"Act" means the general laws of the State, including Sections 3-31-1 through 3-31-12, Sections 7-1-6.4, 7-1-6.15, and 7-1-6.46 NMSA 1978, as amended, and enactments of the Governing Body relating to the Loan Agreement, including this Ordinance.

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

"Authorized Officers" means the Mayor, Manager, Finance Director and Treasurer, and Clerk of the Governmental Unit.

"Bonds" means public project revolving fund revenue bonds, if any, issued hereafter by the Finance Authority and specifically related to the Loan Agreement and the Loan Agreement Payments.

"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.

"Expense Fund" means the expense fund created pursuant to the Indenture to be held and administered by the Trustee to pay Expenses.

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

"Finance Authority" means the New Mexico Finance Authority.

"Finance Authority Debt Service Account" means the debt service account in the name of the Governmental Unit 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 this entire Ordinance and not solely to the particular section or paragraph of this Ordinance in which such word is used.

"Income Fund" means the "City of Alamogordo, New Mexico Joint Water and Sewer System Gross Income Fund" previously created by the Governmental Unit and to be continued and maintained by the Governmental Unit to which all Net Revenues are credited.

“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 Finance Authority and the Trustee, as determined by the Finance Authority pursuant to a Pledge Notification or Supplemental Indenture (as defined in the Indenture).

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

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

“Loan Agreement” means the Loan Agreement dated the Closing Date between the Finance Authority and the Governmental Unit which provides for the financing of the Refunding Project and requires payments by or on behalf of the Governmental Unit to the Finance Authority.

“Loan Agreement Payment” means, collectively, the Principal Component and the Interest Component to be paid by the Governmental Unit as payment of the Loan Agreement as shown on Exhibit “B” thereto.

“Loan Agreement Payment Date” means each date a payment is due on the Loan Agreement as shown on Exhibit “B” thereto.

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

“Net Revenues” means the revenues of the System after deducting operation and maintenance expenses of the System.

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

“Operation and Maintenance Fund” means the "City of Alamogordo Joint Water and Sewer Operation and Maintenance Fund" which is continued and to be maintained by the Governmental Unit.

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

"Ordinance" means this Ordinance adopted by the Governing Body on July 12, 2016 approving the Loan Agreement and pledging the Net Revenues, as amended from time to time.

"Parity Obligations" mean the Loan Agreement, the Loan Agreement dated __________, 2009 between the Finance Authority and the Governmental Unit, the Loan Agreement dated __________, 2010 between the Water Trust Board and the Governmental Unit, the Drinking Water Loan Agreement dated __________, 2013 between the Finance Authority and the Governmental Unit, and the Drinking Water Loan Agreement dated __________, 2013 between the Finance Authority and the Governmental Unit, and any other obligations, now or hereafter issued or incurred, payable from or secured by a lien or pledge of the Net Revenues and issued with a lien on the Net Revenues on parity with the Loan Agreement, including those obligations described on the Term Sheet.

"Processing Fee" means the processing fee to be paid by the Governmental Unit on the Closing Date to the Finance Authority for the costs of originating and servicing the Loan, as shown on the Term Sheet.

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

"Refunding Project" means the refunding, refinancing and prepayment of the outstanding City of Alamogordo Joint Water and Sewer Improvement Revenue Bonds, Series 2005, on the date of execution and delivery of the Loan Agreement.

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

"Series 2005 Bonds" means the City of Alamogordo Joint Water and Sewer Improvement Revenue Bonds, Series 2005.

"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 completion of the Refunding Project and the execution and delivery of the Loan Agreement, be, and the same hereby are, ratified, approved and confirmed.

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

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

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

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

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

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

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

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

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

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

I. The Governmental Unit is current in the accumulation of all amounts which are required to have been accumulated in both the debt service funds and reserve funds for any outstanding Parity Obligations.

Section 5. Loan Agreement - Authorization and Detail.

A. Authorization. This Ordinance has been adopted by the affirmative vote of at least a majority of all of the members of the Governing Body. For the purpose of protecting the public health, conserving the property, protecting the general welfare and prosperity of the residents of the Governmental Unit and completing the Refunding Project, it is hereby declared necessary that the Governmental Unit, pursuant to the Act, pledge the Net Revenues and execute and deliver the Loan Agreement evidencing a special, limited obligation of the Governmental Unit to pay the principal amount of $2,710,000, and the pledge of the Net Revenues and the execution and delivery of the Loan Agreement are hereby authorized. The Governmental Unit shall use the proceeds of the Loan to finance the completion of the Refunding Project and to pay the Processing Fee and Expenses.

B. Detail. The Loan Agreement shall be in substantially the form of the Loan Agreement presented at the meeting of the Governing Body at which this Ordinance was adopted. The Loan shall be in an original aggregate principal amount of $2,710,000, shall be payable in installments of principal due on June 1 of the years designated in Exhibit “B” to the Loan Agreement and bear interest payable on June 1 and December 1 of each year, commencing on December 1, 2016, at the rates designated in Exhibit “B” to the Loan Agreement.

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

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

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

A. Program Account 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 to be held by the Trustee pursuant to the Indenture, each in connection with the Loan. The Governmental Unit hereby approves: (i) of the deposit of the portion of the proceeds of the Loan Agreement in the Program Account and the Finance Authority Debt Service Account, (ii) payment of the Processing Fee directly to the Finance Authority, from the proceeds of the Loan Agreement or from other legally available funds of the Governmental Unit, and (iii) for payment of the Expenses.

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 Finance Authority Debt Service Account, and the Processing Fee shall be paid to the Finance Authority, as provided in the Loan Agreement and the Indenture.

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

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

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

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

A. Deposit of Net Revenues. Net Revenues shall be paid 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 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 such 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 Parity Obligations and bonds or obligations subordinate and junior to the Loan Agreement, or other purposes authorized by the Governmental Unit, the Constitution and laws of the State, as the Governmental Unit may from time to time determine.

Section 10. Lien on Net Revenues. Pursuant to the Loan Agreement, the Net Revenues are hereby authorized to be pledged to, and are hereby pledged, and the Governmental Unit grants a security interest therein for, the payment of the principal, interest, and any other amounts due under the Loan Agreement, subject to the uses thereof permitted by and the priorities set forth in this Ordinance. The Loan Agreement constitutes an irrevocable lien and a first lien, but not necessarily an exclusive first lien, on the Net Revenues with the lien thereon of the Parity Obligations as set forth herein and therein. The Governmental Unit shall not create a lien on the Net 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 and all other transactions contemplated hereby and thereby. Authorized Officers are hereby individually authorized to do all acts and things required of them by this Ordinance and the Loan Agreement for the full, punctual and complete performance of all the terms, covenants and agreements contained in this Ordinance and the Loan Agreement, including but not limited to, the execution and delivery of closing documents in connection with the execution and delivery of the Loan Agreement and the publication of the summary of this Ordinance set out in Section 18 of this Ordinance (with such changes, additions and deletions as may be necessary).

Section 12. Amendment of Ordinance. This Ordinance may be amended by ordinance of the Governing Body without receipt by the Governmental Unit of any additional consideration, but only with the prior written consent of the Finance Authority.

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

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. Redemption of Series 2004 Bonds. The Governmental Unit hereby elects to optionally redeem the outstanding Series 2005 Bonds, issued pursuant to the 2005 Bond Ordinance, contemporaneously with the execution and delivery of the Loan Agreement.

Section 17. 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 Clerk of the Governmental Unit, and the title and general summary of the subject matter contained in this Ordinance (set out in Section 18 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 said Ordinance shall be in full force and effect thereafter, in accordance with law.

Section 18. 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. 1520 duly adopted and approved by the Governing Body of the City of Alamogordo, New Mexico, on July 12, 2016. 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. 1520

AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT BY AND BETWEEN THE CITY OF ALAMOGORDO, NEW MEXICO (THE "GOVERNMENTAL UNIT") AND THE NEW MEXICO FINANCE AUTHORITY, EVIDENCING A SPECIAL, LIMITED OBLIGATION OF THE GOVERNMENTAL UNIT TO PAY A PRINCIPAL AMOUNT OF $2,710,000, TOGETHER WITH INTEREST THEREON, FOR THE PURPOSE OF DEFRAYING THE COST OF REFUNDING OUTSTANDING BONDS AND PAYING A LOAN PROCESSING FEE AND EXPENSES; PROVIDING FOR THE PLEDGE AND PAYMENT OF THE PRINCIPAL AND INTEREST DUE UNDER THE LOAN AGREEMENT SOLELY FROM THE NET REVENUES TO BE DERIVED FROM THE OPERATION OF THE GOVERNMENTAL UNIT'S JOINT WATER AND SEWER SYSTEM; APPROVING THE FORM AND TERMS OF, AND OTHER DETAILS CONCERNING 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.

A general 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 12th DAY OF JULY, 2016.

CITY OF ALAMOGORDO, NEW MEXICO

By________________________________
Mayor

[SEAL]

ATTEST:

By ____________________________
Clerk

Commissioner __________ then moved adoption of the foregoing Ordinance, duly seconded by Commissioner __________.

The motion to adopt said Ordinance, upon being put to a vote, was passed and adopted on the following recorded vote:

Those Voting Aye: ____________________________________

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Those Voting Nay: ____________________________________

Those Absent: ____________________________________

__________ (__) members of the Governing Body having voted in favor of said motion, the Mayor declared said motion carried and said Ordinance adopted, whereupon the Mayor and the Clerk signed the Ordinance upon the records of the minutes of the Governing Body.

After consideration of matters not relating to the Ordinance, the meeting on the motion duly made, seconded and unanimously carried, was adjourned.

CITY OF ALAMOGORDO, NEW MEXICO

By ______________________________
Mayor

[SEAL]

ATTEST:

By______________________________
Clerk

First publication approval: 06/14/2016
First publication: 06/19/2016
Final publication approval: 07/12/2016
Final publication: 07/17/2016

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

The City Commission (the "Governing Body") of the City of Alamogordo, New Mexico, met in regular session in full conformity with the law and the rules and regulations of the Governing Body at Alamogordo Municipal Offices, 1376 East Ninth Street, Alamogordo, New Mexico, being the regular meeting place of the Governing Body, on the 12th day of July, 2016, at the hour of 6:30 p.m. Upon roll call, the following members were found to be present:

Present: ______________________________

____

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Absent: ______________________________

Also Present: ______________________________

____

____

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Thereupon, there was officially filed with the Clerk a copy of a proposed ordinance in final form.

AGENDA REPORT
CITY OF ALAMOGORDO
CITY COMMISSION

Meeting Date: 07/12/2016 **Report Date:** 7/7/2016 **Report No:** 8.

Submitted By: LeeAnn Nichols, Finance Director

Subject: Consider, and act upon, the final publication of Ordinance No. 1521, authorizing the execution of a Loan Agreement and Intercept Agreement by and between the City of Alamogordo and the New Mexico Finance Authority (NMFA) for the principal amount of $5,130,000 for refinancing of the NMFA State Shared Gross Receipts Tax Loan, Series 2008. *(LeeAnn Nichols, Finance Director)* **(Roll Call Vote required)**

Fiscal Impact: $ 5,130,000
Amount Budgeted: $0.00
Fund:

Additional Fiscal Impact:

Recommendation: Approve Ordinance No. 1521 for final publication. **(Roll Call Vote required)**

Background: At the regular Commission meeting of April 26, 2016, the City Commission approved the application to NMFA for the refinancing of the 2008 State Shared Gross Receipts Tax NMFA Loan in the amount of $5,130,000.

The NMFA Loan total amount is $5,130,000 at a true interest rate of 2.199% for a term of 12 years, maturing 6/01/2028 and a delivery date of 8/19/2046.

A presentation of the Loan issue was presented by the City's Financial Advisor, Erik Harrigan, Director of RBC Capital Markets, LLC. Chris Muirhead, Bond Counsel with Modrall Sperling, will also be present for any legal questions pertaining to the Loan and Intercept Agreement.

This ordinance was approved for first publication by the City Commission on June 14, 2016.

CITY OF ALAMOGORDO, NEW MEXICO
ORDINANCE NO. 1521

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, EVIDENCING A SPECIAL, LIMITED OBLIGATION OF THE GOVERNMENTAL UNIT TO PAY A PRINCIPAL AMOUNT OF $5,130,000, TOGETHER WITH INTEREST THEREON, FOR THE PURPOSE OF DEFRAYING THE COST OF REFUNDING THE GOVERNMENTAL UNIT'S OUTSTANDING LOAN AGREEMENT WITH THE NEW MEXICO FINANCE AUTHORITY DATED DECEMBER 12, 2008 AND PAYING A LOAN PROCESSING FEE AND EXPENSES; PROVIDING FOR THE PLEDGE AND PAYMENT OF THE PRINCIPAL AND INTEREST DUE UNDER THE LOAN AGREEMENT SOLELY FROM THE REVENUES OF THE STATE-SHARED GROSS RECEIPTS TAX DISTRIBUTED TO THE GOVERNMENTAL UNIT PURSUANT TO SECTION 7-1-6.4, NMSA 1978, AS AMENDED; PROVIDING FOR THE DISTRIBUTION OF STATE-SHARED GROSS RECEIPTS TAX REVENUES TO BE REDIRECTED BY THE STATE TAXATION AND REVENUE DEPARTMENT TO THE NEW MEXICO FINANCE AUTHORITY OR ITS ASSIGNS FOR THE PAYMENT OF PRINCIPAL AND INTEREST DUE ON THE LOAN AGREEMENT PURSUANT TO AN INTERCEPT AGREEMENT; APPROVING THE FORM AND TERMS OF, AND OTHER DETAILS CONCERNING THE LOAN AGREEMENT AND THE INTERCEPT AGREEMENT; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS ORDINANCE; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE LOAN AGREEMENT AND INTERCEPT AGREEMENT.

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

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

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

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

WHEREAS, other than 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 may 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, other than the Pledged Revenues, no revenues collected by the Governmental Unit shall be pledged to the Loan Agreement; 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 improvements originally financed with the proceeds of the Governmental Unit's 2008 Loan Agreement were and are to be used for governmental purposes of the Governmental Unit and will not be used for purposes which would cause the Loan Agreement to be deemed a "private activity bond" as defined by the Internal Revenue Code of 1986, as amended; and

WHEREAS, the 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, 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 the amounts due under the Loan Agreement, (ii) the use of the proceeds of the Loan Agreement to finance the Refunding Project, and (iii) the authorization, execution and delivery of the Loan Agreement and Intercept Agreement which are required to have been obtained by the date of this Ordinance, have been obtained or are reasonably expected to be obtained.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE GOVERNMENTAL UNIT:

Section 1. <u>Definitions</u>. As used in this Ordinance, the following capitalized 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):

"2008 Loan Agreement" means the Loan Agreement by and between the Governmental Unit and the Finance Authority, dated December 12, 2008 in the original aggregate principal amount of $7,350,000.

"2008 Loan Ordinance" means City Ordinance No. 1344 adopted on November 3, 2008.

"Act" means the general laws of the State, including Sections 3-31-1 through 3-31-12, Sections 7-1-6.4, 7-1-6.15, and 7-1-6.46 NMSA 1978, as amended, and enactments of the Governing Body relating to the Loan Agreement and the Intercept Agreement, including this Ordinance.

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

"Authorized Officers" means the Mayor, Manager, Finance Director and Treasurer, and Clerk of the Governmental Unit.

"Bonds" means public project revolving fund revenue bonds, if any, issued hereafter by the Finance Authority and specifically related to the Loan Agreement and the Loan Agreement Payments.

"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.

"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.

"Escrow Agent" means BOKF, NA, Albuquerque, New Mexico

"Escrow Agreement" means the escrow agreement relating to the Refunding Project by and between the Governmental Unit and the Escrow Agent.

"Escrow Fund" means the Escrow Fund established herein to be held by the Escrow Agent.

"Expense Fund" means the expense fund created pursuant to the Indenture to be held and administered by the Trustee to pay Expenses.

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

"Finance Authority" means the New Mexico Finance Authority.

"Finance Authority Debt Service Account" means the debt service account in the name of the Governmental Unit 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 this entire Ordinance and not solely to the particular section or paragraph of this Ordinance in which such word is used.

"Income Fund" means the "City of Alamogordo, New Mexico Gross Receipts Tax Income Fund" previously created by the Governmental Unit and to be maintained by the Governmental Unit to which all Pledged Revenues are credited.

"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 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 between the Governmental Unit and the Finance Authority providing for the direct payment by the Distributing State Agency to the Finance Authority of Pledged Revenues in amounts sufficient to pay Loan Agreement Payments, 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

Refunding Project and requires payments by or on behalf of the Governmental Unit to the Finance Authority.

"Loan Agreement Payment" means, collectively, the Principal Component and the Interest Component to be paid by the Governmental Unit as payment of the Loan Agreement as shown on Exhibit "B" thereto.

"Loan Agreement Payment Date" means each date a payment is due on the Loan Agreement as shown on Exhibit "B" thereto.

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

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

"Ordinance" means this Ordinance adopted by the Governing Body on July 12, 2016 approving the Loan Agreement and the Intercept Agreement and pledging the Pledged Revenues, as amended from time to time.

"Parity Obligations" mean the Loan Agreement, the Loan Agreement dated July 1, 2016 between the Finance Authority and the Governmental Unit, the Loan Agreement dated February 17, 2012 between the Finance Authority and the Governmental Unit, and the Loan Agreement dated December 23, 2011 between the Finance Authority and the Governmental Unit, 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.

"Pledged Revenues" means the amount of money derived from the state-wide gross receipts tax imposed by the State on all persons engaging in business in the State (levied pursuant to Section 7-9-4 NMSA 1978), (1) which is distributed monthly by the Revenue Division of the Taxation and Revenue Department of the State to the Governmental Unit as authorized by Section 7-1-6.4 NMSA 1978, and (2) which is to be in an amount, subject to any increase or decrease made pursuant to Section 7-1-6.15 NMSA 1978, equal to the product of the quotient of 1.225% (or such higher rate of distribution which hereafter may be enacted into law) divided by the tax rate imposed by Section 7-9-4 NMSA 1978, times the net receipts (i.e., the total gross receipts tax less any refunds disbursed in that month) for the month attributable to the gross receipts tax from business locations within the Governmental Unit and other places designated in Section 7-1-6.4 NMSA 1978. Pledged Revenues also means (i) the distribution to the Governmental Unit pursuant to Section 7-9-46 NMSA 1978, which is in lieu of revenue that would have been received by the Governmental Unit pursuant to Section 7-1-6.4 NMSA 1978, but for the deductions provided by 7-9-92 and 7-9-93 NMSA 1978, and (ii) any similar distributions made to the Governmental Unit in lieu of gross receipts tax revenues. The Governmental Unit is not pledging and the term "Pledged Revenues" does not include any gross receipts tax income received pursuant to Sections 7-1-6.12, 7-19-10 through 7-19-18, or 7-19D-1 through 7-19D-18 NMSA 1978, or any other statute, or any amount received pursuant to Section 7-1-6.4 NMSA 1978 which exceeds the amount required to be distributed to the City pursuant to Section 7-1-6.4 NMSA 1978 as of the date of adoption of this Ordinance, but such terms shall include and the Governmental Unit is pledging, all revenue resulting from any increase (but not any decrease) in such rate of 1.225% which hereafter may be enacted into law.

"Processing Fee" means the processing fee to be paid by the Governmental Unit on the Closing Date to the Finance Authority for the costs of originating and servicing the Loan, as shown on the Term Sheet.

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

"Refunding Project" means the refunding, refinancing and prepayment of the outstanding 2008 Loan Agreement on the date of execution and delivery of the Loan Agreement.

"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 completion of the Refunding Project and the execution and delivery of the Loan Agreement and the Intercept Agreement, be, and the same hereby are, ratified, approved and confirmed.

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

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

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

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

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

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

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

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

G. Other than as described in the Term Sheet, the Governmental Unit does not have any outstanding obligations payable from the 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 does not exceed twelve percent (12.0%) per annum, which is the maximum rate permitted by State law.

I. The Governmental Unit is current in the accumulation of all amounts which are required to have been accumulated in both the Debt Service Fund and Reserve Fund for (a) the Loan Agreement dated December 23, 2011 between the Finance Authority and the Governmental Unit, (b) the Loan Agreement dated February 17, 2012 between the Finance Authority and the Governmental Unit, and (c) the Loan Agreement dated July 1, 2016 between the Finance Authority and the Governmental Unit.

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

A. Authorization. This Ordinance has been adopted by the affirmative vote of a majority of all of the members of the Governing Body. For the purpose of protecting the public health, conserving the property, protecting the general welfare and prosperity of the residents of the Governmental Unit and completing the Refunding Project, it is hereby declared necessary that the Governmental Unit, pursuant to the Act, pledge the Pledged Revenues and execute and deliver the Loan Agreement and the Intercept Agreement evidencing a special, limited obligation of the Governmental

Unit to pay the principal amount of $5,130,000, and the pledge of the Pledged Revenues 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 finance the completion of the Refunding Project and to pay the Processing Fee and Expenses.

B. Detail. The Loan Agreement and Intercept Agreement shall be in substantially the forms of the Loan Agreement and Intercept Agreement presented at the meeting of the Governing Body at which this Ordinance was adopted. The Loan shall be in an original aggregate principal amount of $5,130,000, shall be payable in installments of principal due on June 1 of the years designated in Exhibit "B" to the Loan Agreement and bear interest payable on June 1 and December 1 of each year, commencing on December 1, 2016, 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 may be approved by such individual Authorized Officers, and the 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 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 nor in the Loan Agreement, nor any other instruments, shall be construed as obligating the Governmental Unit (except with respect to the application of the Pledged Revenues), as incurring a pecuniary liability or a charge upon the general credit of the Governmental Unit or against its taxing power, nor shall a breach of any agreement contained in this Ordinance, the Loan Agreement, or any other instrument impose any pecuniary liability upon the Governmental Unit or any charge upon its general credit or against its taxing power. The Loan Agreement shall never constitute an indebtedness of the Governmental Unit within the meaning of any State constitutional provision or statutory limitation and shall never constitute or give rise to a pecuniary liability of the Governmental Unit or a charge against its general credit or taxing power. Nothing herein shall prevent the Governmental Unit from applying other funds of the Governmental Unit legally available therefor to payments required by the Loan Agreement, in its sole and absolute discretion.

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

A. Program Account, Finance Authority Debt Service Account and Escrow Fund. The Governmental Unit hereby consents to creation of the (i) Finance Authority Debt Service Account to be held and maintained by the Finance Authority, (ii) Program Account to be held by the Trustee pursuant to the Indenture, and (iii) Escrow Fund to be held by the Escrow Agent pursuant to the Escrow Agreement, each in connection with the Loan. The Governmental Unit hereby approves: (i) of the deposit of the portion of the proceeds of the Loan Agreement in the Program Account and the Finance Authority Debt Service Account, (ii) payment of Loan proceeds in the Program Account to the Escrow Fund, (iii) payment of the Processing Fee directly to the Finance Authority, from the proceeds of the Loan Agreement or from other legally available funds of the Governmental Unit, and (iv) for payment of the Expenses.

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 Finance Authority Debt Service Account, and the Processing Fee shall be paid to the Finance Authority, as provided in the Loan Agreement and the Indenture.

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

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

B. Completion of the Refunding Project. Upon completion of the Refunding Project, 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. Pledged Revenues shall be paid 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 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 such 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 Parity Obligations and 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 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 lien and a 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 therein. 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 publication of the summary of this Ordinance set out in Section 18 of this Ordinance (with such changes, additions and deletions as may be necessary).

Section 12. Amendment of 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 herein provided.

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. Defeasance and Redemption of the 2008 Loan Agreement. The Governmental Unit hereby elects to defease the outstanding 2008 Loan Agreement, issued pursuant to the 2008 Loan Ordinance, contemporaneously with the execution and delivery of the Loan Agreement, and to redeem the 2008 Loan Agreement on the first optional redemption date pursuant to the terms of the Escrow Agreement.

Section 17. 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 Clerk of the Governmental Unit, and the title and general summary of the subject matter contained in this Ordinance (set out in Section 18 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 said Ordinance shall be in full force and effect thereafter, in accordance with law.

Section 18. 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. 1521 duly adopted and approved by the Governing Body of the City of Alamogordo, New Mexico, on July 12, 2016. 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. 1521

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, EVIDENCING A SPECIAL, LIMITED OBLIGATION OF THE GOVERNMENTAL UNIT TO PAY A PRINCIPAL AMOUNT OF $5,130,000, TOGETHER WITH INTEREST THEREON, FOR THE PURPOSE OF DEFRAYING THE COST OF REFUNDING THE GOVERNMENTAL UNIT'S OUTSTANDING LOAN AGREEMENT WITH THE NEW MEXICO FINANCE AUTHORITY DATED DECEMBER 12, 2008 AND PAYING A LOAN PROCESSING FEE AND EXPENSES; PROVIDING FOR THE PLEDGE AND PAYMENT OF THE PRINCIPAL AND INTEREST DUE UNDER THE LOAN AGREEMENT SOLELY FROM THE REVENUES OF THE STATE-SHARED GROSS RECEIPTS TAX DISTRIBUTED TO THE GOVERNMENTAL UNIT PURSUANT TO SECTION 7-1-6.4, NMSA 1978, AS AMENDED; PROVIDING FOR THE DISTRIBUTION OF STATE-SHARED GROSS RECEIPTS TAX REVENUES TO BE REDIRECTED BY THE STATE TAXATION AND REVENUE DEPARTMENT TO THE NEW MEXICO FINANCE AUTHORITY OR ITS ASSIGNS FOR THE PAYMENT OF PRINCIPAL AND INTEREST DUE ON THE LOAN AGREEMENT PURSUANT TO AN INTERCEPT AGREEMENT; APPROVING THE FORM AND TERMS OF, AND OTHER DETAILS CONCERNING THE LOAN AGREEMENT AND THE INTERCEPT AGREEMENT; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS ORDINANCE; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE LOAN AGREEMENT AND INTERCEPT AGREEMENT.

A general 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 12th DAY OF JULY, 2016.

CITY OF ALAMOGORDO, NEW MEXICO

By________________________________
Mayor

[SEAL]

ATTEST:

By ____________________________
Clerk

Commissioner __________ then moved adoption of the foregoing Ordinance, duly seconded by Commissioner __________.

The motion to adopt said Ordinance, upon being put to a vote, was passed and adopted on the following recorded vote:

Those Voting Aye: ____________________________________

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Those Voting Nay: ____________________________________

Those Absent: ____________________________________

__________ (__) members of the Governing Body having voted in favor of said motion, the Mayor declared said motion carried and said Ordinance adopted, whereupon the Mayor and the Clerk signed the Ordinance upon the records of the minutes of the Governing Body.

After consideration of matters not relating to the Ordinance, the meeting on the motion duly made, seconded and unanimously carried, was adjourned.

CITY OF ALAMOGORDO, NEW MEXICO

By ______________________________
Mayor

[SEAL]

ATTEST:

By______________________________
Clerk

First publication approval: 06/14/2016
First publication: 06/19/2016
Final publication approval: 07/12/2016
Final publication: 07/17/2016
Effective date: 07/22/2016

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

The City Commission (the "Governing Body") of the City of Alamogordo, New Mexico, met in regular session in full conformity with the law and the rules and regulations of the Governing Body at Alamogordo Municipal Offices, 1376 East Ninth Street, Alamogordo, New Mexico, being the regular meeting place of the Governing Body, on the 12th day of July, 2016, at the hour of 6:30 p.m. Upon roll call, the following members were found to be present:

Present: ______________________________

____

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Absent: ______________________________

Also Present: ______________________________

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____

Thereupon, there was officially filed with the Clerk a copy of a proposed ordinance in final form.

AGENDA REPORT
CITY OF ALAMOGORDO
CITY COMMISSION

Meeting Date: 07/12/2016 **Report Date:** 7/7/2016 **Report No:** 9.

Submitted By: LeeAnn Nichols, Finance Director

Subject: Consider, and act upon, the final publication of Ordinance No. 1522, authorizing the execution of a Loan Agreement and Intercept Agreement by and between the City of Alamogordo and the New Mexico Finance Authority (NMFA) for the principal amount of $2,755,000 for refinancing of the NMFA Municipal Gross Receipts Tax Loan, Series 2008 *(LeeAnn Nichols, Finance Director)* **(Roll Call Vote required)**

Fiscal Impact: $ 2,755,000
Amount Budgeted: $0.00
Fund:

Additional Fiscal Impact:

Recommendation: Approve Ordinance No. 1522 for final publication. **(Roll Call Vote required)**

Background: At the regular Commission meeting of April 26, 2016, the City Commission approved the application to NMFA for the refinancing of the 2008 NMFA Municipal Gross Receipts Tax Loan in the amount of $2,755,000.

The NMFA Loan total amount is $2,755,000 at a true interest rate of 2.154% for a term of 12 years, maturing 6/1/2028 and a delivery date of 8/19/2016.

A presentation of the Loan issue was presented by the City's Financial Advisor, Erik Harrigan, Director of RBC Capital Markets, LLC. Chris Muirhead, Bond Counsel with Modrall Sperling, will also be present for any legal questions pertaining to the Loan and Intercept Agreement.

This ordinance was approved for first publication by the City Commission on June 14, 2016.

CITY OF ALAMOGORDO, NEW MEXICO
ORDINANCE NO. 1522

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, EVIDENCING A SPECIAL, LIMITED OBLIGATION OF THE GOVERNMENTAL UNIT TO PAY A PRINCIPAL AMOUNT OF $2,755,000, TOGETHER WITH INTEREST THEREON, FOR THE PURPOSE OF DEFRAYING THE COST OF REFUNDING THE GOVERNMENTAL UNIT'S OUTSTANDING LOAN AGREEMENT WITH THE NEW MEXICO FINANCE AUTHORITY DATED NOVEMBER 21, 2008 AND PAYING A LOAN PROCESSING FEE AND EXPENSES; PROVIDING FOR THE PLEDGE AND PAYMENT OF THE PRINCIPAL AND INTEREST DUE UNDER THE LOAN AGREEMENT SOLELY FROM THE REVENUES OF THE THIRD AND FOURTH INCREMENTS OF MUNICIPAL GROSS RECEIPTS TAX IMPOSED PURSUANT TO GOVERNMENTAL UNIT ORDINANCE NO. 655, ADOPTED JUNE 27, 1983 AND SECTION 7-19(D)-9, NMSA 1978, AS AMENDED; PROVIDING FOR THE DISTRIBUTION OF MUNICIPAL GROSS RECEIPTS TAX REVENUES TO BE REDIRECTED BY THE STATE TAXATION AND REVENUE DEPARTMENT TO THE NEW MEXICO FINANCE AUTHORITY OR ITS ASSIGNS FOR THE PAYMENT OF PRINCIPAL AND INTEREST DUE ON THE LOAN AGREEMENT PURSUANT TO AN INTERCEPT AGREEMENT; APPROVING THE FORM AND TERMS OF, AND OTHER DETAILS CONCERNING THE LOAN AGREEMENT AND THE INTERCEPT AGREEMENT; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS ORDINANCE; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE LOAN AGREEMENT AND INTERCEPT AGREEMENT.

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

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

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

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

WHEREAS, other than 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 may 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, other than the Pledged Revenues, no revenues collected by the Governmental Unit shall be pledged to the Loan Agreement; 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 improvements originally financed with the proceeds of the Governmental Unit's 2008 Loan Agreement were and are to be used for governmental purposes of the Governmental Unit and will not be used for purposes which would cause the Loan Agreement to be deemed a "private activity bond" as defined by the Internal Revenue Code of 1986, as amended; and

WHEREAS, the 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, 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 the amounts due under the Loan Agreement, (ii) the use of the proceeds of the Loan Agreement to finance the Refunding Project, and (iii) the authorization, execution and delivery of the Loan Agreement and Intercept Agreement which are required to have been obtained by the date of this Ordinance, have been obtained or are reasonably expected to be obtained.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE GOVERNMENTAL UNIT:

Section 1. <u>Definitions</u>. As used in this Ordinance, the following capitalized 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):

"2008 Loan Agreement" means the Loan Agreement by and between the Governmental Unit and the Finance Authority, dated November 21, 2008 in the original aggregate principal amount of $3,620,000.

"2008 Loan Ordinance" means City Ordinance No. 1345 adopted on October 14, 2008.

"Act" means the general laws of the State, including Sections 3-31-1 through 3-31-12, Sections 7-1-6.15, 7-1-6.46 and 7-19(D)-9 NMSA 1978, as amended, and enactments of the Governing Body relating to the Loan Agreement and the Intercept Agreement, including this Ordinance.

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

"Authorized Officers" means the Mayor, Manager, Finance Director and Treasurer, and Clerk of the Governmental Unit.

"Bonds" means public project revolving fund revenue bonds, if any, issued hereafter by the Finance Authority and specifically related to the Loan Agreement and the Loan Agreement Payments.

"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.

"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.

"Escrow Agent" means BOKF, NA, Albuquerque, New Mexico

"Escrow Agreement" means the escrow agreement relating to the Refunding Project by and between the Governmental Unit and the Escrow Agent.

"Escrow Fund" means the Escrow Fund established herein to be held by the Escrow Agent.

"Expense Fund" means the expense fund created pursuant to the Indenture to be held and administered by the Trustee to pay Expenses.

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

"Finance Authority" means the New Mexico Finance Authority.

"Finance Authority Debt Service Account" means the debt service account in the name of the Governmental Unit 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 this entire Ordinance and not solely to the particular section or paragraph of this Ordinance in which such word is used.

"Income Fund" means the "City of Alamogordo, New Mexico Gross Receipts Tax Income Fund" previously created by the Governmental Unit and to be maintained by the Governmental Unit to which all Pledged Revenues are credited.

"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 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 between the Governmental Unit and the Finance Authority providing for the direct payment by the Distributing State Agency to the Finance Authority of Pledged Revenues in amounts sufficient to pay Loan Agreement Payments, 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

Refunding Project and requires payments by or on behalf of the Governmental Unit to the Finance Authority.

"Loan Agreement Payment" means, collectively, the Principal Component and the Interest Component to be paid by the Governmental Unit as payment of the Loan Agreement as shown on Exhibit "B" thereto.

"Loan Agreement Payment Date" means each date a payment is due on the Loan Agreement as shown on Exhibit "B" thereto.

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

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

"Ordinance" means this Ordinance adopted by the Governing Body on July 12, 2016 approving the Loan Agreement and the Intercept Agreement and pledging the Pledged Revenues, as amended from time to time.

"Parity Obligations" mean 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.

"Pledged Revenues" means the revenues derived from the Governmental Unit's third and fourth one-eighth of one percent increments, for a total of one-quarter of one percent (.25%), municipal gross receipts tax imposed on all persons engaging in business in the Governmental Unit by Ordinance No. 655, adopted on June 27, 1983, as amended, which tax equals, subject to the exemptions specified in Section 7-19D-9 NMSA 1978, one-fourth of one percent of the gross receipts of all persons engaging in business in the Governmental Unit for the month in which the tax is distributed to the Governmental Unit (provided that the Governmental Unit 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). Pledged Revenues also means (i) the distribution to the Governmental Unit pursuant to Section 7-9-46 NMSA 1978, which is in lieu of revenue that would have been received by the Governmental Unit pursuant to Section 7-19(D)-9 NMSA 1978, but for the deductions provided by 7-9-92 and 7-9-93 NMSA 1978, and (ii) any similar distributions made to the Governmental Unit in lieu of gross receipts tax revenues.

"Processing Fee" means the processing fee to be paid by the Governmental Unit on the Closing Date to the Finance Authority for the costs of originating and servicing the Loan, as shown on the Term Sheet.

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

"Refunding Project" means the refunding, refinancing and prepayment of the outstanding 2008 Loan Agreement on the date of execution and delivery of the Loan Agreement.

"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 completion of the Refunding Project and the execution and delivery of the Loan Agreement and the Intercept Agreement, be, and the same hereby are, ratified, approved and confirmed.

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

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

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

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

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

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

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

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

G. Other than as described in the Term Sheet, the Governmental Unit does not have any outstanding obligations payable from the 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 does not exceed twelve percent (12.0%) per annum, which is the maximum rate permitted by State law.

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

A. Authorization. This Ordinance has been adopted by the affirmative vote of a majority of all of the members of the Governing Body. For the purpose of protecting the public health, conserving the property, protecting the general welfare and prosperity of the residents of the Governmental Unit and completing the Refunding Project, it is hereby declared necessary that the Governmental Unit, pursuant to the Act, pledge the Pledged Revenues and execute and deliver the Loan Agreement and the Intercept Agreement evidencing a special, limited obligation of the Governmental Unit to pay the principal amount of $2,755,000, and the pledge of the Pledged Revenues 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 finance the completion of the Refunding Project and to pay the Processing Fee and Expenses.

B. Detail. The Loan Agreement and Intercept Agreement shall be in substantially the forms of the Loan Agreement and Intercept Agreement presented at the meeting of the Governing Body at which this Ordinance was adopted. The Loan shall be in an original aggregate principal amount of $2,755,000, shall be payable in installments of principal due on June 1 of the years designated in Exhibit "B" to the Loan Agreement and bear interest payable on June 1 and December 1 of each year, commencing on December 1, 2016, 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 may be approved by such individual Authorized Officers, and the 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 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 nor in the Loan Agreement, nor any other instruments, shall be construed as obligating the Governmental Unit (except with respect to the application of the Pledged Revenues), as incurring a pecuniary liability or a charge upon the general credit of the Governmental Unit or against its taxing power, nor shall a breach of any agreement contained in this Ordinance, the Loan Agreement, or any other instrument impose any pecuniary liability upon the Governmental Unit or any charge upon its general credit or against its taxing power. The Loan Agreement shall never constitute an indebtedness of the Governmental Unit within the meaning of any State constitutional provision or statutory limitation and shall never constitute or give rise to a pecuniary liability of the Governmental Unit or a charge against its general credit or taxing power. Nothing herein shall prevent the Governmental Unit from applying other funds of the Governmental Unit legally available therefor to payments required by the Loan Agreement, in its sole and absolute discretion.

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

A. Program Account, Finance Authority Debt Service Account and Escrow Fund. The Governmental Unit hereby consents to creation of the (i) Finance Authority Debt Service Account to be held and maintained by the Finance Authority, (ii) Program Account to be held by the Trustee pursuant to the Indenture, and (iii) Escrow Fund to be held by the Escrow Agent pursuant to the Escrow Agreement, each in connection with the Loan. The Governmental Unit hereby approves: (i) of the deposit of the portion of the proceeds of the Loan Agreement in the Program Account and the Finance Authority Debt Service Account, (ii) payment of Loan proceeds in the Program Account to the Escrow Fund, (iii) payment of the Processing Fee directly to the Finance Authority, from the proceeds of the Loan Agreement or from other legally available funds of the Governmental Unit, and (iv) for payment of the Expenses.

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 Finance Authority Debt Service Account, and the Processing Fee shall be paid to the Finance Authority, as provided in the Loan Agreement and the Indenture.

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

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

B. Completion of the Refunding Project. Upon completion of the Refunding Project, 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. Pledged Revenues shall be paid 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 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 such 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 Parity Obligations and 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 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 lien and a 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 therein. 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 publication of the summary of this Ordinance set out in Section 18 of this Ordinance (with such changes, additions and deletions as may be necessary).

Section 12. Amendment of 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 herein provided.

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. Defeasance and Redemption of the 2008 Loan Agreement. The Governmental Unit hereby elects to defease the outstanding 2008 Loan Agreement, issued pursuant to the 2008 Loan Ordinance, contemporaneously with the execution and delivery of the Loan Agreement, and to redeem the 2008 Loan Agreement on the first optional redemption date pursuant to the terms of the Escrow Agreement.

Section 17. 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 Clerk of the Governmental Unit, and the title and general summary of the subject matter contained in this Ordinance (set out in Section 18 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 said Ordinance shall be in full force and effect thereafter, in accordance with law.

Section 18. 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. 1522 duly adopted and approved by the Governing Body of the City of Alamogordo, New Mexico, on July 12, 2016. 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. 1522

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, EVIDENCING A SPECIAL, LIMITED OBLIGATION OF THE GOVERNMENTAL UNIT TO PAY A PRINCIPAL AMOUNT OF $2,755,000, TOGETHER WITH INTEREST THEREON, FOR THE PURPOSE OF DEFRAYING THE COST OF REFUNDING THE GOVERNMENTAL UNIT'S OUTSTANDING LOAN AGREEMENT WITH THE NEW MEXICO FINANCE AUTHORITY DATED NOVEMBER 21, 2008 AND PAYING A LOAN PROCESSING FEE AND EXPENSES; PROVIDING FOR THE PLEDGE AND PAYMENT OF THE PRINCIPAL AND INTEREST DUE UNDER THE LOAN AGREEMENT SOLELY FROM THE REVENUES OF THE THIRD AND FOURTH INCREMENTS OF MUNICIPAL GROSS RECEIPTS TAX IMPOSED PURSUANT TO GOVERNMENTAL UNIT ORDINANCE NO. 655, ADOPTED JUNE 27, 1983 AND SECTION 7-19(D)-9, NMSA 1978, AS AMENDED; PROVIDING FOR THE DISTRIBUTION OF MUNICIPAL GROSS RECEIPTS TAX REVENUES TO BE REDIRECTED BY THE STATE TAXATION AND REVENUE DEPARTMENT TO THE NEW MEXICO FINANCE AUTHORITY OR ITS ASSIGNS FOR THE

PAYMENT OF PRINCIPAL AND INTEREST DUE ON THE LOAN AGREEMENT PURSUANT TO AN INTERCEPT AGREEMENT; APPROVING THE FORM AND TERMS OF, AND OTHER DETAILS CONCERNING THE LOAN AGREEMENT AND THE INTERCEPT AGREEMENT; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS ORDINANCE; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE LOAN AGREEMENT AND INTERCEPT AGREEMENT.

A general 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 12th DAY OF JULY, 2016.

CITY OF ALAMOGORDO, NEW MEXICO

By________________________________
Mayor

[SEAL]

ATTEST:

By ____________________________
Clerk

Commissioner __________ then moved adoption of the foregoing Ordinance, duly seconded by Commissioner __________.

The motion to adopt said Ordinance, upon being put to a vote, was passed and adopted on the following recorded vote:

Those Voting Aye: ______________________________________

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Those Voting Nay: ______________________________________

Those Absent: ______________________________________

__________ (__) members of the Governing Body having voted in favor of said motion, the Mayor declared said motion carried and said Ordinance adopted, whereupon the Mayor and the Clerk signed the Ordinance upon the records of the minutes of the Governing Body.

After consideration of matters not relating to the Ordinance, the meeting on the motion duly made, seconded and unanimously carried, was adjourned.

CITY OF ALAMOGORDO, NEW MEXICO

By ______________________________
Mayor

[SEAL]

ATTEST:

By______________________________
Clerk

First publication approval: 06/14/2016
First publication: 06/19/2016
Final publication approval: 07/12/2016
Final publication: 07/17/2016
Effective date: 07/22/2016

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

The City Commission (the "Governing Body") of the City of Alamogordo, New Mexico, met in regular session in full conformity with the law and the rules and regulations of the Governing Body at Alamogordo Municipal Offices, 1376 East Ninth Street, Alamogordo, New Mexico, being the regular meeting place of the Governing Body, on the 12th day of July, 2016, at the hour of 6:30 p.m. Upon roll call, the following members were found to be present:

Present: ______________________

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Absent: ______________________

Also Present: ______________________

____

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____

Thereupon, there was officially filed with the Clerk a copy of a proposed ordinance in final form.

AGENDA REPORT
CITY OF ALAMOGORDO
CITY COMMISSION

Meeting Date: 07/12/2016 **Report Date:** 7/5/2016 **Report No:** 10.

Submitted By: Stephen Thies, City Attorney

Subject: Consider, and act upon, first publication of Ordinance No. 1523 adopting Article 26-04-130 Short-Term Rental of Dwelling Units Residentially Zoned Property. *(Stephen Thies, City Attorney)*

Fiscal Impact:
Amount Budgeted:
Fund:

Additional Fiscal Impact:

Recommendation: Approve Ordinance No. 1523 for first publication.

Background: Several weeks ago it was brought to my attention by a City Commissioner that there is an increasing number of short-term rentals occurring in the City. A short-term rental is generally defined as a rental term of less than 30 days. A rental term of less than 30 days requires the owner of the property to pay lodgers tax and gross receipts tax. In addition to avoiding the payment of lodgers tax and GRT, a residence being offered for short-term rental may not necessary comply with the applicable provisions of the fire code.

A solution used by other communities is to enact a short-term rental ordinance. The attached ordinance is modeled after a similar ordinance enacted by Santa Fe and other out-if-state communities. Any person desiring to offer their property for short-term rental would be required to obtain a short-term rental permit. A nominal fee of $100 would be imposed for the permit largely intended to offset the cost of the required fire inspection, not to generate revenue. A copy of the Santa Fe fire inspection checklist is attached for reference purposes. It is anticipated that the scope of inspections conducted by the Alamogordo Fire Department would be similar in scope.

Staff requests approval of the attached ordinance for first publication.

ORDINANCE NO. 1523

ADOPTING ARTICLE 29-04-130
SHORT-TERM RENTAL OF DWELLING UNITS
RESIDENTIALLY ZONED PROPERTY

BE IT ORDAINED by the City Commission of the City of Alamogordo that the *Alamogordo Code of Ordinances* is hereby amended as follows:

SECTION 1. That Section 29-04-130 – Short-Term Rental of Dwelling Units – Residentially Zoned Property is hereby added to the *Alamogordo Code of Ordinances* to read as follows:

(1) Purpose.

The purpose of this section is to establish regulations for the use of privately owned residential dwellings as short-term rentals that ensure the collection and payment of Lodgers' Tax and minimize the negative secondary effects of such use on surrounding residential neighborhoods.

This chapter is not intended to provide any owner of residential property with the right or privilege to violate any private conditions, covenants and restrictions applicable to the owner's property that may prohibit the use of such owner's residential property for short term rental purposes as defined in this section.

(2) Definitions. For purposes of this section, the following word and phrases shall be given the following meanings:

Accessory dwelling unit means a dwelling unit that qualifies as an accessory use and structure.

Applicant means the owner of the short-term rental unit or the owner's authorized agent or representative.

City Manager means that person acting in the capacity of the City Manager of the City of Alamogordo or designee.

Dwelling Unit means one or more rooms connected together constituting a separate, independent housekeeping establishment occupied by one family, for either owner occupancy, rental or lease and physically separated from any other dwelling unit that may be in the same structure, and containing independent cooking and sleeping facilities; provided that the term does not include group housing, hotels or motels.

Dwelling, Single-family means one principal dwelling unit, occupied by one family, located on a lot without other principal uses or structures. Single-family dwelling includes a manufactured home but does not include a mobile home.

Local contact person means the person designated by the owner or the owner's authorized agent or representative who shall be available twenty-four (24) hours per day, seven (7) days per week for the purpose of: (1) responding within sixty (60) minutes to complaints regarding the condition, operation, or conduct of occupants of the short-term rental unit; and (2) taking remedial action to resolve any such complaints.

Nonresidential means all uses not defined as residential.

Owner means the person(s) or entity(ies) that hold(s) legal and/or equitable title to the short-term rental property.

Owner-Occupant or Resident Owner means a natural person who holds fee simple title and resides on the property.

Residential shall be the term used to describe occupancy, structures or districts primarily intended for or restricted to development and use for dwelling units. It does not include hotels or motels.

Residentially Zoned Property means those zones within the City of Alamogordo that primarily permit accommodation of residential housing.

Short Term Rental Unit means a dwelling unit [*or accessory dwelling unit]* rented for less than 30 days.

(3) General Provisions. Unless otherwise stated, the following general provisions apply to short-term rental units:

(a) [*short term rentals will not be permitted in a detached accessory dwelling unit];*

(b) off-street parking shall be provided on site as follows: (1) one bedroom, one parking space; and (2) two or more bedrooms; two parking spaces;

(c) all applicable building and fire life safety codes shall be met;

(d) occupants shall not park recreational vehicles on site or on the street;

(e) short term rentals will not be permitted to be used for non-residential purposes;

(f) the total number of persons that may occupy the short-term rental unit is twice the number of bedrooms;

(g) noise or other disturbance outside the short-term rental unit is prohibited after 10:00 p.m., including decks, portals, porches, balconies or patios;

(h) all occupants shall be informed in writing of relevant city ordinances, including the city's unreasonable noise and nuisance ordinance, by the owner/operator of the short-term rental unit. All occupants shall comply with all relevant city ordinances;

(i) the owner/operator shall pay all applicable local, state and federal taxes, including lodgers' tax, gross receipts tax and income taxes. Should the owner/operator neglect to pay all applicable taxes, the City shall exercise all enforcement authority permissible under applicable City Ordinance, and any applicable county, state, or federal law or ordinance;

(j) the owner/operator shall make available to the city for its inspection all records relating to the operation of the short-term rental unit to determine compliance with this subsection. The owner/operator shall report to the city manager a monthly basis in a format provided by the city manager;

(k) the owner shall maintain adequate property insurance coverage for the short-term rental unit. Proof of insurance shall be required at the time the permit is issued and such other times as requested by the city manager;

(l) a property governed by a recorded restrictive covenants which do not permit short-term rental shall not be issued a short-term rental permit.;

(m)while a short-term rental unit is rented, the owner/operator shall be available twenty-four (24) hours per day, seven (7) days per week for the purpose of responding within sixty (60) minutes to complaints regarding the condition, operation, or conduct of the occupants of the short-term rental unit or their guests; and

(n) the owner/operator shall obtain and maintain a business registration for each short-term rental unit.

(4) Applications. Unless otherwise stated, an application for a permit for a short-term rental shall be submitted to the city as follows:

(a) the application shall include the name and phone number of the owner/operator who is available twenty-four hours per day, seven days per week to respond to complaints regarding the operation or occupancy of the short-term rental unit as well as the name and phone number of city staff responsible for enforcing this section;

(b) the application shall include a verified, notarized statement signed by the owner/operator that the short-term rental shall be operated in compliance with this paragraph and all other applicable city codes and that the operation of the short-term rental is in compliance with any applicable private covenants;

(c) all applicants must submit proof of all required inspections with their initial application. Renewal applications may submit proof of all required inspections in the form of a notarized statement attesting to compliance with all fire, health and safety requirements. Renewal applications will be subject to random compliance checks.

(d) the permit is not transferable to another person or property;

(e) if the short-term rental unit is located on property zoned R-1, within ten days of the issuance of the permit, the owner/operator shall mail notice by first class mail, with certificate of mailing, to the owners of properties within two hundred (200) feet of the subject property, exclusive of rights of way, as shown in the records of the county treasurer, and by first class mail to the physical addresses of such properties where such address is different than the address of the owner. No notice is required if all properties located within two hundred (200) feet of the subject property are zoned other than R-1. Notice shall be on a form approved by the city manager, and shall contain the name and phone number of the owner/operator who will be available twenty-four hours per day, seven days per week to respond to complaints regarding the operation or occupancy of the short-term rental as well as the name and phone number of city staff responsible for enforcing this paragraph. Copies of all required mailing lists and mailing certificates shall be provided to the city manager within ten days of the mailing;

(f) each application shall be accompanied by a fee of one hundred dollars ($100) to cover application processing and inspections. This application fee is non-refundable.

(g) a valid permit number shall be included in all advertising of the short-term rental, including listing on web-based rental sites.

(5) Change of Rental Property Ownership or Agent.

(a) Within thirty days after transfer of ownership or change of local agent of a licensed property, the operator shall notify the city manager of the identity and mailing address of the new owner or new local agent. Every rental license will automatically expire sixty days after the date upon which transfer of ownership of the rental property occurs.

(b) Within sixty days after transfer of ownership of a property for which there is a current and valid license, the new operator of the property shall apply for a new permit.

(6) Violations

(a) It shall be unlawful for an owner to offer for rent as a short-term rental a dwelling unit that is not permitted for use as a short-term rental.

(b) It shall be unlawful for a real estate rental agent who knowingly assists an owner in advertising or renting a dwelling unit as a short-term rental unit that is not permitted under this section.

(7) Penalties.

(a) If an owner fails to report their lodger's tax, the owner shall be subject to the provisions of the Lodgers' Tax Ordinance, Article 23-02 of the Alamogordo City Code, and shall be subject to revocation of their short term rental permit.

(b) If an owner is convicted of operating a short term rental without a valid permit, or violating any other provision of this section, for the first offense, the owner shall be fined one hundred fifty ($150) dollars. If an owner is subsequently convicted a second time within five (5) years of the first conviction, the owner shall be fined three hundred ($300) dollars. If an owner is convicted a third time, or receives any additional convictions within five (5) years of the first conviction, the owner shall be subject to a fine of $500.00 or imprisonment for a term not exceeding 90 days, or both.

SECTION 2. SEVERABILITY CLAUSE. If any section, paragraph, sentence, clause, word or phrase of this Ordinance is for any reason held to be invalid or unenforceable by any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this Ordinance. The Commission hereby declares that it would have passed this Ordinance and each section, paragraph, sentence, clause, word or phrase thereof irrespective of any provision being declared unconstitutional or otherwise invalid.

SECTION 3. EFFECTIVE DATE. This Ordinance shall take effect five days after publication by title and general summary.

DONE this __________ day of ____________, 2016.

CITY OF ALAMOGORDO, NEW MEXICO
a New Mexico municipal corporation

By:__________________________________
Richard Boss, Mayor

ATTEST:

____
Nancy Jacobs, City Clerk

APPROVED AS TO FORM:

____
Stephen P. Thies, City Attorney

AGENDA REPORT
CITY OF ALAMOGORDO
CITY COMMISSION

Meeting Date: 07/12/2016 **Report Date:** 7/7/2016 **Report No:** 11.

Submitted By: Stephen Thies, City Attorney

Subject: Consider, and act upon, first publication of Ordinance No. 1524 amending Section 17-08-010 to define Panhandling and adding new section 17-08-015 regulating panhandling activities within the City of Alamogordo. *(Stephen Thies, City Attorney)*

Fiscal Impact:
Amount Budgeted:
Fund:

Additional Fiscal Impact:

Recommendation: Approve Ordinance No. 1524 for first publication.

Background: In order to protect the safety of the general public against certain abusive conduct of persons engaged in panhandling, this ordinance will impose reasonable manner, time and place restrictions on panhandling while respecting the constitutional rights for all citizens.

Current laws and city regulations are insufficient to address these problems. In enacting this section, the Commission recognizes the availability of community service and other sentencing alternatives that may be appropriate remedies for violations of this ordinance. The goal of this section is to protect citizens from the fear, harassment and intimidation accompanying certain kinds of panhandling that have become an unwelcome and dangerous presence in the city.

ORDINANCE NO. 1524

AN ORDINANCE AMENDING SECTION 17-08-010 OF ARTICLE 17-08 OF CHAPTER SEVENTEEN OF THE CITY OF ALAMOGORDO CODE OF ORDINANCES TO DEFINE "PANHANDLING" AND FURTHER AMENDING ARTICLE 17-08 TO INCLUDE A NEW SECTION 17-08-015 TO REGULATE PANHANDLING ACTIVITIES WITHIN THE CITY OF ALAMOGORDO

WHEREAS, the City Commission of the City of Alamogordo wishes to protect the safety of the general public against certain abusive conduct of persons engaged in panhandling by imposing reasonable manner, time and place restrictions on panhandling while respecting the constitutional rights for all citizens; and

WHEREAS, current laws and city regulations are insufficient to address the aforementioned problems. In enacting this section, the Commission recognizes the availability of community service and other sentencing alternatives that may be appropriate remedies for violations of this ordinance. The goal of this section is to protect citizens from the fear, harassment and intimidation accompanying certain kinds of panhandling that have become an unwelcome and dangerous presence in the city; and

WHEREAS, The purpose of this section is to establish regulations for panhandling in order to promote the safety and convenience of the city's citizens; to protect the panhandler's right to free speech; and to promote harmony among panhandlers, local businesses, residents and visitors within the city.

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

Chapter 17, Article 17-08 – Peddlers and Solicitors, is hereby amended to read as follows:

17-08-010. - Definitions.

- For the purposes of this article, the terms used herein are defined as follows:

Aggressive manner means and includes:

(1) Intentionally or recklessly making any physical contact with or touching another person in the course of the solicitation without the person's consent;

(2) Following the person being solicited, if that conduct is:

a. Intended to or is likely to cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon property in the person's possession; or

b. Is intended to or is reasonably likely to intimidate the person being solicited into responding affirmatively to the solicitation;

(3) Continuing to solicit within five (5) feet of the person being solicited after the person has made a negative response, if continuing the solicitation is:

a. Intended to or is likely to cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon property in the person's possession; or

b. Is intended to or is reasonably likely to intimidate the person being solicited into responding affirmatively to the solicitation;

It is prima facie evidence of an intention to cause a reasonable person fear of imminent bodily harm, if the person continues to solicit from a person who has asked him/her to stop.

(4) Intentionally or recklessly blocking the safe or free passage of the person being solicited or requiring the person, or the driver of a vehicle to take evasive action to avoid physical contact with the person making the solicitation. Acts authorized as an exercise of one's constitutional right to picket or legally protest, and acts authorized by a business registration issued pursuant to Chapter 17 of this Code, shall not constitute obstruction of pedestrian or vehicular traffic;

(5) Intentionally using obscene or abusive language or gestures:

a. Intended to or likely to cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon property in the person's possession; or

b. Words intended to or reasonably likely to intimidate the person into responding affirmatively to the solicitation; or

(6) Approaching the person being solicited in a manner that:

a. Is intended to or is likely to cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon property in the person's possession; or

b. Intended to or is reasonably likely to intimidate the person being solicited into responding affirmatively to the solicitation.

Automated teller machine means a device, linked to a financial institution's account records, which is able to carry out transactions, including, but not limited to: account transfers, deposits, cash withdrawals, balance inquiries, and mortgage and loan payments.

Automated teller machine facility means the area comprising one (1) or more automatic teller machines, and any adjacent space which is made available to banking customers after regular banking hours

Bank means any banking corporation as defined under the laws of the state.

Check cashing business means any business which represents itself to the public as engaged in the business of cashing checks, drafts or money orders for consideration

Commercial solicitors shall mean those persons engaged in the practices enumerated in (1) under the definition of "solicitor" as well as those acting as peddlers, and shall include all persons engaged in solicitation activities within the city who are required to obtain business licenses or registrations under other provisions of this chapter.

Panhandling means any solicitation made in-person which requests an immediate donation of money. Purchase of an item for an amount far exceeding its value, under circumstances where a reasonable person would understand that the purchase is in substance a donation, is a donation for the purpose of this chapter. Panhandling does not include passively standing or sitting with a sign or other indication that one is seeking donations, without addressing any solicitation to any specific person other than in response to an inquiry by that person.

Peddler means any person who goes from house to house, place to place, or from street to street carrying, conveying, or transporting foods, wares, or merchandise, meats, fish, vegetables, fruits, garden truck, farm products, or provisions, offering or exposing such for sale or making sales and delivering articles to purchasers. The term "peddler" shall include the terms "hawker, huckster, transient merchant and itinerant vendor." Peddler shall not include any persons exempt from licensing under Section 7-23-1, NMSA 1978.

Public area means an area to which the public or a substantial group of persons has access, and includes, but is not limited to, alleys, bridges, buildings, driveways, parking lots, parks, playgrounds, plazas, sidewalks, and streets open to the general public, and the doorways and entrances to buildings and dwellings, and the grounds enclosing them.

Solicit means to request an immediate payment, donation of money or other thing of value, including an order or promise of future payment, from another person, regardless of the solicitor's purpose or intended use of the money or other thing of value. The solicitation may be, without limitation, by the spoken, written, or printed word, or by other means of communication.

Solicitation activities shall mean the practices of solicitors as listed in (1) and (2) under the definition of "solicitor" as well as the practices of peddling and panhandling.

Solicitor shall mean any person, including an employee or agent of another, traveling either by foot, automobile, truck or other type of conveyance, who engages in the practice of going door-to-door, house-to-house or along any streets within the city:

(1) Selling or taking orders for or offering to sell or take orders for goods, merchandise, wares or other items of value for future delivery or for services to be performed in the future for commercial purposes; or

(2) Requesting contribution of funds, property or anything of value or of the pledge of any type of future donation or selling or offering for sale any type of property, including but not limited to goods, tickets, books and pamphlets, for political, charitable, religious or other noncommercial purposes.

17-08-015. Panhandling.

A. *Time of Panhandling*. It shall be unlawful for any person to panhandle after sunset or before sunrise.

B. *Place of Panhandling*. It shall be unlawful for any person to panhandle when the person solicited is in any of the following places:

1. At any bus stop or train stop;
2. In any public transportation vehicle or facility;
3. In any vehicle on the street; or
4. On private property unless the panhandler has permission from the owner or occupant.

C. *Manner of panhandling.* It shall be unlawful for any person to panhandle in an "aggressive manner" as defined in Section 17-08-010 of this Chapter.

D. *False or Misleading Representations.* It shall be unlawful for any person to knowingly make false or misleading representations in the course of panhandling. False or misleading representations include, but are not limited to, the following:

1. Stating that the panhandler is from out of town and stranded, when that is not true;
2. Wearing a military uniform or other indication of military service, when the panhandler is neither a present nor former member of the service indicated;
3. Use of any makeup or device to simulate any deformity; or
4. Stating that the panhandler is homeless, when he is not.

E. *Permit Requirement.*

1. It shall be unlawful for any person to panhandle on five or more days in a single calendar year without a permit issued by the police department. A person who has been issued a permit shall keep it on his person at all times while panhandling and show it to any peace officer upon request. No person whose permit has been revoked shall panhandle for a period of two years following the revocation.
2. The police department shall issue the permit, without fee, to any eligible person who presents himself at the central police station, states his true name, presents a photo identification or signs a declaration under penalty of perjury that he has no such identification, and permits himself to be photographed and fingerprinted.

3. A person is ineligible for a permit if and only if within the past five years he (1) has been convicted of two or more violations of this chapter, (2) has had a permit revoked pursuant to subdivisions (e) or (f) of this section, or (3) has been convicted of two or more offenses under the law of any jurisdiction which involve aggressive or intimidating behavior while panhandling or false or misleading representations while panhandling.

If the police department is unable to determine eligibility within 24 hours of the application, the department shall issue a permit good for 30 days and determine eligibility for a regular permit before the temporary permit expires. The regular permit shall expire three years from the date of issuance. Along with the permit, the police department shall give the applicant a copy of this chapter.

F. Nothing in this section shall be construed as prohibiting the city from using a premise or area designated on a governmental liquor license for the retail and consumption by adults of alcoholic beverages in any city park, or on any other public place.

DONE this _______ day of ________________, 2016.

CITY OF ALAMOGORDO, NEW MEXICO
a New Mexico municipal corporation

By:___________________________________
Richard Boss, Mayor

ATTEST:

____
Nancy Jacobs, City Clerk

APPROVED AS TO FORM:

____
Stephen P. Thies, City Attorney

AGENDA REPORT
CITY OF ALAMOGORDO
CITY COMMISSION

Meeting Date: 07/12/2016 **Report Date:** 7/7/2016 **Report No:** 12.

Submitted By: Stephen Thies, City Attorney

Subject: Consider, and act upon, first publication of Ordinance No. 1525 amending Section 18-01-030 of the Code of Ordinances concerning Municipal Court conditional discharge. *(Stephen Thies, City Attorney)*

Fiscal Impact:
Amount Budgeted:
Fund:

Additional Fiscal Impact:

Recommendation: Approve Ordinance No. 1525 for first publication.

Background: The enactment of this Ordinance will allow the Municipal Court Judge to enter a conditional discharge when a person who has not been previously convicted of a felony offense is found guilty of a crime for which a deferred or suspended sentence is authorized, without entering an adjudication of guilt and place the person on probation.

ORDINANCE NO. 1525

AN ORDINANCE AMENDING SECTION 18-01-030 OF CHAPTER EIGHTEEN OF THE CITY OF ALAMOGORDO CODE OF ORDINANCES

WHEREAS, the City Commission of the City of Alamogordo finds that it is in the interest of justice to allow for the availability of conditional discharges in sentencing defendants in municipal court.

BE IT ORDAINED by the City Commission of the City of Alamogordo New Mexico that Chapter Eighteen of the *Code of Ordinances* be amended to include the following:

18-1-030. - Suspension of sentence; conditional discharge; probation.

(a) The municipal court may, upon entry of a plea of guilty or judgment ~~of~~ or conviction:

(1) Suspend in whole or part the execution of sentence; or

(2) Enter a conditional discharge in accordance with subsection (c) of this Section; or

(3) Place the defendant on probation for a period not exceeding one year on terms and conditions the court deems best; or any combination of the above.

(b) Suspension of execution of the sentence or probation, or both, shall be granted only when the municipal judge is satisfied it will serve the ends of justice and of the public, and that the defendant's liability for any fine or other punishment imposed is fully discharged upon successful completion of the terms and conditions of probation.

(c) Conditional Discharges

(1) When a person who has not been previously convicted of a felony offense is found guilty of a crime for which a deferred or suspended sentence is authorized, the court may, without entering an adjudication of guilt, enter a conditional discharge order and place the person on probation.

(2) A conditional discharge entered by the municipal court shall be granted only if the person has not been previously convicted of a felony offense, if the entry of a deferred or suspended sentence would be authorized for the offense and, if good cause exists for the entry of a conditional discharge.

(3) A conditional discharge may be made by the municipal court only once with respect to any person during that person's lifetime.

(4) A conditional discharge may not be entered for any offense of DWI by the municipal court.

(5) If a conditional discharge is entered by the municipal court, the court shall not collect court costs.

DONE this _______ day of ________________, 2016.

CITY OF ALAMOGORDO, NEW MEXICO
a New Mexico municipal corporation

By:___________________________________
Richard Boss, Mayor

ATTEST:

____
Nancy Jacobs, City Clerk

APPROVED AS TO FORM:

____
Stephen P. Thies, City Attorney

AGENDA REPORT
CITY OF ALAMOGORDO
CITY COMMISSION

Meeting Date: 07/12/2016 **Report Date:** 7/7/2016 **Report No:** 13.

Submitted By: Stephen Thies, City Attorney

Subject: Consider, and act upon, first publication of Ordinance No. 1526 amending Section 24-01-020 of the Code of Ordinances pertaining to reckless driving, by strengthening the penalty for such crime. *(Stephen Thies, City Attorney)*

Fiscal Impact:
Amount Budgeted:
Fund:

Additional Fiscal Impact:

Recommendation: Approve Ordinance No. 1526 for first publication.

Background: The crime of Reckless Driving is a serious violation, reserved to punish motorists who drive "carelessly and heedlessly in willful or wanton disregard of the rights or safety of others and without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or property."

Enacting this Ordinance will deter the crime of Reckless Driving by strengthening the maximum allowable penalty for such crime.

ORDINANCE NO. 1526

AN ORDINANCE AMENDING SECTION 24-01-020 OF CHAPTER TWENTY FOUR OF THE CITY OF ALAMOGORDO CODE OF ORDINANCES

WHEREAS, the City Commission of the City of Alamogordo has previously adopted the provisions of the New Mexico Uniform Traffic Ordinance; and

WHEREAS, the City Commission of the City of Alamogordo finds that the crime of **Reckless Driving** is a serious violation, reserved to punish motorists who drive "carelessly and heedlessly in willful or wanton disregard of the rights or safety of others and without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or property;" and

WHEREAS, the City Commission of the City of Alamogordo wishes to deter the crime of Reckless Driving by strengthening the maximum allowable penalty for such crime.

BE IT ORDAINED by the City Commission of the City of Alamogordo New Mexico that Section 24-01-020 of Chapter Twenty Four of the *Code of Ordinances* be amended as follows:

24-01-020. – Same – Amendments.

The following amendments to the 2010 New Mexico Uniform Traffic Ordinance are adopted:

A. *12-1-2.1 Access Aisle.* "Access Aisle" means a space designed to allow a person with a significant mobility limitation to safely exit and enter a motor vehicle that is immediately adjacent to a designated parking space for persons with significant mobility limitations and that may be common to two such parking spaces of at least sixty inches in width or, if the parking space is designed for van accessibility, ninety-six inches in width, and clearly marked and maintained with blue striping, and after January 1, 2011 the words "NO PARKING" in capital letters, each of which shall be at least one foot high and at least two inches wide, placed at the rear of the access aisle so as to be close to where an adjacent vehicle's rear tires would be placed (66-1-4.1 NMSA 1978).

B. *12-6-5.5 Limitations on Turning Around.* The driver of any vehicle may turn the vehicle so as to proceed in the opposite direction provided that the movement can be made safely and without interfering with other traffic and further provided that authorized signs disallowing U-turns have not been erected in the area; such turn shall not be made if to do so would violate any other traffic ordinance or statute.

C. *12-6-12.6 Unlawful Use of License; Driving When Privilege To Do So Has Been Suspended or Revoked*

a. No person shall:

    1. display or cause or permit to be displayed or have in his possession any canceled, revoked or suspended driver's license or permit;

    2. lend his driver's license or permit to any other person or knowingly permit the use thereof by another;

    3. display or represent as one's own any driver's license or permit not issued to him;

    4. fail or refuse to surrender to the court upon its lawful demand any driver's license or permit which has been suspended, revoked, or canceled;

    5. permit any unlawful use of driver's license or permit issued to him; (66-5-37)

    6. drive a motor vehicle on any public street or highway at a time when his privilege to do so is suspended and who knows or should have known that his license was suspended. Upon conviction, the person shall be punished by imprisonment for not less than four days nor more than ninety days or participation for an equivalent period of time in a certified alternative sentencing program, and there may be imposed in addition a fine of not more than five hundred dollars ($500.00). When a person pays any or all of the cost of participating in a certified alternative sentencing program, the court may apply that payment as a deduction to any fine imposed by the court;

    7. drive a motor vehicle on a highway of this state at a time when the person's privilege to do so is revoked and who knows or should have known that the person's license was revoked is guilty of a misdemeanor and shall be charged with a violation of this section. Upon conviction, the person shall be punished, notwithstanding the provisions of Sec. 31-18-13 NMSA 1978, by imprisonment for not less than four days or more than ninety days or by participation for an equivalent period of time in a certified alternative sentencing program, and there may be imposed in addition a fine of not more than $500. When a person pays any or all of the cost of participating in a certified alternative sentencing program, the court may apply that payment as a deduction to any fine imposed by the court; and

    8. notwithstanding any other provision of law for suspension or deferment of execution of a sentence, if the person's privilege to drive was

revoked for driving under the influence of intoxicating liquor or drugs or a violation of the Implied Consent Act, upon conviction shall be punished by imprisonment for not less than seven consecutive days and shall be fined not less than three hundred dollars ($300.00) and not more than five hundred dollars ($500.00) and the fine and imprisonment shall not be suspended, deferred or taken under advisement. No other disposition by plea of guilty to any other charge in satisfaction of a charge under this section shall be authorized if the person's privilege to drive was revoked for driving under the influence of intoxicating liquor or drugs or a violation of the Implied Consent Act. (66-5-39.1 NMSA 1978)

b. In addition to any other penalties imposed pursuant to the provisions of this section, when a person is convicted pursuant to the provisions of this section, the motor vehicle the person was driving shall be immobilized by an immobilization device for thirty days, unless immobilization of the motor vehicle poses an imminent danger to the health, safety or employment of the convicted person's immediate family or the family of the owner of the motor vehicle. The convicted person shall bear the cost of immobilizing the motor vehicle. (66-5-39 NMSA 1978)

D. *Section 12-8-5(C),* which reads as follows:

(C) Wherever a usable path for bicycles has been provided adjacent to a street, bicycle riders shall use such path and shall not use the street.

is hereby deleted. The remaining language of section 12-8-5 (C) shall continue in full force and effect.

E. *Section 12-12-1.3* is amended:

a. There is imposed upon any person convicted of violating any municipal ordinance the penalty for which carries a potential jail term of any ordinance relating to the operation of a motor vehicle the following mandatory fees:

1. a corrections fee of twenty dollars ($20.00);

2. a judicial education fee of three dollars ($3.00);

3. a court automation fee of six dollars ($6.00).

F. *12-12-3 Conduct of Arresting Officer – Notices by Citation.*

a. Except as provided in Section 12-12-5, unless a penalty assessment or warning notice is given, whenever a person is arrested for any violation of this ordinance or other law relating to motor vehicles punishable as a misdemeanor, the arresting officer, using the uniform traffic citation in paper or electronic form, shall complete the information section and prepare a notice to appear in court, specifying the time and place to appear, have the arrested person sign the agreement to appear as specified, give a copy of the citation to the arrested person and release him from custody.

b. Whenever a person is arrested for violation of a penalty assessment misdemeanor and elects to pay the penalty assessment, the arresting officer, using the uniform traffic citation in paper or electronic form, shall complete the information section and prepare the penalty assessment notice indicating the amount of the penalty assessment, have the arrested person sign the agreement to pay the amount prescribed, give a copy of the citation along with a business reply envelope addressed to the municipal court with jurisdiction and release him from custody. No officer shall accept custody or payment of any penalty assessment notice, the officer shall issue a notice to appear. (66-8-123 B NMSA 1978)

c. The arresting officer may issue a warning notice, but shall fill in the information section of the uniform traffic citation in paper or electronic form and give a copy to the arrested person after requiring his signature on the warning notice as an acknowledgment of receipt. No warning notice issues under this section shall be used as evidence of conviction for purposes of suspension or revocation of license under Section 66-5-30 NMSA 1978.

d. In order to secure his release, the arrested person must give his written promise to appear in court, or to pay the penalty assessment prescribed or acknowledge receipt of a warning notice.

e. Any officer violating this section is guilty of misconduct in office and is subject to removal. (66-8-123 NMSA 1978)

f. An electronic traffic citation, prescribed by Section 12-12-3.1, is an electronic version of the uniform traffic citation. For the purposes of this section, an electronic citation may be completed instead of a uniform traffic citation; provided, however, that where this section requires a copy of a citation to be given to an arrested person, a physical copy of the citation shall be provided whether a uniform traffic citation or an electronic form of the uniform traffic citation was used. An electronic form of the uniform traffic citation may be signed electronically.

G. *12-12-3.1 Electronic Uniform Traffic Citation.*

a. An electronic version of the uniform traffic citation shall include the same information required to be included in a uniform traffic citation. An electric version of a uniform traffic citation may be signed electronically and a law enforcement officer may submit or file with a court an electronic version of a uniform traffic citation if prior permission of the department has been secured. There the law requires a law enforcement officer to provide a copy of a citation to the person cited or arrested, a physical copy of the citation shall be provided regardless of whether a paper uniform traffic citation or an electronic version of a uniform traffic citation was used. (66-8-128 NMSA 1978)

H. *12-12-11 Abstract of Traffic Cases – Report on Convictions.*

a. Every municipal judge shall keep a record of every traffic complaint, uniform traffic citation and other form of traffic charge filed in the judge's court or its traffic violations bureau and every official action and disposition of the charge by that court. The court shall notify the Department if a defendant fails to appear on a charge of violating the Motor Vehicle Code or other law or ordinance relating to motor vehicles.

b. Within ten days of the later of entry of a final disposition of a conviction for violation of this ordinance or other law or ordinance relating to motor vehicles or the final decision of any higher court that reviews the matter and from which no appeal or review is successfully taken, every municipal judge, including the children's court judges, or the clerk of the court in which the entry of the final disposition occurred shall prepare and forward to the department an abstract of the record containing the name and address of the defendant; the specific section number and common name of the provision of the local law, ordinance or regulation under which the defendant was tried; the plea, finding of the court and disposition of the charge, including fine or jail sentence or both; total costs assessed to the defendant; the date of the hearing; the court's name and address; whether defendant was a first or subsequent offender; and whether the defendant was represented by counsel or waived his right to counsel and, if represented, the name and address of counsel.

c. The abstract of record prepared and forwarded under Subsection B of this section shall be certified as correct by the person required to prepare it. With the prior approval of the department, the information required in Subsection B of this Section may be transmitted electronically to the department. Report need not be made of any disposition of a charge of illegal parking or standing of a vehicle except when the uniform traffic citation is used.

d. When the uniform traffic citation is used, the court shall provide the information required in Subsection B of this Section in the manner prescribed by the director. A copy of each penalty assessment processed shall be forwarded to the division within ten (10) days of completion of local processing for posting to the driver's record. With the prior approval of the director, the required information may be submitted to the division by electronic means in lieu of forwarding copies of the penalty assessments.

e. The willful failure or refusal of any judicial officer to comply with this section is misconduct in office and grounds for removal. (66-8-135 NMSA 1978)

I. *12-6-18 Texting While Driving.*

a. A person shall not read or view a text message or manually type on a handheld mobile communication device for any purpose while driving a motor vehicle except to summon medical or other emergency help or unless that device is an amateur radio and the driver holds a valid amateur radio operator license issued by the Federal Communications Commission.

b. The provisions of this section shall not be construed as authorizing the seizure or forfeiture of a handheld mobile communications device. Unless otherwise provided by law, the handheld mobile communications device used in the violation of the provisions of this section is not subject to search by a law enforcement officer during a traffic stop made pursuant to the provisions of this section.

c. As used in this section:

1. "*driving*" means being in actual physical control of a motor vehicle on a highway or street and includes being temporarily stopped because of traffic, a traffic light or stop sign or otherwise, but "driving" excludes operating a motor vehicle when the vehicle has pulled over to the side of or off an active roadway and has stopped at a location in which it can remain safely stationary;

2. *"handheld mobile communications device"* means a wireless communications device that is designed to receive and transmit text or image messages, but "handheld mobile communications device" excludes global positioning or navigation systems, devices that are physically or electronically integrated into a motor vehicle and voice-operated or hands-free devices that allow the user to compose, send, or read a text message without the use of a hand expect to activate, deactivate or initiate a feature or function; and

3. *"text message"* means a digital communication transmitted or intended to be transmitted between communication devices and

includes electronic mail, an instant message, a text or image communication and a command or request to an internet site; but "text message" excludes communications through the use of a computer-aided dispatch service by law enforcement or rescue personnel.

d. A violation of provisions of this section is punishable by a fine of $25 for a first violation and $50 for a second or subsequent violation. Violations of provisions of this section may be included in a local penalty assessment ordinance.

J. 12-6-12.3 Reckless Driving.

a. Any person who drives any vehicle carelessly and heedlessly in willful or wanton disregard of the rights or safety of others and without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or property is guilty of reckless driving.

b. Every person convicted of reckless driving shall be punished by imprisonment for not less than five days, or by a fine not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00), or both.

DONE this __________ day of ______________, 2016.

CITY OF ALAMOGORDO, NEW MEXICO
a New Mexico municipal corporation

By: ______________________________
Richard A. Boss, Mayor

ATTEST:

____
Nancy E. Jacobs, City Clerk

APPROVED AS TO FORM:

____
Stephen P. Thies, City Attorney

AGENDA REPORT
CITY OF ALAMOGORDO
CITY COMMISSION

Meeting Date: 07/12/2016 **Report Date:** 7/7/2016 **Report No:** 14.

Submitted By: Stephen Thies, City Attorney

Subject: Consider, and act upon, the transfer of quitclaim deed to Betty Dare Good Samaritan Center. *(Stephen Thies, City Attorney)*

Fiscal Impact:
Amount Budgeted:
Fund:

Additional Fiscal Impact:

Recommendation: Approve transfer of deed.

Background: A few meetings ago the City Commission was asked to approve an electrical easement for the Betty Dare Good Samaritan Center. As explained at the time, the property had originally been convened to the City as part of an industrial revenue bond proceedings many years prior. For whatever reason, the property was never transferred back to Betty Dare when the bonds were paid off. Since that time, the City has been contacted to request that transfer. A quitclaim deed is attached for that purpose.

Staff requests approval of the deed.

QUITCLAIM DEED

The City of Alamogordo, New Mexico, a municipal corporation duly organized and existing as a municipal corporation under and by virtue of the laws of the State of New Mexico ("Grantor"), quitclaims to The Evangelical Lutheran Good Samaritan Society, a North Dakota non-profit corporation, whose address is 4800 West 57th Street, Sioux Falls, SD 57108 ("Grantee"), all of Grantor's right, title, and interest in and to the real estate in Otero County, New Mexico more particularly described as follows:

A tract of land in the Northeast Quarter of Section 7, T16S, R10E, NMPM, and more particularly described by metes and bounds as follows:

Starting at the East one-quarter corner of said Section 7 and going N 0° 03' W along the section line a distance of 811.25 feet;
THENCE N 89° 17' 30" W a distance of 30.0 feet to the place of beginning of the tract of land herein described;
THENCE continuing N 89° 17' 30" W along the North line of the South half of the Southeast quarter of the Northeast quarter of said Section 7 a distance of 473.06 feet;
THENCE N 0° 03' W a distance of 285.6 feet;
THENCE S 89° 17' 30" E a distance of 169.6 feet;
THENCE N 0° 03' W a distance of 31.7 feet;
THENCE S 89° 17' 30" E a distance of 19.5 feet;
THENCE N 0° 03' W a distance of 105.7 feet;
THENCE S 89° 17' 30" E a distance of 283.96 feet to the West right-of-way line of North Florida Avenue;
THENCE S 0° 03' E along said right-of-way line 30 feet West of and parallel with the section line a distance of 422.00 feet to the place of beginning and containing 4.01 acres.

WITNESS its hand a seal this ______ day of June, 2016.

The City of Alamogordo, New Mexico

By:___________________________________
Richard A. Boss, Mayor

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

This instrument was acknowledged before me on June ________, 2016, by Richard A. Boss, Mayor of the City of Alamogordo, New Mexico, a municipal corporation duly organized and existing as a municipal corporation under and by virtue of the laws of the State of New Mexico.

____
Notary Public

My commission expires:

AGENDA REPORT
CITY OF ALAMOGORDO
CITY COMMISSION

Meeting Date: 07/12/2016 **Report Date:** 7/7/2016 **Report No:** 15.

Submitted By: Nancy Jacobs, City Clerk

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

Fiscal Impact:
Amount Budgeted:
Fund:

Additional Fiscal Impact:

Recommendation: Appoint to the Community Development Advisory Committee.
Appoint to the Senior Volunteer Programs Advisory Council.

Background:

Airport Zoning Board. Three (3) vacancies. Staff Liaison -Veronica Ortega
(Opening due to the expiring term of Darron Williams and the resignation of Frank Nelson and Paul Vigneault.) No nominations received.

Alamogordo Disability Council. One (1) vacancy. Staff Liaison - Edward Balderrama
(Openings due to the expiring term of Rita Martinez) No nominations received.

Community Development Advisory Committee. Five (5) vacancies. Staff Liaison - Stella Rael
(Opening due to the expiring term of Bruce Knee, Tony Alger and Melanie Hall and the resignation of Eddie Kemp and Arthur Alterson)
The following individual is interested in being appointed:
Jeremy Avalos - if appointed this will be his first term.

Housing Authority Advisory Board. Two (2) vacancies. Staff Liaison - Evelyn Huff
(Opening due to the expiring term of Kandace Daugherty and the resignation of Angela Mauldin) No nominations received.

Mayors Committee on Aging. Three (3) vacancies. Staff Liaison – Britney Courtier
(Openings due to the resignation of Dawn Lewis, David Day and Josephine Chavez)
No nominations received.

Parks and Recreation Board. One (1) vacancy. Staff Liaison - Veronica Ortega
(Opening due to the resignation of Michael Elliott) No nominations received.

Promotion Board. One (1) tourism related vacancy. Staff Liaison - Jan Waffull (*Opening due to the resignation of Kathleen Beall)* No nominations received.

Public Library Board. One (1) vacancy. Staff Liaison – Melissa Garcia
(Opening due to the expiring term of Joann Reynolds) No nominations received.

Senior Volunteer Programs Advisory Council. Five (5) vacancies. Staff Liaison - Julie Baker *(Openings due to the expiring term of Eldon E Hoover and Angela Axtolis, and the resignations of Laura L Blackmon, William Whitley and Thomas Rich V.)*
The following individuals are interested in being appointed:
Eldon E Hoover - if appointed this will be his third term.
Jennifer Euler - if appointed this will be her first term.

COMMUNITY DEVELOPMENT ADVISORY COMMITTEE

RECEIVED
JUL 05 2016
CITY CLERK

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

Name: Jeremy Avalos

Home Phone: 575 Work Phone:

Cell Phone: (575)214-0477 Fax No:

e-mail address: Jermimey12@outlook.com

Physical Address: 1511 Michigan Ave

Is the above address within City limits? Yes ✓ No

Mailing Address: 1511 Michigan Ave. Alamogordo, NM 88310

Present Employer: Professional ~~[illegible]~~ Detailing Job Title: Independent Contractor

Board/Committee you wish to serve on:

First choice: Community development

Second choice: Parks and Recreation

Are you related to anyone who is presently employed by the City of Alamogordo:

Yes ____ No ✓ If so, what is their relation to you?

Are you related to any Elected Official of the City of Alamogordo?

Yes ____ No ✓ If so, what is their relation to you?

Experience and education relating to the Board/Committee:

Great team work, overly motivated, strong + hardworking, Considerate, Consistent, awake

Please indicate your interest in serving on a City Board/ Committee:

Looking to add a big piece to the puzzle, helping those who can't or don't know how to speak for them selves.

Please return completed application to:

City Clerk's Office
1376 E. Ninth Street
Alamogordo, NM 88310
PHONE: (505)439-4205
FAX: (505)439-4396

SENIOR VOLUNTEER PROGRAMS ADVISORY COUNCIL

RECEIVED
JUN 27 2016
CITY CLERK

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

Name: Eldon E. Hoover

Home Phone: 575 443-1593 Work Phone: ~~575 442 2642~~

Cell Phone: 575 442-2642 Fax No: ____

e-mail address: eehooversr@yahoo.com

Physical Address: 1923 OCOTILLO Dr ALAMOGORDO N M 88310

Is the above address within City limits? Yes X No ____

Mailing Address: 1923 OCOTILLO Dr. Alamogordo NM 88310

Present Employer: Retired Job Title: N/A

Board/Committee you wish to serve on:

First choice: Retired Seniors Volenteer Advisory Concel

Second choice: ____

Are you related to anyone who is presently employed by the City of Alamogordo:

Yes ____ No X If so, what is their relation to you? ____

Are you related to any Elected Official of the City of Alamogordo?

Yes ____ No X If so, what is their relation to you? ____

Experience and education relating to the Board/Committee:

Highschool GED
College Associate Degree / Bussiness Admin.
Veteran US NAVY 4 yrs

Please indicate your interest in serving on a City Board/ Committee:

To share ideas to recruit New Volenteers
To share ideas and help @ fund raisers

Please return completed application to:

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

RECEIVED
JUN 23 2016
CITY CLERK

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

Name: Jennifer Euler

Home Phone: 439-0120 Work Phone: 439-4274

Cell Phone: unavailable Fax No: ______

e-mail address: jjeuler72@hotmail.com

Physical Address: 1122 Canyon Rd

Is the above address within City limits? Yes ✓ No ____

Mailing Address: 1122 Canyon Rd

Present Employer: city of Alamogordo Job Title: Fitness Coordinator

Board/Committee you wish to serve on:

~~First~~ SECOND choice: Mayor's Committee ~~for Seniors~~

~~Second~~ FIRST choice: Senior Advisory Council

Are you related to anyone who is presently employed by the City of Alamogordo:

Yes ____ No ✓ If so, what is their relation to you? ______

Are you related to any Elected Official of the City of Alamogordo?

Yes ____ No ✓ If so, what is their relation to you? ______

Experience and education relating to the Board/Committee: retired Public School teacher

Please indicate your interest in serving on a City Board/ Committee: I wish to represent the concerns and interests of Senior Citizens in my community.

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10/27/16 — Jennifer Euler — her 1st choice is Senior Advisory Council; 2nd choice: MCFS is >55 y.o.; SAC is FRG

AGENDA REPORT
CITY OF ALAMOGORDO
CITY COMMISSION

Meeting Date: 07/12/2016 **Report Date:** 7/7/2016 **Report No:** 16.

Submitted By:

Subject: Recess into Executive Session in compliance with Section 10-15-1(H), NMSA 1978 (as amended), to discuss Limited personnel issues (George Straface evaluation results & bonus). **(Roll Call Vote required)**

Fiscal Impact:
Amount Budgeted:
Fund:

Additional Fiscal Impact:

Recommendation:

Background: