



Alamogordo City Commission

NOTICE OF MEETING

Regular Meeting Agenda

August 12, 2025 - 6:30 PM

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

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

Stephanie Hernandez Acting City Manager
Darrell Mori City Attorney
Rachel Hughs City Clerk

MISSION STATEMENT as Adopted by the City Commission on March 24, 1995.

The City of Alamogordo is a Municipal Corporation that exists solely for the purpose of providing the best possible services to our customers, the citizens of Alamogordo. We are committed to providing these services with honesty, integrity, compassion, fairness, and a commitment to excellence.

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

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

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

CALL TO ORDER & ROLL CALL

Announce the presence of a Quorum.

INVOCATION & PLEDGE OF ALLEGIANCE

APPROVAL OF AGENDA

PRESENTATIONS

1. Letters of appreciation to Captain Machael Toscano, Captain Xavier Perches, Staff Sergeant Tanner Daniels, Staff Sergeant Joseph De Leon, Staff Sergeant James Fletcher, and Senior Airman Alexis Morris for their selfless efforts and heroic actions while volunteering at the Big Give project; they assisted citizens

involved in a multi-vehicle accident.

PUBLIC COMMENT

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

CITY MANAGER'S REPORT

REMARKS AND INQUIRIES BY THE CITY COMMISSION

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

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

2. Approve the minutes for the Regular Commission meeting on July 22, 2025, and the Special Commission Meeting on July 30, 2025. *(Rachel Hughs, City Clerk)*
3. Approve the statements related to the Executive Closed Sessions held on July 22, 2025. *(Rachel Hughs, City Clerk)*
4. Consider, and act upon, the City of Alamogordo becoming a member of National Purchasing Partners (NPP). *(Barbara Pyeatt, Chief Procurement Officer)*
5. Consider, and act upon, an agreement with Otero County for Alamo Senior Center services to County residents. The total amount budgeted is \$51,279.00 (\$30,185.00 for home-delivered meals and \$21,094.00 for transportation). *(Magdalena Morales, ASC Manager, and Veronica Ortega, Community Services Director)*
6. Consider, and act upon, the award of Public Works Bid No. 2025-003, La Luz South Reservoir Cover, Tower, and Catwalk Replacement No. UC2209, to Lone Mountain Contracting Inc., related to the La Luz South Reservoir Cover, Tower, and Catwalk Replacement project in an amount not to exceed \$3,989,869.53, including NMGR. *(Justen Boyle, Senior Project Manager)*
7. Consider, and act upon, the City of Alamogordo becoming a member of the Purchasing Cooperative of America (PCA). *(Barbara Pyeatt, Chief Procurement Officer)*
8. Consider, and act upon, the award of RFP 2025-008 Fire Flow Testing, Marking and Maintenance of Fire Hydrants. *(Jerry Ramirez, Fire Chief)*

ITEMS REMOVED FROM CONSENT AGENDA

UNFINISHED BUSINESS

9. Discussion and possible action on request from Patriot Pointe Apartments that the City provide funding for perimeter sidewalks in the City right of way and to waive water and sewer tap and impact fees, along with the dedication of the infrastructure in the City. *(Crystal Guthrie, Commissioner, and Eduardo Valencia, Patriot Pointe Apartments Manager Member)*

NEW BUSINESS

10. Consider, and act upon, Resolution 2025-24, updating the Notice of Right to Inspection of Public Records. *(Rachel, Hughs, City Clerk)* **(Roll Call Vote Required)**
11. Consider, and act upon, Resolution 2025-27, delaying the sale of the fairgrounds parking lot for five years to allow Otero County time to identify an alternate location and develop a phased plan. *(Stephanie Hernandez, Acting City Manager, Priyam Chevdawala, Intern)* **(Roll Call Vote Required)**
12. Discussion on the Code of Ordinances sections 2-02-060 Code of conduct, 2-03-570 Code of conduct,

and 2-02-050 City Commission use of social media. (*Josh Rardin, Commissioner*)

13. Appointments to Boards and Committees. (*Susan L. Payne, Mayor*)

EXECUTIVE SESSION (Roll Call Vote Required)

14. Recess into Executive Closed Session in compliance with 10-15-1(H)(8) NMSA (as amended) to discuss: Real Property: 1100 Michigan, Alamogordo, New Mexico and Parcel R023917 (Legal Description: S: 16 T: 16 R: 10 TR IN SE1/4) and 10-15-1(H)(2)NMSA (as amended) to discuss: Limited Personnel Matters (City Manager). (**Roll Call Vote Required**)

RECONVENE INTO OPEN SESSION

15. Motion to reconvene into open session.

16. Take action, if any, as a result of the Executive Closed Session concerning Real Property: 1100 Michigan, Alamogordo, New Mexico and Parcel R023917 (Legal Description: S: 16 T: 16 R: 10 TR IN SE1/4).

17. Take action, if any, as a result of the Executive Session concerning Limited Personnel Matters (City Manager).

ADJOURNMENT

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 8/12/2025

Report Date: 08/07/2025

Report No: 1.

Submitted By: Susan Payne

Subject: Letters of appreciation to Captain Machael Toscano, Captain Xavier Perches, Staff Sergeant Tanner Daniels, Staff Sergeant Joseph De Leon, Staff Sergeant James Fletcher, and Senior Airman Alexis Morris for their selfless efforts and heroic actions while volunteering at the Big Give project; they assisted citizens involved in a multi-vehicle accident.

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation:

Background:

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 8/12/2025

Report Date: 08/05/2025

Report No: 2.

Submitted By: Rachel Hughs

Subject: Approve the minutes for the Regular Commission meeting on July 22, 2025, and the Special Commission Meeting on July 30, 2025. *(Rachel Hughs, City Clerk)*

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation: Approve the minutes.

Background: This is required by the Open Meetings Act.

**CITY OF ALAMOGORDO, NEW MEXICO
CITY COMMISSION REGULAR DRAFT MEETING MINUTES
6:30 PM, DONALD E. CARROLL COMMISSION CHAMBERS
July 22, 2025**

**SUSAN PAYNE, MAYOR
SHARON MCDONALD, MAYOR PRO-TEM
CRYSTAL GUTHRIE, COMMISSIONER
STEPHEN BURNETT, COMMISSIONER
WARREN ROBINSON, COMMISSIONER**

**JOSHUA RARDIN, COMMISSIONER
MARK TAPLEY, COMMISSIONER
STEPHANIE HERNANDEZ, ACTING CITY
MANAGER
DARREL MORI, CITY ATTORNEY
RACHEL HUGHS, CITY CLERK**

CALL TO ORDER & ROLL CALL

Mayor Payne called the meeting to order at 6:30 PM. Roll Call was taken by the City Clerk. City Clerk Hughs announced there was a quorum present.

INVOCATION & PLEDGE OF ALLEGIANCE

The Invocation was given by Commissioner Robinson, and the Pledge of Allegiance was led by Commissioner Guthrie.

APPROVAL OF AGENDA

The order of Items 1 and 2 was swapped.

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

PRESENTATIONS

2. Presentation of EMT-B Certificates to Fire Staff. (*Justin Powell, ENMU Roswell EMS Program Director*)

Fire Chief Ramirez and the Lead Instructor of the Course, Melissa Carter, presented the EMT-B Certificates to Firefighters Liam Arnold, Antonio Flores, Jacob Lawrence, Billie Moore, Tyler Harrison, and Marcus Murray. Fire Chief Ramirez and Deputy Chief Lashley congratulated them on their accomplishment of passing the Eastern New Mexico University Emergency Medical Technician Basic Course.

1. Presentation to recap FY25 and explain work to be done in FY26 by Alamogordo MainStreet. (*Nolan Ojeda, Executive Director of Alamogordo MainStreet*)

Mr. Ojeda gave his presentation on the overview of FY25 and into the year ahead of FY26. Year ahead projects included: the Great Blocks project, Facade Squad Grants, NMMS Annual Institute & 40th Anniversary, Science Discovery Grant, Side Street Art 2.0 Opening, Murals & Memories Tour, and a District-wide Commercial. Year ahead events included: Side Street Art Ribbon Cutting, MainStreet Makeover Launch Event, Trick or Treat on MainStreet, Shop Small Saturday, and Christmas on MainStreet.

PUBLIC COMMENT

1. Kathy Denton said she was here representing Kitty City and requesting the Commission's guidance. We regularly work at the mall and have adoption events most Saturdays. We also do home visits to check where the cats go because of repeat adoptions. A number of cats were adopted this past Saturday. The couple I wish to speak about today has adopted from us before with no issues and always brought their cats for vaccinations. However, we received a report from neighbors that the cats would be in an environment where there was no electricity, no air conditioning, and the people would not be there. We went out to the site, and there is no electricity. There are three dogs, two ferrets, and two other cats. We returned their money and took the kittens back because we cannot have them in that kind of environment. This is a trailer that the couple owns in the Oasis Mobile Home Park. I do not know what the next step is. They are not connected to electricity. I thought if you rented space at a mobile home park, they

would have to provide the electricity, and you would have to pay for electricity and water with that space. Does anyone know about that ordinance? I know that Oasis said they would take care of up to \$600, and then the couple had to pay for the rest of the hookup. So right now, the couple is not living there, but their animals are there. Several neighbors have complained. Both the Alamogordo Police Department and Animal Control have checked, but we cannot get the owners to be there to check on the animals. They do hear barking and banging in the cages. When I was helping to get the kittens out, I noticed the two cats were emaciated from lack of food and water. I don't know what the next step is to help these folks and the animals. There was an odor in the trailer, as well as feces and urine. Animal Control is working with me, and officers are trying to contact the owners. I do not want to see the deaths of animals or these people not having a place to live. Acting City Manager Hernandez said let's have City Attorney Mori, Deputy Chief Glidden, and Code Enforcement work on this and get back with you. Mrs. Denton said Kitty City is willing to board animals, and I am working with dog rescues to board the animals to get them out of the situation until it can be resolved. We are willing to work with them so their animals are safe.

2. Ali Kassam said they are working on a project associated with an easement in a later agenda item. My partner and I bought a sixty-four unit mobile home park off Walker Avenue a year ago. You turn onto Mescalero to reach it, and it was called the Trail Winds once upon a time. We have gotten the plumbing plans approved by the City, and we've gotten plans with PNM finalized. We are going to redo the entire utilities for the entire park. We will be putting in new 2025 and beyond homes to help create affordable housing. We aim to have all construction done within the next year, and hopefully, the park will be filled with new homes within two years. At least twelve of the units will be double-wides.

CITY MANAGER'S REPORT

Acting City Manager Hernandez deferred her report to her intern, Priyam Chevawala. Mr. Chevawala made the following remarks.

1. The growth in this town is inspiring. Many projects are ongoing, and seeing people work on them is cool.
2. I think community engagement is rising overall. I see kids at my school getting interested as well. I think this town can grow very well.
3. Many people work for our city, which is very inspiring.

REMARKS AND INQUIRIES BY THE CITY COMMISSION

Mayor Pro-Tem McDonald thanked everyone for their help with the District 5 City-Wide Clean Up this past weekend.

Commissioner Robinson asked how the bridge was coming along. Acting City Manager Hernandez said it is coming along. There are scheduling issues with one of the contractors we are trying to work through. We are trying to push them to August 6th, but one contractor is holding things up.

Commissioner Burnett said he wanted to thank Acting City Manager Hernandez for helping him with a venue change. We are holding our first annual Color Run for our foundation. It was going to be in Ruidoso, but we moved it down here due to the flooding. It will start at the Zoo, walking around Alameda Park, and then back to the Zoo. It will be on August 9th. Registration will start at 7:15 AM, and the run starts at 8:00 AM.

Commissioner Rardin said back during the recent Joint City-County Meeting, I asked about a resolution to be brought at the next regular meeting. We have not seen anything. Acting City Manager Hernandez said it is coming. I am working with my intern, Mr. Chevawala, so he can put the resolution before you all. I am teaching him how resolutions and ordinances work. Commissioner Rardin said we told the County we would do it in good faith. Before tonight's meeting, I got a call from Harry Boom with Alamo Paint and Glass. Access to their business is right there, and he asked if we could do signage. Acting City Manager Hernandez said I have all the information; Mr. Boom was also upset they were not properly notified. I am sending that to Senior Project Manager Boyle; it is up to the contractor. He will get with the contractor tomorrow to get the signage, close the alley, communicate better how long the street will be closed for access, and how to route customers and vendors through that area. Commissioner Rardin said eighteen-wheelers come in with glass, so that can be tough.

Commissioner Guthrie said there have been a lot of complaints recently. Is there a way to conduct a traffic study on the intersection of Juniper Drive and Indian Wells Road, around where Juniper Drive and Walmart come together?

That intersection is cumbersome with the increased traffic. It is a worry when school is starting up. Acting City Manager Hernandez said we can put speed cameras that measure data there. Depending on the outcome, we have on-calls that can do a traffic study.

Commissioner Rardin said he would like to note Ozzy Osbourne's passing. He was an honorary member of the Alamogordo Chamber of Commerce, which happened back when he was filming his show. He was also a very good musician.

CONSENT AGENDA

- 3. Approve the minutes for the Regular Commission meeting on July 8, 2025. (Rachel Hughs, City Clerk)**
- 4. Approve the statements related to the Executive Closed Sessions held on July 8, 2025. (Rachel Hughs, City Clerk)**
- 5. Consider, and act upon, Resolution 2025-21 approving the agreement for the annual membership between the City and the Southeastern New Mexico Economic Development District/ COG, to include a contribution of \$9,125. (Rachel Hughs, City Clerk) (Roll Call Vote Required)**
- 6. Consider, and act upon, the award of RFQ 2025-01 On-Call Geotechnical Engineering Services to multiple vendors. (Justen Boyle, Senior Project Manager)**
- 7. Consider, and act upon, Ordinance 1716 for final publication to approve a Local Economic Development Project for up to \$1,000,000, Secured Assistance Proposed by White Sands Theater Entertainment Venue. (Stephanie Hernandez, Acting City Manager, and Troy Stegner, Owner) (Roll Call Vote Required)**
- 8. Consider, and act upon, Resolution 2025-22 authorizing the donation of a police vehicle to the Police Department of the Town of Hurley, New Mexico. (David Kunihiro, Police Chief) (Roll Call Vote Required)**
- 9. Consider, and act upon, Resolution 2025-23 authorizing a government-to-government transfer of assets from the Alamogordo-White Sands Regional Airport to Spaceport America. (Troy Orr, Airport Manager) (Roll call vote required)**

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

ITEMS REMOVED FROM CONSENT AGENDA

None.

PUBLIC HEARINGS

- 10. Consider, and act upon, the question of whether or not the Alcoholic Beverage Control Division should grant the applicant St. Clair Winery & Bistro VI, LLC DBA D.H. Lescombes Winery & Bistro a Winegrower Liquor License for the location at 261 Panorama Blvd. (Rachel Hughs, City Clerk) (Roll Call Vote Required)**

City Clerk Hughs said that the applicant is requesting a Winegrower Liquor License for the location at 261 Panorama Boulevard. The business already had this type of license, but there was a change in ownership, which is the reason for the new request. The application indicates that the nearest school and church are more than 1000 feet away.

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

NEW BUSINESS

- 11. Consider, and act upon, granting a 10-foot PNM electrical easement at the eastern and westernmost portions of the property, within the existing City of Alamogordo easement and City of Alamogordo Right of**

Way at 1101 Mescalero St. (Erik Fortenberry, Acting City Planner; Baxter Patillo, Alamotero Land Surveyors)

Acting City Planner Fortenberry said this is the same property Mr. Kassam spoke of during Public Comment earlier. In order to get power to the area, PNM is requesting a ten-foot easement grant on the eastern and western sides of the property to allow for PNM electrical work to commence. This will allow electrical connections for a multi-family mobile home park.

Commissioner Rardin asked if this would be an additional ten feet over and above the twenty-five feet the City already has out there? Baxter Patillo of Alamotero Land Surveyors said a grant within the twenty-five feet, yes. Commissioner Rardin said so really nothing is going change. Is this just making it official? Mr. Patillo said it was to allow the electrical easement to be within city-controlled property on the right-of-way. Commissioner Rardin said so we already have a twenty-five foot easement, and you are just asking us to be able to put electrical in the City's easement? Mr. Patillo said yes, and the right-of-way. Commissioner Rardin asked if those were actual dedicated roads out there. Mr. Patillo said Legends is a twenty-five foot easement that basically covers a portion of the road. It was dedicated to the City for ingress, egress, water, and sewer. We do want to confirm that. Commissioner Rardin asked about utilities. Mr. Patillo said we need to confirm that. Commissioner Rardin asked if the utilities were going to be overhead or underground. Mr. Patillo said those will both be underground lines.

Commissioner Burnett asked if Mescalero Avenue and Mesquite Street would provide access to the trailer park itself. Mr. Patillo said correct. You have two roads that go down the middle, but those are privately owned.

Commissioner Rardin asked if there were any plans to put any City or sewer water source in that easement. Mr. Patillo said he would defer to the owner. Mr. Kassam said no.

**Commissioner Burnett moved to approve.
Commissioner Tapley seconded the motion.
Motion Passed with a vote of 7 - 0 - 0.**

12. Discussion on a request from Patriot Pointe Apartments that the City provide funding for perimeter sidewalks in the City right of way and to waive water and sewer tap and impact fees, along with the dedication of the infrastructure in the City. (Crystal Guthrie, Commissioner, and Eduardo Valencia, Patriot Pointe Apartments Manager Member)

Eduardo Valencia said he was the developer of this project. The initial idea was to bring forward a garden-style apartment project, but I encountered some barriers. A project of this size has not been built here in twenty-five years, and there is nothing comparable in the area. I could not get it appraised or get the project to work. We went back and decided to present a town-home project of about one hundred and fourteen units. This project has been approved by the Department of Housing. I received a commitment letter and approval to build this project for a loan of \$21,000,000. The commitment is an insurance policy by the federal government that insures me as a developer to successfully build, operate, and manage this project. One possibility is that we partner with a 501(c)3 to extend the possibility for lower-income housing here in the city. Another possibility is with the Sacramento Mountain Foundation. I met with John Wheeler this afternoon, and they are interested in helping out with the project by working with the City, but Mr. Wheeler said it needs to go through their Board. Mr. Valencia proceeded to give his presentation.

Mayor Pro-Tem McDonald said you mentioned the County made concessions. Mr. Valencia said no, they were not concessions. The County is looking at what I presented today, and there are some options. The County Attorney spoke about an Industrial Revenue Bond, or IRB. Mayor Payne said there was a similar meeting a few years ago where someone you knew talked about those bonds. Mr. Valencia said that it was a related law firm. Mayor Payne said she believed the County was limited to waiving the property tax somehow. Acting City Manager Hernandez said yes, we had that meeting several years back. Our attorney, Chris Muirhead, said that IRBs cannot be used for housing developments. Mayor Payne said that was her understanding as well. I remember this conversation. Mr. Valencia said that is what he remembers, but the County Attorney brought it up today and was looking at the statute. Another section was brought up, and I cannot remember the term, but the City of Albuquerque is using that right now. I would rather the City discuss that with the County as a possibility. Acting City Manager Hernandez said we

had that discussion with Mr. Muirhead. I'll talk with him again. There are other things we should discuss if you want to incentivize, but I do not see IRBs as one of those. I do not want to waste anyone's time because we have already gone down that road. Mayor Payne said yes, like I said, the County would be limited to waiving their portion of the property tax, so we would have the lion's share of whatever the requests are.

Commissioner Rardin said regarding the dedication of infrastructure, would you basically pay to put it in, and then you want us to maintain it? Mr. Valencia said yes. Commissioner Rardin said in a typical subdivision, the developer puts it in. Once it is dedicated, we will maintain it for however long it is needed. Is that how it typically works with our subdivisions? Acting City Manager Hernandez said not with apartment complexes. It works like that on our subdivisions. Commissioner Rardin said so those roads are dedicated to the City afterwards, but these would still be private? She said that is correct, just like Amber Skies and Alamo Apartments. We take care of up to the meter and everything else inside the roads. He asked if that was to the property line. She said yes sir. He asked how many lineal feet of sidewalks there were and the cost we were looking at. Mr. Valencia said the City would require all of the exterior perimeter sidewalks. I do not remember how many lineal feet that is, but I could get a cost estimate to the Commission. I tried to stay outside of the property line, and so the request I made is basically outside the property line on City right-of-way, which is the exterior sidewalks, driveway aprons, and utility taps. To expand on the earlier question of infrastructure, I have done that with other cities and entities. They have requested we do a loop-around system inside the property, so Fire has access all the way around, but it would be a dedication to the City for future maintenance. Commissioner Rardin asked if we had an idea of how much it would actually cost the City to do these things. Also, regarding sidewalks, would we install them or would you, but you cover materials? When you get into government contracting, costs go up tremendously. Us doing the sidewalk around those two sides would cost us three times what it would cost you. Mr. Valencia said he was here to ask, not make demands. If that is a possibility, I am open to it. Anything you all are willing to participate in is accepted. Commissioner Rardin said I would need to know what it would cost. Mr. Valencia said I have everything priced out, so I could send you an estimate to see what our cost is. Then you can say how you want to handle it if approved. Commissioner Rardin said in the event we cannot offer any of these, is that a deal-breaker for the project? Mr. Valencia said not necessarily. My deadline is December 15th. If I decide to ask for an extension, I am approved through the Southwest Office of the Department of Housing. If I ask for an extension, it has to go to Washington to be approved, which could take anywhere from six to nine months. Then I would restart the clock again. Commissioner Guthrie said so, when do you need an answer from the Commission? Mr. Valencia said as soon as possible. I can get the Commission whatever information is needed. Commissioner Guthrie said if we had a list of things to approve or deny at the next meeting in two weeks, would that give you enough time to work on whatever you need so you do not miss your deadline? When do you absolutely have to know if it is yes or no? Mr. Valencia said probably until the end of August. I am awaiting final endorsement, and once I have that, I can lock in the interest rate or make the decision to ask for extension and put this on hold until the following year.

Commissioner Guthrie said in full transparency, I am in big support of this. My job is in the real estate industry, and in working with the military, our City badly needs housing. Developers are leaving, and it does not look good for us. It would be a big mistake to lose something like this that could help our City grow. Even with this housing, the ones who are working do not have enough.

Mayor Payne asked what the taps would cost us. Senior Project Manager Boyle said just one water tap would be over \$8,000. Mr. Valencia said I would need two taps. They are in the City right-of-way now. The City has fees for the tap, right? Senior Project Manager Boyle said yes, there is a fee for each tap. Utility Maintenance has to come and do the tap themselves. Mr. Valencia said it also depends on whether or not you have to install a manhole, the depths you are working with, and that capacity. Senior Project Manager Boyle said the manhole depends on what line you are putting in. A two-inch line would have to have an actual manhole, and with that size apartments, it would have to be two inches. Mayor Payne asked for the worst-case scenario on pricing. Senior Project Manager Boyle said that for the water, just on our side, the tap feeds would probably cost \$20,000 to \$30,000. Contractors are responsible for their own taps. We do not really do sewer taps, which is a problem. Again, just a water tap would be \$20,000 to \$30,000. Commissioner Rardin said we should have staff put that together. Is Mr. Valencia doing a six-inch line for this? Mr. Valencia said I believe it is a six-inch water tap because of the pressure we need and fire lines. The sewer would be an eight-inch line. Commissioner Rardin asked if staff could give a ballpark estimate of what it would cost for staff to do two eight-inch lines for the sewers and two six-inch lines for the water. Mr. Valencia said there is also the installation of the manhole. Commissioner Rardin asked if there was an existing manhole. Mr.

Valencia said there may be, but may not be enough capacity. In other places where I have done this, utility companies can say I would have to replace it, or it needs to be bigger, or even the current one is unusable and a new one needs to be installed. Commissioner Rardin said Fourth Street does not have a lot of housing on that side. I do not know about Moonglow Street. Commissioner Rardin asked Mr. Valencia for the cost of the lineal feet of sidewalk and driving. Mr. Valencia said he believed the bid they got for flatworks, which is the sidewalks, was roughly \$50,000. Mayor Payne said we are up to \$80,000. Commissioner Rardin said that is for if they are doing it, not the City. We are probably talking about \$200,000 worth of donations.

Mayor Payne said in a previous presentation Mr. Valencia gave, I believe he said he did not own any of the projects he built. I had the impression he sold everything. Is that correct? Mr. Valencia said not necessarily. We own a lot of projects in El Paso, and I am currently developing and building one in Lovington for United Supermarkets. The other multi-family projects have been sold. Mayor Payne said so you do not own any of those. Do you plan to sell this? Mr. Valencia said not necessarily. Mayor Payne said so, possibly then. I just want to be clear about what your intentions are with the complex. Mr. Valencia said in getting into a HUD loan, my intent is to keep it long-term. I think doing this project would open up a market for you. I think it would be self-sustaining and give you all a very good base. My intent is to own it long-term. I own a lot of properties, but in these types of markets, developers from bigger companies come in and want to buy. Not many people are willing to come in and develop.

Mayor Payne said another concern she had was taking over the maintenance of the infrastructure inside the complex. We recently had a huge issue with Amber Skies where the Attorney General had to get involved because the infrastructure was so bad. Water was running out in the street. So, how do we justify one developer and not the rest of them? White Sands Community just had to replace all of their gas lines; they invested a ridiculous amount of money because the lines needed to be upgraded. We pushed that. I am concerned about setting a precedent. There is a mobile home park that is intended to go up. Are we going to take over the infrastructure in all these places? We are getting into millions of dollars, which I do not believe we have the budget for. Another question I have is whether anything will be bought locally. Are you going to use local contractors or subcontractors? Mr. Valencia said yes. I have a list of all the subcontractors that have submitted pricing from Alamogordo. We do not have the entire sub-base in Alamogordo, so I will be bringing in a lot from El Paso. Mayor Payne said it would be nice if local contractors and local suppliers could benefit. Mr. Valencia said the Chamber of Commerce has given us a lot of people who are registered with them, including subcontractors. We have reached out to many. We are looking at the possibility of solar energy. I know the Commander of Holloman Air Force Base was pushing for car chargers, so we are looking at doing that and solar car ports. At the end of the day, it is about how we make the investment work. Our investment is \$5,000,000, which does not compare to what I am asking for. I have \$1,300,000 invested right now.

Commissioner Rardin asked if staff could look back at Las Ventanas and Otero Village to see if the City did anything back when those were built, like if the City gave or did anything. City Attorney Mori said some of the requests here violate City ordinances, especially those with infrastructure utilities and sidewalks. The City taking some of the projects would be violating certain City codes. There is also litigation risk when it comes to dealing with different developers differently instead of having a uniform process. The litigation risk is from other developers who may seek the same type of treatment, or those who have been denied such treatment in the past. Commissioner Rardin said Las Ventanas and Otero Village were the last two that were built in a similar size to this. Mayor Payne said Otero Village is income-based, but not rent-adjusted. You can only make so much and live there. Mr. Valencia said it may be tax credit, which is income restricted. Mayor Pro-Tem McDonald asked if that is what we are going for with this project. Mr. Valencia said no, this is a market-rate product. Acting City Manager Hernandez said she has been involved with this since the beginning, back when former City Manager Cesar was with us. IRBs are not an option for us. I'll refer to City Attorney Mori regarding the legality of what is being asked for. Something that could be fair to all is if the Commission considered bringing GRIP back with a cap. GRIP is a Gross Receipts Investment Policy, where you get a portion of your gross receipts back that you spend within the city. It must be within the city because we are giving you the part we normally get. You could bring that back up to an amount, or go with state statutes that allow the Community Development Incentives Act. Chapter 3 allows the city to waive property taxes for up to twenty years, but only for that which is not dedicated to debt, meaning operational only. We have debt related to the bond and other things, but should the Commission wish to bring it forward, we could waive property taxes at a set amount or for twenty years. If the property sells, it nulls the resolution that would have to come forward. I believe it would be a better option to explore both staying in compliance and allowing other developers the same opportunity. Commissioner Rardin asked how much our portion of property tax was. Acting City Manager Hernandez said the

operational property tax is 4.99%. Commissioner Rardin said he did not think it was that much. She said it was around 9%, but the 5% is debt service, and the 4.99% is operational. He said bringing GRIP back could open up a can of worms, but we could look into that. How long would it take for staff to get the numbers for all this? She asked if he was talking about the numbers for the sewer taps, water taps, and what was done previously at the two other locations. He said yes, and we'll also need Mr. Valencia to let us know where the taps are, what we are doing, and whether there are manholes or not. We need to know the dollar amount of what we are looking at. She said she did not know the timeframe. Those two apartments were done a while ago. That may be digging into the archives. He said he just wanted to see what the previous Commission had done. She said it would be better for us to look through the Minutes rather than the archives then. He said he could call former officials and see if they remember when those places were built. We know the rough timeline. I believe it was around 1999. Mayor Payne said Otero Village was way after that.

Commissioner Guthrie asked for this to be placed on the next meeting for continued discussion. Commissioner Rardin asked if two weeks was enough time to gather all that information. Acting City Manager Hernandez said yes to the numbers part, but I cannot promise the research of the two apartment complexes. Commissioner Guthrie said we need to consider Mr. Valencia's timeline. We only have two meetings left until his timeline for us. Commissioner Rardin said he would reach out to Senator Ron Griggs to see if he remembers, as he was in office at the time.

Mr. Valencia said that based on his conversation with Mr. John Wheeler of the Sacramento Mountain Foundation, it seemed like they were willing to participate and make a donation to the City for some of this stuff, so it does not have to come out of pocket from the City. Mr. Wheeler told me it was not his decision and he would need to go to the Board for approval. Is that a consideration? Acting City Manager Hernandez said before we consider anything, we need to talk to our auditors. It could be given to the County instead.

13. Discussion, and possible action, on City Manager recruitment. (Josh Rardin, Commissioner)

Commissioner Rardin said he wanted to see where the other members of the Commission were on this and to get the process rolling. It was canceled in April, and we are now almost in August. We are no further along than we were last September. Commissioner Guthrie asked if all violations were cured. City Attorney Mori said the ones for the Open Meetings Act were cured. Proceeding with City Manager recruitment lies with the Commission. There has been some delay due to the investigation into the process of how the City went about that. That investigation is almost at a close, and it should be done by the next Commission meeting. The item can go to an executive session for discussion. Hurdles appear to be holding recruitment back, but we should be near the end. We should be close to presenting options to the Commission to proceed forward. I feel confident that it should be done by the next City Commission meeting. Commissioner Rardin asked what hurdles there were. City Attorney Mori said there were allegations of improper procedures. It was not just the Open Meetings Act violations. Practices need to be looked into to ensure City compliance with different State regulations. It is more protection for both the City and the Commission itself. That is why it has been taking so long. As the City decides to proceed, we wanted to ensure that it is doing so with the right foot forward and with as little litigation risk as possible. Commissioner Rardin said per the City Charter, staff has no involvement in the hiring process of the City Manager, correct? City Attorney Mori said correct. Commissioner Rardin said it solely falls upon us seven. City Attorney Mori said correct, that is your sole employee. Mayor Payne asked where the investigation stood. City Attorney Mori said it is finishing finalization. We will be able to present findings, go over where we stand, and how to proceed forward. Commissioner Guthrie said so we cannot proceed with opening up the position to take applicants at the next meeting. Commissioner Rardin said we could, but we should hire a firm for reasons of transparency and no bias. City staff ought to be completely out of the picture. Commissioner Guthrie asked if we could discuss that at the next meeting. Commissioner Rardin said it can be discussed tonight. City Attorney Mori said you can discuss that, and I will offer any legal opinions. Mayor Payne asked if that could be discussed tonight. City Attorney Mori said absolutely. Commissioner Guthrie asked if that could be voted on tonight. Commissioner Rardin said yes, that is a possible action. We can vote on it tonight if we want to. I feel we should hire a consultant and an outside attorney to consult us. That way, staff is not in the middle of this. They have no authority to hire for this position. Mayor Payne said considering everything that has gone on, I think we need to go out for RFP and hire an outside search firm. It is not a lot of money. Commissioner Rardin said we do, but do we need to go to RFP? She said yes. He said we just need three estimates. She said that with RFP, there are no accusations of it being tainted, and we picked this or that one because we liked them better. RFP is whoever bids on it. We can take the most qualified and lowest responsive bidder. That way, we are not picking

the firm. He asked if we really wanted the lowest responsive bidder. She said it's just a search firm; they are all good. I can think of at least five where all they do is municipalities. He said that under \$60,000 does not require an RFP. She said she understood that, but doing it by RFP means the City is not picking it, and Human Resources is not picking it. He said that kicks it down the road sixty days. She said putting it out on RFP means we can tell them exactly what we are looking for in a search firm. We set parameters and go out for RFP. It is just like any other search where you have to meet requirements. The people who bid are based on the requirements the Commission set forth. Can we do less than sixty days? Acting City Manager Hernandez said you could do fourteen days. Commissioner Guthrie said let's do the least amount of time possible. Finance Director Huff said what you are talking about is going out for RFQ. That is where you base it on qualifications and not the price. Depending on the scope of work, you are probably looking at more than \$60,000 if you want them to develop the job description, candidates, a national search, and other documents. All the different things you want need to be spelled out in the document, whether you are going out for a quote or RFQ. Do you want national mailers or a revamp of the job description through the company before they put it out? There is a lot of development to that. We can advertise it once on a Saturday. It does not have to have a pre-bid or anything like that; it will be pretty straightforward. The shortest timeframe you can do is fourteen days from the time you advertise it, and those documents would then come. We can do something similar to what was done with the Fun Center, where you all are the scorers and not anyone within staff is doing the scoring the proposals. Mayor Payne said that it is a good idea. Finance Director Huff said from there, a RFQ negotiation goes to the price. Then it is time to sign the contract and go forward from there. Commissioner Rardin said so we are looking at roughly thirty days at the quickest. Finance Director Huff said yes. The first step is developing a scope of work. There are some good ones out there already built that you could look at and decide on, but I would defer to City Attorney Mori or City Clerk Hughs if that has to be in a meeting. Commissioner Rardin asked if there were any headhunting firms that may potentially have a state contract or statewide price agreement? They would essentially already be there. Finance Director Huff said that is something we can look into. We did not look into state contracts. We are members of a lot of different cooperatives. Even if that is chosen as an option, you still have to develop the scope of work. You still have to go to whatever firm is chosen and say these are the menu items we would like you to do. Commissioner Rardin said once we decide on one, wouldn't the representative come down to talk to us behind closed doors to get that information from us? Finance Director Huff said they could, but having that information on the front end is still good. Sometimes they do not talk to you unless you have some sort of scope on the front end. The last time we tried to do this in 2015, we did not have a great response because of the shortness of the length of the City Manager's tenure. Chances are that it will increase the price as well. Commissioner Rardin asked staff to check on the statewide and let the Commission know who is on and available. Finance Director Huff said yes, if they are on a statewide pricing agreement or in one of those co-ops, they must submit their price. Statewide pricing agreements have to be laid out in a lot of detail, while co-ops are a bit more vague. We can check into that. Commissioner Rardin said it would streamline the process and not be biased if we have an entity from out of town helping us to get this done. Finance Director Huff said if you decide to go down that route, we probably would not be able to bring it back for award at the next meeting because you will have to have met with them to develop the scope of work or have provided it to them. Depending on what we can find, it is possible that you have an executive session at the next meeting to meet with that person if we find someone who is available. I cannot guarantee that. Commissioner Guthrie asked if we did not already have that scope of work developed. Finance Director Huff said not for a firm, but there are a lot of different options with that. Commissioner Rardin asked how long it would take for staff to see what is available. Finance Director Huff said she would have Purchasing start looking tomorrow. Then we can email the Commission our options. Commissioner Rardin asked if that would be a day or two. Finance Director Huff said yes, they are pretty quick with researching stuff. Commissioner Guthrie said I believe we should vote on what direction we want to go so we can start moving. City Attorney Mori said as far as the legal side of things and litigation liability, it is my opinion that an RFP is the way to go, whether it be thirty or fourteen days or whatever the Commission decides, to insulate both the City and the Commission. Keep the initial applicant gathering from any type of perceived bias so the Commission can make the sole decision-making, and it can be done without any shadow of a doubt. Commissioner Rardin said if it is a statewide or price agreement or state contract, it is essentially the same thing. It just cuts out the advertisement because they are already a certified vendor. City Attorney Mori said correct. That is another option that is available. Mayor Payne said she was not sure what City Attorney Mori was saying. City Attorney Mori said his personal thought is to go with RFP. Going the state agency route is an option, but going the RFP route is the highest legal protection. I would have to review the state agencies route to ensure we are insulated from any litigation liability. Commissioner Rardin said the state contract already has specialized people there who are certified and signed up with the state. It just cuts out paperwork in the middle. I guess it just depends on whether anyone is available on the state contract or if we need to do an RFQ and advertise it. City Attorney Mori

said there is also the option of calling special meetings if this process needs to go faster. Commissioner Rardin said let's wait until we hear back from Purchasing.

Mayor Payne said to clear the air, have I done anything to stall this process? City Attorney Mori said I have no knowledge. Acting City Manager Hernandez said City Attorney Mori has only been here a few weeks. City Attorney Mori said regarding my dealings regarding this process, I have not seen any action that would indicate that. Mayor Payne said she wanted to make it clear she is not stalling this process. This is not me. I am not doing this, and no one wants to get this over with more than I do. I did not do this, and I have nothing to do with this. I find out like everyone else does.

Commissioner Rardin said if staff finds out within a day or two, we can call a special meeting. Finance Director Huff said we have a special meeting next week on the 30th to approve the final budget and financials. Acting City Manager Hernandez said that notice had already been sent out. City Attorney Mori said if anyone is to blame for slowing things down, look to Legal. I would urge caution in going too fast. I understand the need for this process to start, but rushing things can lead to problems. It has caused problems in the past. Mayor Payne said we also need to close out the investigation. If there is nothing else to do, great. You are saying we can move forward, so I am assuming that is okay. City Attorney Mori said yes. The Commission is in a position to start the process of moving forward, where you can make decisions on how to proceed. Finance Director Huff said if we do start looking at different firms through co-op process or state contract, do you want us to contact them to see their availability before we bring the list to you? Or do you want us to bring the list, let you look at it, and then contact them? Commissioner Rardin said he would like availability first. Mayor Payne said if there is only one on the state list, I would not be comfortable with that. Commissioner Rardin said that still leaves us out of the loop. We do not have a choice another than that one. Finance Director Huff said we would look at all the different options. Mayor Payne said I want this as transparent as possible. Commissioner Rardin said we put out an RFQ for the worst-case scenario. Does staff have the direction they need? Do we need to vote? City Attorney Mori said that as far as seeking staff to start the process and looking before an official decision is made, a vote is not needed. You guys have the ability to authorize the start of that process. Commissioner Rardin said the general consensus is to get the process rolling. Mayor Payne said she was okay with that. To be clear, Finance Director Huff will look to see if there are any approved contractors with the state. We are going to consider that as an option. Commissioner Rardin said if need be, then call a special meeting. Mayor Payne said okay. Commissioner Rardin said the biggest issue is the election coming up. If this is not done by the end of the year, you could potentially have four brand new Commissioners up here that would need to do this process. Mayor Payne asked how many meetings were left. Commissioner Rardin said ten regular meetings after tonight. Mayor Payne said she just wants to do this right. It is important to our City. We need to make sure we are fair and that this process is transparent. City Attorney Smith to clarify things, Finance Director Huff will start working on getting quotes and availabilities of state, and possibly having to look out to different places. I will be presenting the Commission with a scope of work as well in the meantime to ensure everything is lining up. That is where we will get started.

14. Appointments to Boards and Committees. (Susan L. Payne, Mayor)

Mayor Payne appointed Randel Wilson to the Airport Zoning Board and Pamela Vesey to the Senior Volunteer Programs Advisory Council. No one was opposed.

EXECUTIVE SESSION

15. Adjourn into Executive Closed Session in compliance with 10-15-1(H)(7)NMSA (as amended) to discuss Pending Litigation: Estate of Stone et al v. City of Alamogordo. (Darrell Mori, City Attorney)

Mayor Pro-Tem McDonald moved to adjourn into Executive Session at 8:43 PM.

Commissioner Rardin seconded the motion.

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

ADJOURNMENT

ATTEST:

Mayor Susan Payne

City Clerk Rachel Hughs

(Prepared by Dylan Aleshire, Deputy Clerk)

Approved at the Regular Meeting held on August 12, 2025.

DRAFT

**CITY OF ALAMOGORDO, NEW MEXICO
CITY COMMISSION SPECIAL MEETING DRAFT MINUTES
5:30 PM, DONALD E. CARROLL COMMISSION CHAMBERS
July 30, 2025**

**SUSAN PAYNE, MAYOR
SHARON MCDONALD, MAYOR PRO-TEM
CRYSTAL GUTHRIE, COMMISSIONER
STEPHEN BURNETT, COMMISSIONER
WARREN ROBINSON, COMMISSIONER**

**JOSHUA RARDIN, COMMISSIONER
MARK TAPLEY, COMMISSIONER
STEPHANIE HERNANDEZ, ACTING CITY
MANAGER
DARREL MORI, CITY ATTORNEY
RACHEL HUGHS, CITY CLERK**

CALL TO ORDER & ROLL CALL

Mayor Payne called the meeting to order at 5:31 PM. Roll Call was taken by the City Clerk. City Clerk Hughs announced there was a quorum present.

INVOCATION & PLEDGE OF ALLEGIANCE

The Invocation was given by Mayor Payne, and the Pledge of Allegiance was led by Commissioner Guthrie.

APPROVAL OF AGENDA

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

PUBLIC COMMENT

None.

NEW BUSINESS

1. Consider and act upon Resolution 2025-25 approving the Department of Finance Authority Quarterly Report for the period ending June 30, 2025. (Evelyn Huff, Finance Director). (Roll Call Vote Required)

Finance Director Huff said your packets have the full trial balance, and I will mention some high spots for that. We ended the year with \$96,403,576 in cash spread across all our various funds. Seven funds ended the year with a negative cash balance. Of those, the Grant Fund is just waiting for some reimbursements from the State, and there is always a timing issue there. The Municipal Court exceeded its budgeted transfer because it did not make as much revenue as we thought it would; it needed a correction at the end of the year. The High-Intensity Drug Task Force Fund, HIDTA, also has a difference in reimbursement timing. The Debt Fund also had the same issue with reimbursement timing. Fund 91, which is the Airport, had a negative cash balance at the end of the year. This is the same with reimbursement we are waiting for from the State, which was for the Taxiway Project. All other funds were in good shape and either exceeded or met cash balances. We are asking for approval for all these financials so we can submit them to DFA.

Mayor Payne asked if what happened with the Municipal Court was typical. Finance Director Huff said most of the Court's revenue goes into the General Fund, and then we subsidize from the General Fund to the Municipal Court Fund. Many years ago, they made significant money and could always cover their expenses and more with court revenue. As time has passed, they have had lean years when they have been unable to cover expenditures with just what they bring in. They also had to have a subsidy from the General Fund. Things are a little better now since we updated the ordinance and those fees. FY26 will be the first year we have all that in place for the full year. I do not think we will have issues with them being unable to cover.

**Commissioner Robinson moved to approve.
Commissioner Guthrie seconded the motion.
Motion Passed with a vote of 7 - 0 - 0.**

2. Consider and act upon, the approval of Resolution 2025-26 amending the Preliminary FY 2025-2026 Budget with carry-over fund balances, and adopting the Final Budget for 2025-2026. (Evelyn Huff, Finance Director). (Roll Call Vote Required)

Finance Director Huff said referring back to the previous item, we take approximately \$96,000,000 starting cash and revise all the cash numbers projected for the preliminary budget up to what they actually were as of June 30, 2025. We increased substantially because we are very fiscally conservative in our approach. We went from the original projection of \$56,240,000 to approximately \$96,000,000, so we had \$40,163,054 more than we originally projected. From there, we also carried over project balances for the capital projects that were not completed. We also carried over operating purchase orders that were not completed at the end of FY25, where we still expect invoices or additional expenditures. We also had a few additional revisions, the biggest one being adding funds to fund the Dispatch Center, which is coming back to the City. That is a \$3,000,000 expenditure in the General Fund budget. We offset that somewhat by transferring \$500,000 from the Cannabis Fund. The Cannabis Fund started FY26 with \$301,796 in cash and is projected to make \$290,000 in FY26. Another revision is in Fund 81, the \$27,000,000 procured from the New Mexico Finance Authority loan. Bids have been opened for the first project on that loan, which was the rehabilitation of the reservoir in La Luz. That project will be about \$3,900,00 to start. Additional projects will be bid on shortly. The final cash total is \$64,100,000 of unspent cash, with a lot of that residing in Fund 109, the Streets Capital Outlay. That will be dealt with. There is about \$10,000,000 in the Water/Sewer Fund, which will also go to cash-funded capital projects throughout the year. The General Fund is in relatively good shape with \$2,500,000 of unbudgeted cash. However, some of that belongs to the Opioid Trust and is restricted. Our budgeted expenditures this year are \$135,000,000.

Commissioner Guthrie asked if we were on track financially to get the Dispatch set up. Finance Director Huff said yes, there was a meeting months ago where they did all the background work of the software and hardware needed. They gave a full presentation of what we needed to have, what would be great to have, and what we would like to have. So that, along with projecting salaries and benefits and operating costs. We feel comfortable with the \$3,000,000 amount. There could be something lurking that we have not thought of, but staff and consultants have gone through it comprehensively.

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

ADJOURNMENT

**Mayor Pro-Tem McDonald moved to adjourn at 5:45 PM.
Commissioner Tapley seconded the motion.
Motion with a vote of 7 - 0 - 0.**

ATTEST:

Mayor Susan Payne

City Clerk Rachel Hughs

(Prepared by Dylan Aleshire, Deputy Clerk)
Approved at the Regular Meeting held on August 12, 2025.

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 8/12/2025

Report Date: 08/07/2025

Report No: 3.

Submitted By: Rachel Hughs

Subject: Approve the statements related to the Executive Closed Sessions held on July 22, 2025. *(Rachel Hughs, City Clerk)*

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

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

Background:

As required by Section 10-15-1 (J) of the Open Meetings Act, approve the following statements authorizing them to be included in the minutes of July 22, 2025: "The Governing Body of the City of Alamogordo, New Mexico, hereby states that on July 22, 2025, an Executive Closed Session was held, and the matters discussed in the closed meeting was limited to Pending Litigation: Estate of Stone et al v. City of Alamogordo.

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 8/12/2025

Report Date: 07/24/2025

Report No: 4.

Submitted By: Barbara Pyeatt

Subject: Consider, and act upon, the City of Alamogordo becoming a member of National Purchasing Partners (NPP). *(Barbara Pyeatt, Chief Procurement Officer)*

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation: Request the Commission approve the City of Alamogordo to become a member of National Purchasing Partners for the purpose of using the membership as a method of procuring products and services.

Background: Becoming members would give the City the authority to buy products and services through this cooperative purchasing program. The City of Alamogordo's Procurement code, section 2-13-150(a) (3), permits cooperative purchasing, and City staff would appreciate the opportunity to utilize this contract periodically. In order to provide products and services through the National Purchasing Partners (NPP) purchasing agreement, contracts and vendors are subject to a formal competitive solicitation process, which includes either a Request for Proposal (RFP), Invitation for Bid (IFB), or Public Works Bids. This competitive process is conducted in accordance with state and local bylaws and aims to ensure fairness, transparency, and value in government procurement.

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 8/12/2025

Report Date: 08/04/2025

Report No: 5.

Submitted By: Britney Ybarra

Subject: Consider, and act upon, an agreement with Otero County for Alamo Senior Center services to County residents. The total amount budgeted is \$51,279.00 (\$30,185.00 for home-delivered meals and \$21,094.00 for transportation). (*Magdalena Morales, ASC Manager, and Veronica Ortega, Community Services Director*)

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Total amount budgeted: \$51,279.00

Allocation for Home-delivered Meals: \$30,185.00

Allocation for Transportation: \$21,094.00

Recommendation: Approve the award of \$51,279.00 for Senior Center services to Otero County residents.

Background: This agreement is a memorandum of understanding providing home-delivered meals and transportation services to Otero County residents outside the Alamogordo City limits. Otero County will award a total of \$51,279.00 (\$30,185.00 for home-delivered meals and \$21,094.00 for transportation).

ADMINISTRATION
1101 NEW YORK AVENUE
ALAMOGORDO, NM 88310



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☎ (575) 437-7427
📠 (575) 443-2928

**Agreement for Reimbursable Community Services Funding
Between the Board of County Commissioners of
Otero County, New Mexico,
And
City of Alamogordo, Alamo Senior Center
Meals on Wheels Program**

I. General Provisions.

A. Parties

The parties to this agreement are:

1. the Board of County Commissioners of Otero County, New Mexico, a political subdivision of the State of New Mexico established under N.M.S.A. 1978, § 4-19-1 (1899), to be referred to as “Otero County,” and
2. **City of Alamogordo, Alamo Senior Center, Meals on Wheels Program & Transportation**, to be referred to as “Recipient.”

B. Parties Includes Officials, Employees, Agents, Etc.

The parties agree that references to “parties,” “Otero County” and “Recipient” shall be understood, where the context is appropriate, as including all their elected officials, directors, officers, employees, agents, contractors, licensees, invitees, and visitors.

C. Purpose

The purpose of this agreement for Otero County to provide community services funding to Recipient so that it may provide community services in Otero County in accordance with the legislative premise established by NMSA 4-38-13.2. These services are detailed in Exhibit A, which is attached to this agreement.

II. Essential Provisions.

A. Term & Effective Date

The term of this agreement shall be a term of one year, which shall be Otero County's fiscal year 2026.

This agreement shall commence upon July 1st, 2025, and this agreement shall terminate on June 30th, 2026, the last day of Otero County's fiscal year 2026.

This agreement is not renewable.

B. Amount of Funding

The parties agree that the community services reimbursable funding shall not exceed **\$51,279.00** for the fiscal year.

C. Payments

Otero County will make payments by check or warrant.

D. No Use of County Purchasing Department

Recipient may not purchase any goods or services through Otero County or its purchasing department. If Recipient chooses to use funding provided by this agreement for the purchase of goods or services, it shall do so on its own account and with its own personnel.

E. Receipts for Payments

The Recipient agrees to submit receipts to Otero County for the reimbursement of payment paragraph II-C. The receipt shall reference this agreement's approved expenses, recipient's name, and the mailing address to which payment is to be sent. Receipts shall be sent to:

County of Otero
Attn: Sylvia Tillbrook, Contract Monitor
1101 New York Avenue
Alamogordo, New Mexico 88310

Receipts must be dated prior to June 30, 2026 and submitted to Otero County no later than 7/17/2026.

Recipient agrees to supply additional information to the Finance Department if the invoice information submitted is determined to be deficient. Such additional information shall be supplied by Recipient within fourteen days of the request.

F. Report on Activities

During the months of September 2025, December 2025, March 2026, and June 2026, in addition to Recipient's submission of receipts/invoices, an activities report shall be submitted to Otero County describing the use of funding during the corresponding quarter as described under this agreement. The receipts/invoices and the activities report must reflect the services provided to the community as outlined in the approved application.

The report shall be submitted to:
County of Otero
Attn: Sylvia Tillbrook, Contract Monitor
1101 New York Avenue
Alamogordo, New Mexico 88310

Recipient agrees to make its report in a form acceptable to the Contract Monitor and to supply additional information to the Contract Monitor if the Contract Monitor believes the report as submitted is deficient. Such additional information shall be supplied by Recipient within fourteen days of the Contract Monitor's request.

G. W-9 and Vendor ID Forms

Recipient agrees to supply Otero County with both (1) a completed and signed Internal Revenue Service Form W-9, Request for Taxpayer Identification Number and Certification and (2) a completed Otero County vendor identification form.

Recipient agrees that these forms must be supplied annually even if Recipient had completed them in a prior year.

Recipient agrees that no payment can be made by Otero County until these forms are completed and returned to Otero County.

H. No Receipts Accepted After June 30th, 2026

Recipient agrees that no request for payment shall be honored by Otero County if it is invoice documentation is dated after June 30th, 2026.

Recipient understands that Otero County must close its fiscal year on June 30th, 2026 and is unable to accept invoices dated after June 30th, 2026.

Recipient agrees that any receipts dated prior to July 1, 2026 or dated after June 30th, 2026 will be rejected.

Recipient agrees any request for payment received after July 17, 2026 will be rejected.

Recipient agrees that any balance under this agreement that was unpaid due to failure to submit timely requests for payment will be forfeited.

I. Non-transferrable

The parties agree that this agreement is non-transferable and it may not be assigned or sub-contracted to any other party.

Recipient may not pledge the funding provided under this agreement to another party.

J. Termination

The parties agree that this agreement may be terminated at any time.

III. Compliance with Laws.

A. Taxes

Recipient acknowledges that it may be subject to Federal, state, and local taxes.

Recipient agrees that it is solely responsible for paying such taxes as well as any interest and penalties that may arise from its failure to do so.

Recipient agrees that upon demand of the County Commissioners, it shall provide evidence that it is current in its payment of Federal, State, and local taxes, including payments required under: (1) the Federal Insurance Contributions Act, 26 U.S.C. § 3101 et seq.; (2) the Unemployment Compensation Law, N.M.S.A. 1978, § 51-1-1 et seq.; (3) the Workers' Compensation Act, N.M.S.A. 1978, § 52-1-1 et seq.; and (4) the Gross Receipts and Compensating Tax Act, N.M.S.A. 1978, § 7-9-1 et seq.

Recipient agrees to indemnify Otero County for any action against the Otero County arising from Recipient's failure to pay any tax or make any payment required by law.

B. Licenses and Permits

Recipient agrees to obtain all licenses or permits necessary for the conduct of its operations and will be solely responsible for the costs of the licenses or permits.

Recipient agrees to indemnify Otero County against any action arising from Recipient's failure to obtain any licenses or permits.

Recipient agrees to provide copies of all its licenses or permits to Otero County Commissioners upon demand.

C. Corporate Status

Recipient warrants that it is either (a) a non-profit corporation in good standing with the New Mexico Secretary of State or (b) a unit of a local government.

If Recipient is a non-profit corporation, Recipient agrees that it shall keep its corporate status in good standing with the New Mexico Secretary of State.

Recipient shall give Otero County notice of any change in its corporate status within fourteen days.

Recipient agrees to provide Otero County a copy of a certificate of good standing upon demand.

D. Non-profit Tax Status

Recipient warrants that it has tax-exempt status with the Internal Revenue Service because it is either (a) a non-profit corporation certified as tax exempt under section 501(c)(3) of the Internal Revenue Code of 1986 or (b) a unit of a local government.

If Recipient has tax-exempt status under section 501(c)(3) of the Internal Revenue Code of 1986, Recipient agrees that it shall keep this status with the Internal Revenue Service.

Recipient shall give Otero County notice of any change in its tax-exempt status under the Internal Revenue Code of 1986 within fourteen days.

Recipient agrees to provide Otero County proof of its tax status upon demand.

Recipient agrees to provide Otero County with a copy of its Internal Revenue Service Form 990 or audited financial statements upon demand.

E. Anti-discrimination Laws

Recipient agrees that it shall comply with all Federal, state, and local anti-discrimination laws, including:

- 1) the Civil Rights Act of 1964, Pub. L. 88-352, 78 Stat. 741;
- 2) the Age Discrimination in Employment Act of 1967, Pub. L. 90-202, 81 Stat. 602;
- 3) the Rehabilitation Act of 1973, Pub. L. 93-112, 87 Stat. 355;
- 4) the Older Americans Amendments Act of 1975, Pub. L. 94-135, 89 Stat. 713;
- 5) the Americans with Disabilities Act of 1990, Pub. L. 101-336, 104 Stat. 327;
- 6) the Civil Rights Act of 1991, Pub. L. 102-166, 105 Stat. 1071;
- 7) the ADA Amendments Act of 2008, Pub. L. 110-325, 122 Stat. 3553;
- 8) the Human Rights Act, N.M.S.A. 1978, § 28-1-1 et seq.; and
- 9) the Fair Pay for Women Act, N.M.S.A. 1978, § 28-23-1 et seq.

F. Federal, State, and Local Laws

Recipient acknowledges that it is subject to Federal, state, and local laws and will comply with them.

Recipient agrees that will indemnify Otero County for any violation of Federal, state, or local law committed by it.

IV. Contract Interpretation Provisions.

A. Entire Agreement

The parties agree that this document constitutes the entire agreement between them and any prior agreements or understandings between them have been merged into this document.

B. Amendments

The parties agree that amendments to this agreement shall be done in writing and signed by representatives of them in the same manner that this contract was executed.

C. Severability

The parties agree that if any part of this agreement is found to be unenforceable under present laws or those enacted during the term of this agreement, then the illegal parts of this agreement shall be severed from the agreement and the remaining parts shall continue in force.

D. Waivers

No waiver or any breach or default by Recipient shall constitute a waiver of any subsequent default or breach by it.

E. Choice of Law

The parties agree that the laws of the State of New Mexico shall govern the interpretation of this agreement.

F. Forum-Selection

The parties agree that the exclusive forum for disputes under this agreement shall be the Twelfth Judicial District Court of the State of New Mexico sitting in Otero County. If the Twelfth Judicial District Court finds that the amount in question in the suit is below its jurisdictional limits, the parties agree that the exclusive forum for disputes shall lie instead with the Otero County Magistrate Court.

G. Submission to Jurisdiction

The parties agree to submit to the jurisdiction of both the Twelfth Judicial District Court and the Otero County Magistrate Court.

H. Federal Court

The parties hereby waive their rights to file in or remove to Federal court any suit brought under this agreement.

J. Running of Time

If the deadline for any act required under this agreement falls upon a Saturday, Sunday, legal holiday, or other day that the Otero County offices are closed, then the act shall be timely if done on the next weekday that Otero County offices are open.

K. Non-appropriation

If the performance of Otero County is contingent upon sufficient appropriations and authorizations being made by the Legislature of New Mexico and sufficient appropriations and authorizations are not made by the Legislature of New Mexico, this agreement shall terminate upon written notice being provided by the Otero County to Recipient. Otero County's decision as to whether sufficient appropriations are available shall be accepted by Recipient and shall be final.

L. Status of Recipient

Recipient agrees that it is an independent contractor of Otero County.

Recipient agrees that none of its employees or volunteers are employees of Otero County and therefore they shall not be entitled to any salary or benefits from Otero County.

M. Notices

The parties agree to make any notices required under this agreement in writing. Any notices declaring a default or terminating this agreement shall be sent to the parties at the addresses below by the U.S. Postal Service or commercial carrier using a method of delivery that requires the addressee to sign for the item. Examples of such methods are certified mail, registered mail, and express mail.

Notices shall be sent to Otero County as follows:

County of Otero
Attn: Sylvia Tillbrook, Contract Monitor
Otero County Administration Building
1101 New York Avenue
Alamogordo, New Mexico 88310

Notices shall be sent to Recipient as follows:

City of Alamogordo, Alamo Senior Center
Attn: Magdalena Morales
2201 Puerto Rico Avenue
Alamogordo, NM 88310

OTERO COUNTY, NEW MEXICO

By:  Date: 7/24/25
Pamela Heltner
County Manager

Attest:  (SEAL)
Selina Maes
Otero County Clerk



City of Alamogordo, Alamo Senior Center

By: _____ Date: _____
Authorized Representative

Exhibit A

Recipient agrees to provide community services as follows:

(See Attached Pages)

EXHIBIT A

OTERO COUNTY COMMUNITY SERVICES GRANT APPLICATION FY 2025-2026

All grant applications will be reviewed and considered for approval by the Otero County Board of County Commissioners.

Grants will be paid on a reimbursement basis.

Please complete the following information:

Organization Name: City of Alamogordo, Alamo Senior Center

Mailing Address: 2201 Puerto Rico Avenue
Alamogordo, NM 88310

Primary Contact Name: Magdalena Morales
Phone: 575-439-4150
Email: mmorales@ci.alamogordo.nm.us

Secondary Contact Name: John Ely
Phone: 575-439-4150
Email: jely@ci.alamogordo.nm.us

Federal TIN: 85-6000099

Amount of Funding
Requested: \$51,279.00

What is the mission of your organization? (attach add'l page if needed)

The mission of the Alamo Senior Center (ASC) is to provide services for persons 60 years of age and over, and their spouses regardless of age. The Center is a social environment that provides support, education, recreation, nutrition and entertainment for independent elderly persons in Alamogordo and the surrounding area. The Center's goal is to provide opportunities for Seniors to maintain a vital and meaningful role in life.

What services do you provide to Otero County citizens? (attach add'l page if needed)

The Alamo Senior Center (ASC) provides a relaxed social environment offering nutrition, entertainment, recreation, education and support for Senior Citizens in Otero County. We specifically offer in-house lunches in our dining room, hot meals delivered to home-bound Seniors, physical fitness courses with additional exercise equipment in our Fitness building, transportation, nutritional education, arts and crafts courses, group activities (including bridge, sewing, quilting, dominoes, games, puzzles and pool room), educational presentations (Medicare, AARP Safe Driving) and related social support services.

OTERO COUNTY COMMUNITY SERVICES GRANT FUNDING FY26

Please provide a breakdown of how the grant funds will be used, (dollar amount by program or expense type):

	Amount	Program/Project
1.	\$ 30,185.00	Home-Delivered Meals to La Luz, NM Residents
2.	\$ 21,094.00	Transportation
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		
	\$ 51,279.00	Total Funding Request

Will any of the grant funds be used as a match for other federal, state or local grants?

Yes ☒ No ☐

The following items will be **required** to be submitted as part of your application packet:

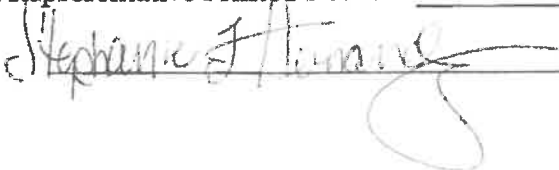
- Completed W-9 Form
- Completed Vendor Master Request Form
- Copy of IRS Determination Letter designating your organization as tax-exempt (not applicable for units of local/state/tribal government)
- Amounts and description of other current funding sources and how they are used by your organization, (grants, etc...)

The following items are **optional** to submit with your application packet:

- Letters of support or endorsement of your organization
- Photos/printed programs/newsletters of past program events or projects

By signing this application, I hereby attest that all the information contained within, and attached to this application is a true and correct representation of the organization requesting community services grant funding from Otero County.

Authorized Representative Printed Name: Stephanie Hernandez

Signature:  Date: 3.6.25

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 8/12/2025

Report Date: 08/05/2025

Report No: 6.

Submitted By: Justen Boyle

Subject: Consider, and act upon, the award of Public Works Bid No. 2025-003, La Luz South Reservoir Cover, Tower, and Catwalk Replacement No. UC2209, to Lone Mountain Contracting Inc., related to the La Luz South Reservoir Cover, Tower, and Catwalk Replacement project in an amount not to exceed \$3,989,869.53, including NMGR. *(Justen Boyle, Senior Project Manager)*

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation: Approve the award

Background: The work designated as La Luz South Reservoir Cover, Tower, and Catwalk Replacement consists of removing and replacing the floating HDPE cover, portions of the HDPE liner, and the concrete outlet tower and steel catwalk in accordance with the drawings, specifications, and other Contract Documents. The project was advertised on June 21 and 28, 2025. Bids were opened on July 23, 2025. The bid tabulation is attached.

Bid Comparison

Public Works Bid Number 2024-002

Project Title BASIN SEDIMENT REMOVAL

Bid Opening Date JUNE 12,2024

ITEM NO.	DESCRIPTION OF WORK	Unit	Bid Quantity	Bid Item Cost	Extended	Bid Item Cost	Extended	Bid Item Cost	Extended
1	MOBILIZATION	LS	1	\$250,000.00	\$250,000.00	\$212,993.00	\$212,993.00	\$1.00	\$105,000.00
2	DEMO OF FLOATING COVER	LS	1	\$200,000.00	\$200,000.00	\$22,626.00	\$22,626.00	\$1.00	\$70,000.00
3	DEMO LINER	SY	4000	\$45.00	\$180,000.00	\$40.00	\$160,000.00	\$37.50	\$150,000.00
4	REPAIR SOIL CEMENT BOTTOM	SY	1000	\$50.00	\$50,000.00	\$29.00	\$29,000.00	\$45.00	\$45,000.00
5	REPAIR CONCRETE LINER	SY	3000	\$60.00	\$180,000.00	\$29.00	\$87,000.00	\$100.00	\$300,000.00
6	DEMO OF TOWER/ CATWALK	LS	1	\$89,000.00	\$89,000.00	\$24,817.00	\$24,817.00	\$1.00	\$50,000.00
7	45-MIL FLOATING COVER	LS	1	\$1,650,000.00	\$1,650,000.00	\$2,575,000.00	\$2,575,000.00	\$1.00	\$2,226,821.00
8	EARTHWORK	CY	165	\$330.00	\$54,450.00	\$287.00	\$47,355.00	\$303.00	\$50,000.00
9	TOWER FOUNDATION	CY	20	\$1,500.00	\$30,000.00	\$1,037.00	\$20,740.00	\$1,350.00	\$27,000.00
10	OUTLET TOWER	CY	15	\$6,000.00	\$90,000.00	\$15,382.00	\$230,730.00	\$1,500.00	\$22,500.00
11	CATWALK	LS	1	\$70,000.00	\$70,000.00	\$89,106.00	\$89,106.00	\$1.00	\$65,000.00
12	TOWER GATES	LS	1	\$130,000.00	\$130,000.00	\$237,466.00	\$237,466.00	\$1.00	\$40,000.00
13	GEOTECH ENGINEER REPORT	ALLOW	1	\$100,000.00	\$100,000.00	\$100,000.00	\$100,000.00	\$100,000.00	\$100,000.00
14	NMPE ENGINEER	ALLOW	1	\$100,000.00	\$100,000.00	\$100,000.00	\$100,000.00	\$100,000.00	\$100,000.00
15	FLOATING COVER	ALLOW	1	\$100,000.00	\$100,000.00	\$100,000.00	\$100,000.00	\$100,000.00	\$100,000.00
16	BID ALT 253 LF AC PIPE	LS	1	\$0.00	\$0.00	\$15,433.00	\$15,433.00	\$80,000.00	\$80,000.00
17	BID ALT447 LF CONCRETE PIPE	LS	1	\$0.00	\$0.00	\$80,013.00	\$80,013.00	\$138,600.00	\$138,600.00
18	BID ALT 14 IN PIPE	LS	1	\$0.00	\$0.00	\$21,382.00	\$21,382.00	\$18,000.00	\$18,000.00
				Sub-Totals	\$3,273,450.00	Sub-Totals	\$4,153,661.00	Sub-Totals	\$3,687,921.00
				NMGRT (8.1875%	\$268,013.72	NMGRT (8.1875%)	\$340,080.99	NMGRT (8.1875%	\$301,948.53
				TOTALS	\$3,541,463.72	TOTALS	\$4,493,741.99	TOTALS	\$3,989,869.53
				Engineer's Estimate		KE&G		LONE MOUNTAIN	

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 8/12/2025

Report Date: 08/06/2025

Report No: 7.

Submitted By: Barbara Pyeatt

Subject: Consider, and act upon, the City of Alamogordo becoming a member of the Purchasing Cooperative of America (PCA). *(Barbara Pyeatt, Chief Procurement Officer)*

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation: Request approval of the City of Alamogordo to become a member of the Purchasing Cooperative of America (PCA) for the purpose of a procurement tool.

Background: Becoming a member would give the City the authority to buy products and services through this cooperative purchasing program. The City of Alamogordo's Procurement code, section 013-150(a) (3) permits Cooperative purchasing, and City staff would appreciate the opportunity to utilize this periodically. In order to provide products and services through PCA purchasing agreement, contracts and vendors are subject to a formal competitive solicitation process, which includes either a Request for Proposal (RFP), Invitation for Bid (IFB), or Public Works Bids. This competitive process is conducted in accordance with state and local bylaws and aims to ensure fairness, transparency, and value in government procurement.

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 8/12/2025

Report Date: 08/06/2025

Report No: 8.

Submitted By: Barbara Pyeatt

Subject: Consider, and act upon, the award of RFP 2025-008 Fire Flow Testing, Marking and Maintenance of Fire Hydrants. (*Jerry Ramirez, Fire Chief*)

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation: Approve the award and authorize staff to proceed with the service agreement.

Background:

The RFP 2025-008 scope of work is for flow testing and marking of approximately 1,800 to 2,200 fire hydrants located within the city limits (excluding any located outside city limits in the County of Otero and any privately-owned hydrants located inside city limits). RFP was advertised on June 28th, 2025. Proposals were due July 24th, 2025. One proposal was received from M.E. Simpson CO. Inc. The proposal was reviewed and deemed compliant.

The proposal for the RFP is available for review at the Purchasing Department.

F E E S C H E D U L E

A commitment to improving and maximizing the City of Alamogordo's water system for future generations.

M.E. Simpson Co., Inc. and Giant Maintenance and Restoration, Inc., are pleased to offer the City of Alamogordo our quote for a Fire Hydrant Maintenance Flow Testing Services and Painting program. This program is based on locating, documenting, flow testing, and painting approximately 2200 hydrants in the City's water distribution system. Private fire hydrants are part of this program. All procedures and practices will be done in accordance with the above stated Scope of Services. The maintenance, flow testing and documentation will be done by one of our two-man teams with all necessary equipment furnished by M.E. Simpson Co., Inc. as described within this document. Fire hydrant painting will be performed by our project partner, Giant Maintenance and Restoration, Inc., with their experienced paint crew. Fees stated include per diem and crew mobilization to/from Alamogordo, NM.

[M.E. Simpson Co., Inc. 2025 Fire Hydrants Maintenance and Flow Testing](#)

Unit Cost **\$124.00 each, approx. 2200 total hydrants -----****\$272,800.00**

[Giant Maintenance and Restoration, Inc. Hydrant Painting, Painting preparation work,](#)

Task	Unit Cost	Units	Subtotal
Giant to remove existing coating of paint on hydrants by abrasive blasting to a minimum SSPC-SP6, followed with one coating of Rust-Oleum Professional DTM Alkyd Enamel Primer at the recommended coverage rate per coating. After prime coat application, Giant will apply finish coat of Rust-Oleum Professional alkyd Enamel; again, at the recommended coverage rate per coating.	\$105.00	2200	\$231,000.00
Secondary Color Coding - bonnets and caps	\$24.00	2200	\$52,800.00
Glass Bead application for reflective secondary coating	\$2.00	2200	\$4,400.00
Rated pencil stencil per item 5.2.1.4	\$10.00	2200	\$22,000.00
Giant unit cost crew mobilization	\$2.50	2200	\$5,500.00
Painting Total estimated cost	\$143.50		\$315,700.00

Additional work outside the stated above proposal will be performed only after agreement between the City and M.E. Simpson Co., Inc and Giant Maintenance and Restoration Inc.

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 8/12/2025

Report Date: 08/06/2025

Report No: 9.

Submitted By: Crystal Guthrie

Subject: Discussion and possible action on request from Patriot Pointe Apartments that the City provide funding for perimeter sidewalks in the City right of way and to waive water and sewer tap and impact fees, along with the dedication of the infrastructure in the City. *(Crystal Guthrie, Commissioner, and Eduardo Valencia, Patriot Pointe Apartments Manager Member)*

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation: Discussion only.

Background: Per Commission request on July 22, 2025, staff brought back the item for further discussion. Staff recommends denial of the proposed item based on the following considerations:

Equity and Consistency: Staff have received concerns from existing and prospective developers regarding the importance of upholding the City's ordinances, technical standards, and the requirement to enter into subdivider agreements. Approving an exception in this case would undermine the equitable treatment the city is promoting to developers who have complied with all established regulations.

Existing Housing Developments: While the City acknowledges the current housing insufficiency within Alamogordo, several residential developments have already been approved and are in progress. These include:

- Sendora Apartments in the Mesa Village Subdivision, anticipated to exceed 100 units;
- Somerset Subdivision, Mesa Village, 18th Street Subdivision, Bella Vista, among others, which collectively account for over 300 homes.

Market Pricing: The above-listed developments, including Patriot Point, are all positioned within the same housing market and offer housing at market rates. These projects do not fall under the category of affordable or low-income housing initiatives.

Cost Responsibility under Subdivision Regulations: According to Article 22-01 of the City's Subdivision Regulations, certain improvements, such as residential streets and neighborhood utilities, primarily benefit the residents within a development and therefore should be the financial responsibility of the developer. Only infrastructure that provides a broader public benefit, such as major thoroughfares or regional utility

extensions, may warrant shared investment. *As this proposed development is intended to serve only the future residents of the apartment complex, it is appropriate for the developer to incur the associated costs of infrastructure and improvements.*

Lack of Formal Incentive Program: The City of Alamogordo has not adopted a formal housing or development incentive program. As such, staff continues to require all developers to adhere to standard procedures and subdivider contracts without deviation. Granting approval for Patriot Point Apartments and Mr. Valencia's proposal under these circumstances would represent a departure from established practice.

Risk of Unfair Competitive Advantage: Approving the request could create a perception of preferential treatment, which may deter other developers from entering or continuing to invest in the Alamogordo market. This could negatively impact commercial and residential development by introducing uncertainty and inconsistency into the city's development review process.

For these reasons, staff recommend denying or tabling the item until after the upcoming housing special meeting, during which potential incentive programs can be reviewed and vetted. This approach promotes fairness, upholds regulatory integrity, and supports the city's *ongoing* efforts to build a transparent and consistent development process.



July 24, 2025

Honorable Susan L. Payne- Mayor City of Alamogordo New Mexico

Crystal Guthrie- District 1 Commissioner

Stephen Burnett- District 2 Commissioner

Warren Robinson- District 3 Commissioner

Josh Rardin- District 4 Commissioner

Sharon McDonald- Mayor Pro-Tem District 5 Commissioner

Mark Tapley- District 6 Commissioner

1376 East Ninth Street

Alamogordo, New Mexico 88310

Re: Patriot Pointe Apartments- Incentive Grant

Dear Mayor Payne and Commissioners,

I appreciate your interest and support of our proposed 114-unit apartment project to be constructed on 5.95 acres at 305 Moonglow, Alamogordo New Mexico. At this time I am requesting an incentive grant to assist in off-site cost for our project.

The estimated offsite cost are as follows:

- Perimeter sidewalks on Moonglow and 4th Street. The cost estimate below includes the Concrete Entrance Aprons (Driveways). The estimated total Cost is \$54,130.00.

Allen Concrete, LLC
3800 Hueco Club Rd.
El Paso, TX 79938
P: 915-921-0678
F: 915-856-8834

Rev.3
PROPOSAL

6/12/2025



To:	Project:
ECOM Construction and Development Services, LLC	Patriot Pointe Apartments
Attn: Eddie Valencia	305 Moonglow St, Alamogordo, NM 88310
Scope of Work:	

Provide all materials, labor and equipment necessary to complete Patriot Pointe Apartments per received plans and specifications. Work includes as referenced below.

Exclusions:

Any work not listed below: rip, top, rock, color polish/finish concrete, joint sealant, rebar/rod & midwall footings, chain link fence footings, stabilization, embedded drains, landscape rock, permits, engineering and/or surveying, testing, any fees, boards, utility work, utility concrete aprons, traffic control, erosion control, pollution control, dust control once we are away from jobsite, removal of trash and unforeseen underground items, spotting existing utilities, top soil, trench patch, if needed use call for price (max. 9 sy), patch work, dewatering, water to be provided by others, etc.

Reference	Price	
DEMOLITION:	\$	1,525.00
• Demo Curb & Gutter		
PUBLIC SIDEWALK/DRIVEWAY:	\$	54,130.00
• 5" 3000 psi Concrete Sidewalk w/o Reinforcement	Labor:	\$11,055.00
• 6" 4000 psi Concrete Drive Apron #4 @ 18" O.C.W.	Matl:	\$41,495.00

We request the City of Alamogordo to add the cost of the Water, Sewer Fees and additional manhole, per construction specs to the incentive grant.

I am providing an example of one I recently completed in El Paso for a Medical Clinic we are building.

Limited Scope Development Agreement for Sewer Tap.

Estimated Sewer Tap Cost is \$24,340.00 (Includes one manhole)

Water Service Agreement Fees: \$29,940.00

Total Estimated Cost for water and sewer service taps: \$48,280.00

Estimated Construction Staking and Survey \$2,500.00

Total Estimated Incentive Grant Request Amount: \$104,910.00

Thank you for your consideration.

Eduardo "Eddie" Valencia

Managing Member

Patriot Pointe Apartments, LLC





June 23, 2025

Honorable Susan L. Payne- Mayor City of Alamogordo New Mexico
Crystal Guthrie- District 1 Commissioner
Stephen Burnett- District 2 Commissioner
Warren Robinson- District 3 Commissioner
Josh Rardin- District 4 Commissioner
Sharon McDonald- Mayor Pro-Tem District 5 Commissioner
Mark Tapley- District 6 Commissioner

1376 East Ninth Street
Alamogordo, New Mexico 88310

Re: Patriot Pointe Apartments

Dear Mayor Payne,

We appreciate your interest and support of our proposed 114 unit apartment project to be constructed on 5.95 acres at 305 Moonglow. Yesterday we received the Firm Commitment from the U.S. Department of Housing and Urban Development providing financing for the complex. Through the issuance of the Commitment, HUD acknowledged the acute need for rental housing in Alamogordo.

We have worked with the City throughout the planning and design of the complex and now have the building permits. At this time we are repricing the hard cost of the construction. With the highest interest rates in the past four years and uncertainty in the supply chain of materials because of tariffs, we are working hard to make the sources of funds equal the use of funds. As to the hard cost, we request that the City provide the funds for the perimeter sidewalks that will be constructed in the City right of way. In addition, we respectfully request that the City waive water and sewer tap and impact fees and the dedication of this infrastructure to the City of Alamogordo.

We have with the assistance of appraisals estimated the rents and operating expenses. The largest single operating expense is real estate taxes. We respectfully request that the City of Alamogordo

grant a 10 year City tax abatement. We are requesting that Otero County also consider a 10-year tax abatement. We are doing everything possible to make the numbers work and your assistance will greatly help.

Thank you for your consideration.



Eduardo "Eddie" Valencia

Managing Member

Patriot Pointe Apartments, LLC



Engineering Division Estimate

7/27/2025

Engineering Division Estimate



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Southwest Multifamily Region

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New Mexico, Oklahoma, and Texas*

Multifamily Customer Service Telephone Line 1-800-568-2893

www.hud.gov

Matt Simms, Vice President
Mason Joseph Company, Inc.
21102 Market Ridge
San Antonio, TX 78258

SUBJECT: Patriot Pointe
Alamogordo, (Otero County), NM
221(d)(4) (114 Units)
HUD 116-35205

Dear Matt:

Enclosed is an executed, scanned copy of the Firm Commitment for Insurance for the subject project in the amount of \$21,002,800. **A hard copy of the Firm Commitment will not be sent.**

Please acknowledge receipt and acceptance of this Commitment with the signature of both the mortgagor and mortgagee. Within 3 to 5 business days, you will be contacted by your assigned Closing Coordinator to discuss the next steps and logistics of the closing process. The fully executed copy must be returned to the assigned Closing Coordinator within ten business days, along with the lender attorney's contact information. Amendment and extension requests, if any, must also be forwarded to the assigned Closing Coordinator prior to submitting your closing documents.

We look forward to the Final Endorsement of this project. If you have any questions, please call Charlotte Thompson-Brown at 817-978-5794 or charlotte.p.thompson-brown@hud.gov.

Sincerely,

**CHRISTOPHER
MCDANIEL**

Digitally signed by: CHRISTOPHER MCDANIEL
DN: CN = CHRISTOPHER MCDANIEL, C = US, O
= U.S. Government, OU = Department of Housing
and Urban Development, Office of Housing
Date: 2025.06.18 13:46:14 -05'00'

Christopher S. McDaniel
Fort Worth Underwriting Branch Chief
Southwest Multifamily Region

Enclosures

*Fort Worth Regional Office
801 Cherry Street Unit #45, Suite 2500
Fort Worth, Texas 76102*

*Kansas City Satellite Office
400 State Avenue, Suite 300
Kansas City, KS 66101*

COMMITMENT for Insurance of Advances (Sections 207, 220, 221, 241(a) and 231)

OFFICE OF HOUSING
Multifamily Production

U.S. Department of Housing
and Urban Development

WARNING: Federal law provides that anyone who knowingly or willfully submits (or causes to submit) a document containing any false, fictitious, misleading, or fraudulent statement/certification or entry may be criminally prosecuted and may incur civil administrative liability. Penalties upon conviction can include a fine and imprisonment, as provided pursuant to applicable law, which includes, but is not limited to: 18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802, 24 C.F.R. Parts 25, 28 and 30, and 2 C.F.R. Parts 180 and 2424.

FHA Project No.:	116-35205
Project Name:	Patriot Pointe Apartments
Project Address:	305 Moonglow St
	Alamogordo, NM 88310

Mason Joseph, LLC

Patriot Pointe Apartments, LLC

(“Lender”)

(“Borrower”)

21102 Market Ridge
San Antonio, TX 78258

10728 Aduato Ct
El Paso, TX 79935

(“Lender Address”)

(“Borrower Address”)

We understand that you, as Lender, have agreed to make a loan to Borrower (the “**Loan**”) in an amount not exceeding the Maximum Loan Amount (defined below), evidenced by a note (the “**Note**”) to be secured by a security instrument (the “**Security Instrument**”) covering real property as shown on the legal description of the property attached hereto as **Exhibit A** (“**Project**”).

It is your intention to present the said Note and Security Instrument to the U.S. Department of Housing and Urban Development (“**HUD**”) for mortgage insurance under the section of the National Housing Act (the “**Act**”) identified further below and the Regulations thereunder now in effect (the “**Regulations**”).

HUD hereby agrees to insure said Note and Security Instrument under the provisions of the Act and Regulations upon the following conditions, all of which must be satisfied before this commitment letter (hereinafter referred to as the “**Commitment**”) is enforceable against HUD.

Lender and Borrower expressly acknowledge and agree that each numbered item contained in this Commitment, including those in **Exhibit B**, is an independent condition that must be satisfied before HUD is legally obligated to accept the Note and Security Instrument for mortgage insurance. The HUD action that signifies its acceptance of said Note and Security Instrument for mortgage insurance is the “**Initial Endorsement**” (initial Loan closing for insured advances) or “**Final Endorsement**” (final Loan closing for insured advances).

The conditions contained herein may include various references to the *Multifamily Accelerated Processing Guide* (the “**MAP Guide**”), the *Federal Housing Administration Multifamily Program Closing Guide* (the “**FHA Closing Guide**”), and HUD “**Program Obligations**” (as defined in the Security Instrument). All applicable provisions of the MAP Guide, FHA Closing Guide, and Program Obligations are hereby incorporated by reference and must be addressed to the satisfaction of HUD prior to Initial Endorsement and Final Endorsement.

The definition of each capitalized term used in this Commitment is indicated with quotation marks, and preceded or followed by data, information, narrative, or reference to another document.

FHA Project No.	116-35205	
“Section of the Act”	221(d)(4) NC	
“Firm Commitment Effective Date”	Date SIGNED BY Authorized Agent of HUD, as it appears at the end of this document]	
“Firm Commitment Term”	60	Days.
“Maximum Loan Amount”	\$21,002,800	
	Twenty-one Million, Two Thousand, Eight Hundred Dollars	

MIP owed at Initial Endorsement (This amount is shown for informational purposes only. The amount must be consistent with the upfront amount calculated pursuant to condition I.15 below. If there is a conflict, the amount established by condition I.15 controls.)	\$52,507.00	
Upfront capitalized MIP percentage rate (For informational purposes only.)	.25	%
Annual MIP percentage rate (For informational purposes only.)	.25	% Per Annum
“MIP Category”	Market / Green	
“Section 50 Signatories”	Eduardo Valencia Robert Keener	

“Permanent Financing”		
“Permanent Interest Rate”	5.65	% Per Annum
“Amortization Period”	480	Months Piece “A” (if applicable) Piece “B” (if applicable)
“Initial Principal Payment Month”	1st day of the 5th month; no later than four months from the date of construction completion for insurance of advances.	Months after date of Initial Endorsement
“Principal and Interest Payment Amount”	\$110,477.91	Per Month Piece “A” (if applicable) Piece “B” (if applicable)

“Additional Funding Sources”		
“Secondary Financing”	N/A	<i>[Insert numeric amount for each source]</i>
“Tax Credit Equity”	N/A	<i>[Insert numeric amount for each source]</i>
“Bridge Loan”	N/A	<i>[Insert numeric amount]</i>
“Bonds”	N/A	

“Construction Terms”		
“Construction Contract Amount”	\$20,621,020	
“Construction Term”	18	<i>Months</i>
[“Surety Bond Amounts”] or [“Completion Assurance Agreement Amount”]	\$20,621,020	
“Construction Period Interest Rate”	5.65	<i>% Per Annum</i>
“Cost Certification”	REQUIRED	

“Drawing and Specifications”	Patriot Pointe Apartments	
	Plans 1/1/2025	Specs 10/31/2024
“Deferred Drawing & Specifications”	N/A	
“Survey”	Robert B. Pattillo	
	12/27/2024	

“Current Davis-Bacon Wage Decision”

[Attach current wage decision(s) as **Exhibit F**, if available. If more than one wage decision is applicable to the Project, attach all applicable wage decisions. Consult with the Office of Davis-Bacon and Labor Standards.

Insert the following information from the wage decision(s).

(Note, this box (and Exhibit F) must be verified (and updated, if necessary) to ensure the accuracy of the wage decision(s) immediately prior to Initial Endorsement.)

Otero	County
New Mexico	State
NM20240005	General Decision No.
0	Modification No.
Residential	Construction Category

“Reserves, Insurance and Escrows”

“Initial Reserve for Replacement Deposit Amount”	N/A	<i>Prior to Closing</i>
“Annual Reserve for Replacement Amount”	\$28,500	<i>Per Year</i>
“Monthly Reserve for Replacement Payment Rate”	\$2,375.00	<i>Per Month</i>

“Inspection Fee Amount”	\$105,014.00
“Exam Fee Amount”	\$63,008.40
“Flood Insurance”	NOT REQUIRED
“Property Insurance Coverage Amount”	\$13,172,527.20
“Estimated Insurable Value”	\$16,465,659
“Maximum Allowable Property Insurance Deductible”	Deductibles may not exceed the greater of \$50,000 or 1% of the insurable value for any particular building up to a maximum amount of \$250,000. Wind/Named Storm Deductible may not exceed the greater of \$50,000 or 5% of the insurable value per location, up to a maximum amount of \$475,000 per occurrence (Per ML 2024-05).

“Working Capital Deposit Escrow Amount”	\$840,112.00	
“Additional Project Capital Amount”	\$2,825,871	
[“Maximum Contractor's Fee”] [“BSPRA”]	\$2,382,867	
“Off-site Improvement Cost”	N/A	
“Assurance of Completion Amount for Off-Site Improvements”	N/A	
“Demolition Cost”	N/A	
“Initial Operating Deficit Deposit”	\$630,084	
“Operating Deficit Period”	12	<i>Months after the date of Final Endorsement</i>

“ADDITIONAL & DEAL-SPECIFIC CONDITIONS”	
Additional & Deal-Specific Conditions are identified in Exhibit B	SEE EXHIBIT B

I. UNIFORM CONDITIONS - FIRM COMMITMENT

- Firm Commitment Acceptance; Corrections.** The Borrower’s and Lender’s acceptance of the Commitment must be evidenced by the return of a fully executed copy to HUD on or before ten (10) business days from the Firm Commitment Effective Date. This Commitment and exhibits referred to herein, and the Act and Regulations constitute the entire agreement among the parties, and the signature of the Borrower and Lender below hereof evidences acceptance of the terms. Notwithstanding anything to the contrary contained in this Commitment, Borrower and Lender agree to revise and execute any documents HUD determines necessary to complete the Loan closing in accordance with Program Obligations, and/or correct ministerial or clerical errors in the Commitment that are inconsistent with the loan application and supporting documents.
- Firm Commitment Term.** This Commitment shall expire after the Firm Commitment Term unless extended by HUD. Upon such expiration, all rights and obligations of the respective parties shall cease, and pursuant to 24 C.F.R. § 200.47, HUD shall not insure the Note and

HUD Office of Housing, Multifamily Production

Commitment for Insurance of Advances (Sections 207, 220, 221, 241(a) and 231) (HN 2018-03; as of April 6, 2018)

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Security Instrument. Prior to any extension of this Commitment, HUD may, at its option, reexamine this Commitment to determine whether it shall be extended in the same amount, or shall be amended to include a lesser amount. The Firm Commitment Term shall commence on the Firm Commitment Effective Date.

(a) **Reopening of Expired Firm Commitment.** A request for the reopening of this Commitment received within ninety (90) days of its expiration must be accompanied by the reopening fee of \$.50 per \$1,000 of the amount of the expired commitment.

3. **No Material Adverse Change.** Prior to Initial Endorsement the Lender must certify that there has been no material adverse change to the: (a) underwriting assumptions stated on the attachments to this Commitment; (b) financial condition or creditworthiness of the Borrower, or principals thereof; (c) Borrower's ability to perform its obligations or responsibilities under the loan documents; or (d) Project; and no event has occurred, or circumstances exist that may result in such material adverse effect.
4. **Third Party Updates.** HUD may require submission of updated third-party reports and underwriting, which will be subject to HUD review and approval, to extend this Commitment beyond its original expiration. HUD may elect to not insure the Note and Security Instrument as a consequence of any material adverse change to such reports or underwriting.
5. **Compliance with Laws and HUD Requirements.** The Borrower, Lender, and Project shall comply with all Program Obligations, and all applicable state and local laws. All certificates, documents and agreements required by this Commitment and required for closing are on HUD forms or, if no HUD form is available, must be approved by HUD. The closing procedures and requirements in the FHA Closing Guide are followed, including procedures for changes to closing documents when requested. To the extent any condition references a specific form number, HUD may require the use of any renumbered, successor, or otherwise formally updated version.
6. **Draft Closing Documents.** Draft closing documents shown in comparison form against the model forms, conforming to the terms of this Commitment, must be submitted not less than fifteen (15) business days prior to Initial Endorsement and/or Final Endorsement. After review, the place and date of the closing will be designated, at which time the documents and exhibits in final form shall be delivered to HUD for approval. Borrowers and Lenders must use the most recent closing checklists for Initial Endorsement and Final Endorsement found here: https://www.hud.gov/OGC_Multifamily_Closing_Documents_Checklist
7. **Closing Statement Certification.** Upon closing, the Lender must submit a certified loan closing statement signed by the Lender and Borrower that itemizes the disbursement of Loan proceeds and Borrower's cash contribution, if any. The statement regarding the disbursements must be specific and list the amounts to be paid to satisfy the Borrower's obligations for: (1) existing or other indebtedness in a refinancing transaction, (2) repairs, (3) discounts, (4) financing fees, (5) legal expenses, (6) organizational expenses, (7) title and recording costs, and (8) any Lender required escrows for GNMA, taxes, or insurance. The

certified closing statement signed by the Borrower and Lender must include the following certification:

WARNING: Federal law provides that anyone who knowingly or willfully submits (or causes to submit) a document containing any false, fictitious, misleading, or fraudulent statement/certification or entry may be criminally prosecuted and may incur civil administrative liability. Penalties upon conviction can include a fine and imprisonment, as provided pursuant to applicable law, which includes, but is not limited to: 18 U.S.C. 1001, 1010, 1012; 13 U.S.C. 3729, 3802, 24 C.F.R. Parts 25, 28 and 30, and 2 C.F.R. Parts 180 and 2424.

8. **Assurance of Permanent Financing.** Prior to Initial Endorsement, the Lender must provide HUD with a commitment for a permanent loan or other firm written assurance demonstrating that permanent financing will be available at the rate shown in the firm commitment application. The form of assurance must address, but is not limited to the: (1) source of financing; (2) term; (3) interest rate; (4) extension provisions; (5) dates for delivery of the permanent mortgage; and (6) any conditions that are, will be part of, or will impact on the permanent financing arrangements.
9. **Electronic Documents.** Acceptance of this Commitment includes the Lender's agreement to provide, within five (5) business days after closing, a CD or USB flash drive containing electronic copies of the fully executed and otherwise collected closing documents. The CD or USB flash drive should be submitted to the assigned HUD closing coordinator and the HUD closing attorney.
10. **HUD Review.** HUD reserves the right to examine the Lender's file materials related to the underwriting of the Note and Security Instrument at any time during the ten (10) -year period following Initial or Initial/Final (as applicable) Endorsement. If there is evidence of fraud or misrepresentation by the Lender, HUD reserves its legal rights under the contract of mortgage insurance and Mortgagee Review Board requirements. The Lender agrees to retain, in accessible files, all materials related to the underwriting of the Note and Security Instrument for a period of ten (10) years, even though the Note and Security Instrument itself may be sold to another entity.

UNIFORM CONDITIONS - SECURITY

11. **Form of the Note and Security Instrument.** The Note and Security Instrument to be insured shall be in the form prescribed by HUD for use in connection with loans insured under the Act in the locality in which the property is situated.
12. **First Lien Security Interest.** The Borrower and Lender, as applicable, shall provide a security agreement, UCC financing statements, and such other documents as required under State law, granting Lender and HUD a perfected first lien security interest in the UCC Collateral (as that term is defined in the Security Instrument, form HUD-94000M) for the duration of the insured Note and Security Instrument (subject only to liens for taxes and

assessments that are not delinquent). For § 241 loans only, the preceding provision is modified to substitute “second” in lieu of “first.”

- 13. Title Policy.** Prior to Initial Endorsement and again prior to Final Endorsement, the Borrower shall present to HUD an ALTA Loan title policy and title policy endorsements in conformity with the FHA Closing Guide in effect on the date of this Commitment. The title policy must indicate that fee simple title to the property (or, if approved by HUD, a leasehold estate therein) is vested in the Borrower free of all exceptions to title, other than those specifically determined to be acceptable by HUD, on the date of Initial Endorsement and Final Endorsement (as applicable). Said title policy shall by its terms inure to the benefit of the Lender and/or the U.S. Department of Housing and Urban Development, as their interests may appear. Lender and Borrower each agree that as a condition of this Commitment, title exceptions must be acceptable to HUD.
- 14. Survey.** Prior to Initial Endorsement, and again prior to Final Endorsement, the Borrower shall present to HUD an ALTA/NSPS Survey of the Project and Surveyor’s Report dated within 120 days of the closing, in form and substance satisfactory to HUD.
- 15. Upfront Mortgage Insurance Premium.** Upon Initial Endorsement, the Lender shall pay to HUD, in advance, the “Upfront Mortgage Insurance Premium,” which is defined by multiplying the Maximum Loan Amount by the upfront mortgage insurance premium rate published in the Federal Register pursuant to 24 C.F.R. 207.254 that is applicable to the Loan’s Section of the Act and MIP Category, as of the Firm Commitment Effective Date.
- 16. Changes in Tax Credit Allocation or Other Governmental Assistance.** Pursuant to Form HUD-2880, this Commitment is based on Borrower certifications regarding the absence or use of Tax Credits or Other Government Assistance. Any change to the Borrower’s financial position relating to Tax Credits or Other Government Assistance must be reflected in an updated Form HUD-2880. HUD reserves the right to unilaterally alter any and all of its underwriting determinations, and/or revise the terms of this Commitment or Regulatory Agreement in accordance with the change in Tax Credit Allocation or Other Governmental Assistance. This condition survives through Final Endorsement.

UNIFORM CONDITIONS - AUTHORITY & OWNERSHIP

- 17. Borrower Authority.** The Borrower must possess the powers necessary for complying with Program Obligations for insurance of the Note and Security Instrument. Prior to Initial Endorsement, there shall be delivered to HUD and the Lender (a) copies of ownership entity documentation that complies with applicable requirements of HUD, including a copy of the instrument under which the Borrower entity is created, together with copies of all instruments or agreements necessary under the laws of the applicable jurisdiction to authorize execution of the other closing documents, and (b) a regulatory agreement in the form prescribed by HUD for use in connection with loans insured under the Act (the “**Regulatory Agreement**”).

18. Section 50 Signatory. Section 50 of the Regulatory Agreement shall apply to the individuals or entities identified above as Section 50 Signatories. It is a condition of this Commitment that none of the Section 50 Signatories may withdraw or be substituted without HUD's prior written approval.

19. Previous Participation (2530) Review. Any individuals and entities in control of the Project are subject to a previous participation review as set forth in 24 C.F.R. part 200, subpart H (as may be amended from time to time) ("**Controlling Participants**") and other Program Obligations ("**Previous Participation**").

Any individual or entity who is subject to the Previous Participation regulations but who has not already received Previous Participation approval or who may later become involved with the Project, is subject to said Previous Participation review, mortgage credit review, and Office of Foreign Assets Control (OFAC)/Terrorism checks and verifications as required by the U.S. Patriot Act, prior to Initial Endorsement or Final Endorsement (as applicable). HUD's obligations under this Commitment remain subject to satisfactory resolution of any adverse items found by HUD during HUD Previous Participation review, as determined by HUD.

A closing date shall not be set until appropriate clearance and HUD approval is obtained for all participants. Previous Participation Certifications may be submitted to HUD electronically via the Active Partners Performance System (APPS) or via paper form HUD-2530, or as directed by HUD. Controlling Participants who opt to file a paper form HUD-2530 must also register at Business Partner Registration HUD Multifamily. To register, and for more information, please visit:

http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/apps/appsmfhm.

20. Changes in Ownership/Financial Support. HUD has materially relied on the representations made in the firm commitment application as to the identity of all entities and individuals having an ownership interest (directly or indirectly) in the Borrower entity. It is a condition of this Commitment that any change to such entities or individuals requires a written request to HUD for written approval of the change, and any such change shall be subject to HUD's credit review and Previous Participation clearance prior to Initial Endorsement and Final Endorsement. Additionally, the withdrawal of any entity or individual relied on for financial capacity prior to Initial or Final Endorsement requires prior approval by HUD.

UNIFORM CONDITIONS - PROJECT

21. Property Insurance Coverage. Prior to issuance of the Permission to Occupy or prior to Final Endorsement as applicable, the Borrower must provide evidence to Lender that all required insurance complies with Program Obligations. Property insurance, including fire and other property insurance as required by the Security Instrument, shall be in full force and effect and coverage must equal the Property Insurance Coverage Amount with a deductible that equals the Maximum Allowable Property Insurance Deductible.

- 22. Reserve for Replacement.** The Regulatory Agreement shall provide, among other things, for the establishment of a reserve fund for replacements (the “**Reserve for Replacement**”) under the control of the Lender by payment of the Annual Reserve for Replacement Amount, to be accumulated monthly at the Monthly Reserve for Replacement Payment Rate, commencing on the date of the first payment to principal as established in the Note and Security Instrument, unless a later date is agreed upon by HUD. In addition to the Annual Reserve Fund for Replacement Amount, there shall be an initial deposit in the amount of not less than the Initial Reserve for Replacement Deposit Amount made to the Reserve for Replacement by the Borrower at the time of Initial Endorsement. If applicable, attached hereto as **Exhibit D**, is the Reserve for Replacement Funding Schedule which supports the per annum and initial deposits to the Reserve for Replacement. The Annual Reserve for Replacement Amount shall be subject to change in accordance with Program Obligations.

II. PROGRAM CONDITIONS **(New Construction/Substantial Rehabilitation)**

1. Note Terms.

- (a) The Note shall bear interest at the Construction Period Interest Rate during the “**Construction Period.**” As used herein, the Construction Period shall begin on the date of Initial Endorsement and end on the cost cut-off date approved by HUD (or such other date as may be approved by HUD). The Construction Period is scheduled to last for the number of months identified above as the Construction Term. After the Construction Period ends, the Note shall bear interest at the Permanent Interest Rate and shall be payable in the manner set forth below. (If the Note does not specify a Construction Period Interest Rate, the Note shall bear interest at the Permanent Interest Rate and shall be payable in the manner set forth below.)

Note: Any change in the interest rate may require reprocessing of the mortgage insurance application and amendment of this Commitment prior to Initial Endorsement.

- (b) Payments of interest only on the outstanding principal balance shall be due and payable on the first day of each month, commencing not later than the first day of the month following Initial Endorsement and continuing through the first day of the month immediately prior to the date on which the first monthly payment of principal is due.
- (c) The first payment to principal (commencement of amortization) shall be due on the first day of the Initial Principal Payment Month. The Note and Security Instrument shall be payable on a level annuity basis in the amount identified above as the Principal and Interest Payment Amount. Monthly principal and interest payments due prior to, or on the first day of the month after Final Endorsement shall be adjusted to the extent that the full principal amount of the Note and Security Instrument has not yet been advanced in order for such payments to equal the sum of (i) interest on the outstanding principal balance plus (ii) the regularly scheduled principal amortization payments due on the Note and Security Instrument assuming that the full amount thereof has been advanced. The Amortization Period shall begin on the due date of the first repayment of the principal.

- (d) Upon Final Endorsement, the Borrower must be current with respect to all payments required by the Note and Security Instrument, including all deposits required to be made with the Lender for mortgage insurance premiums, fire and other property insurance premiums, ground rents, water rates, taxes and other assessments.
2. **Project Construction.** The Project shall be constructed or substantially rehabilitated (as applicable) on the property shown on **Exhibit A** in accordance with a Construction Contract (HUD-92442M), approved by HUD, and with the project's final Drawings and Specifications filed with HUD and identified in the index attached hereto as **Exhibit C**. The Drawings and Specifications, which include "General Conditions of the Contract for Construction" (AIA Document A201) and "Supplementary Conditions of the Contract for Construction" (HUD-92554M), shall be identified in a manner acceptable to HUD by the following parties or their authorized agents: Borrower, design architect, architect administering the Construction Contract, contractor, and if applicable, the contractor's surety. HUD encourages Borrowers to utilize energy saving devices and methods.
 3. **Changes to Drawings and Specifications.** Any change in the Drawings and Specifications or in the related conditions upon which this Commitment is based, that may occur after the date hereof, shall be explained in writing, or in a supplementary application if required by HUD, and must be approved by HUD prior to Initial Endorsement. Any such change must be brought to the attention of HUD immediately upon occurrence, and must be documented as a project change order and approved by both HUD and the Lender. HUD's approval of any change described above is subject to the procedures set forth in Chapter 12 of the MAP Guide.
 4. **Building Agreements.** Approval of advances of insured loan proceeds in accordance with the Building Loan Agreement (Form HUD-92441M) must be obtained on a form prescribed by HUD prior to the date of each advance to be insured. A Contractor's Prevailing Wage Certificate is included with the Contractor's Requisition Form (HUD-92448) and shall be filed with the request for approval of each advance that includes a payment for construction costs. HUD's execution of Applications for Insurance of Advances of Mortgage Proceeds (Form HUD-92403) shall be required only for advances made at Initial Endorsement and Final Endorsement and for advances of all or part of the contractor's retainage, and the Lender shall have the authority to approve all other advances of Loan proceeds. The Current Davis-Bacon Wage Decision, as identified above, applies as of the Firm Commitment Effective Date, but must be verified, and updated as necessary, prior to Initial Endorsement.
 5. **Davis Bacon Wage Requirements.** The HUD Closing Coordinator will contact the HUD Office of Davis Bacon and Labor Standards ("DBLS") at least two (2) weeks prior to the start of construction to determine whether a wage conference is necessary. If determined necessary, authorized representatives from the Borrower, general contractor, and any subcontractors specified by DBLS must attend the conference (all subcontractors are encouraged to attend). Initial Endorsement is contingent on the Borrower having obtained a wage decision from DBLS effective for the date of Initial Endorsement.

6. **Pre-Construction Conference.** A pre-construction conference must be held the day of Initial Endorsement or, if requested and HUD scheduling permits, at an earlier date. Required attendees include authorized representatives from the Lender, Borrower, general contractor, architect, and sureties.
7. **Estimated Progress Schedule of Work.** No fewer than ten (10) calendar days prior to Initial Endorsement, an Estimated Progress Schedule of Work must be submitted by the general contractor for review and approval by HUD. The progress schedule is required by the AIA General Conditions, which is an integral part of the FHA Construction Contract, Form HUD-92442M.
8. **E&O Insurance.** Prior to Initial Endorsement, both the design architect and supervising architect shall provide evidence of errors and omissions (liability) insurance and shall agree to maintain errors and omissions insurance through acceptance of the 12-month warranty inspection.
9. **Asbestos O&M Plan/Lead Based Paint Survey.** Should any asbestos-containing materials, lead paint or other environmental contaminants be encountered in the course of demolition or construction, such contaminants are to be handled in accordance with all applicable federal, state, and local requirements.
10. **Section 106 Consultation.** If an archaeological site, human remains, or cultural resources of tribal interest are revealed during the project's construction, HUD must be notified. HUD will contact responders to the Section 106 consultation, as applicable.
11. **HUD Inspection and Inspection Fee.** During the course of construction, HUD shall at all times have access to the property and the right to inspect the progress of construction, and the Inspection Fee Amount shall be paid at or before Initial Endorsement. The inspection of construction by a representative of HUD shall be only for the benefit and protection of HUD. The inspection fee is subject to change based on the resizing of the Note and Security Instrument prior to Initial Endorsement.
12. **HUD Application Fee ("Exam Fee").** Prior to Initial Endorsement, the Lender shall also pay to HUD an application fee (also known as an "Exam Fee") equal to the Exam Fee Amount set forth above, in accordance with Chapter 3 of the MAP Guide.
13. **Completion Assurance.** At or prior to Initial Endorsement, there shall be submitted to HUD assurance of completion of the Project in the form of (i) Payment and Performance Bonds reflecting the Surety Bond Amounts set forth above and issued by a surety acceptable to HUD, or (ii) a completion assurance agreement reflecting a deposit of the Completion Assurance Agreement Amount set forth above.
14. **Escrows.** At or before Initial Endorsement, the Lender or its nominee shall collect escrowed funds (in the form of cash and/or, except with respect to clause (c) below, one or more unconditional and irrevocable letters of credit) to be applied to the following items:

- (a) **Working Capital Deposit Escrow Amount.** Funds for application to taxes, mortgage insurance premiums, property insurance premiums and assessments required by the terms of the Security Instrument accruing subsequent to Initial Endorsement, and not from Loan proceeds, in the amount identified above as the Working Capital Deposit Escrow Amount.
- (b) **Additional Project Capital Amount.** Funds required over and above Note and Security Instrument proceeds for completion of the Project in the amount identified above as the Additional Project Capital Amount. This sum represents the difference between HUD's estimate of the total cash required for carrying charges, financing, and for construction of the Project, including contractor's fees and overhead, architect's fees, and other fees, and the maximum amount of the Note and Security Instrument to be insured. These funds may be reduced by (i) so much of the contractor's fees up to Maximum Contractor's Fee or BSPRA (as applicable), as the closing documents show that are not to be paid in cash, and (ii) amounts that have been prepaid by or on behalf of the Borrower, as evidenced by a certification of the Borrower.
- (c) **Off-site Improvement Cost & Demolition Cost.** Funds for application to the costs of off-site improvements in the amount identified above as the Off-site Improvement Cost, and the amount identified above as the Demolition Cost.
- (d) **Initial Operating Deficit Deposit.** Funds in the amount identified above as the Initial Operating Deficit Deposit held in escrow either by cash, a letter of credit, or excess mortgage proceeds, or excess land equity, if any, for application to the Project expenses beginning on the later of (1) the date on which all or part of the Project receives a certificate of occupancy, or (2) the date on which the residents first occupy the Project, and ending on the later of (1) the Operating Deficit Period or (2) the date by which the Project has demonstrated to HUD's satisfaction that the Project has achieved a debt service coverage ratio (including Mortgage Insurance Premium) of at least 1.0 for six consecutive months (break-even occupancy).
- (e) At Initial Endorsement, the Lender shall deliver to HUD a Lender's Certificate (form HUD-92434M) evidencing the escrow of funds corresponding to the accounts described in (a) – (d) above. All funds deposited with the Lender or its nominee under this paragraph shall be held and disbursed by the Lender or its nominee in accordance with the applicable Program Obligations.

15. Occupancy Approval. To the extent that the Borrower has not done so prior to Initial Endorsement, the Borrower must provide to HUD evidence/documentation from the appropriate local/state local authorities showing approval or conditional approval for the occupancy of the Project prior to any actual occupancy of the Project (or applicable portion thereof).

- 16. Tenant Security Deposits.** If the Project is currently occupied, the Borrower must provide proof of a tenant security deposit account prior to Initial Endorsement. The Borrower agrees that it will comply with the Regulatory Agreement covering Security Deposits.
- 17. Cost Certification and Cost Savings.** Borrower must provide a Cost Certification (under Forms HUD-92330 and 92330-A) unless HUD has determined that the Project is exempt from this requirement pursuant to Program Obligations as indicated in the table above. Any interest savings resulting purely from a differential between the processed interest rate and the actual final interest rate may not be construed as excess funds offsetting costs in other categories at the time of cost certification. To the extent that the amount of the Note and Security Instrument set forth in this Commitment has been determined based upon replacement cost, any such savings must be applied as a reduction in the amount of the Note and Security Instrument or placed in the Reserve for Replacement account (if permitted by Program Obligations) or other use as deemed appropriate as project betterment by HUD.
- 18. Continuing Obligations & Final Endorsement.** Once HUD endorses the Note and Security Instrument for mortgage insurance upon satisfaction of all conditions required prior to Initial Endorsement, pursuant to 24 C.F.R. § 200.100(b), Borrower and Lender shall continue to be obligated to satisfy all remaining conditions contained herein that must be satisfied before Final Endorsement. Upon completion of the Project in accordance with the Drawings and Specifications, the Note will be finally endorsed for insurance to the extent of the advances of Note and Security Instrument proceeds approved by HUD, subject to reduction as provided in the Act and Regulations.

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

acting by and through the **Secretary:**

By: CHRISTIE NEWHOUSE Digitally signed by: CHRISTIE NEWHOUSE
DN: CN = CHRISTIE NEWHOUSE C = US
O = U.S. Government OU = Department of
Housing and Urban Development, Office of
Housing
Date: 2025.06.18 14:32:50 -05'00' Date: 6/18/2025

Christie M. Newhouse
Director
Southwest Multifamily Region

This Commitment, including **Exhibit B** conditions, is hereby accepted by the undersigned, and we hereby agree to be bound by the terms hereof.

Each signatory below hereby certifies such signatory's statements and representations contained in this Commitment and all supporting documentation provided by such signatory are true, accurate, and complete. This Commitment has been made, presented, and delivered for the purpose of influencing an official action of HUD in insuring the Loan, and may be relied upon by HUD as a true statement of the facts contained therein.

BORROWER: **Patriot Pointe
Apartments, LLC**

Date: 6-23-25 By: Eduardo Valencix
Name: Eduardo Valencix
Title: Owner-Manager

LENDER: **Mason Joseph, LLC**

Date: 6/23/2025 By: Matthew Sims
Name: Matthew Sims
Title: Underwriter

Attachments:

- Exhibit A – Legal Description
- Exhibit B – Additional Conditions
- Exhibit C – Listing of Drawings and Specifications
- Exhibit D – Reserve for Replacement Funding Schedule (if applicable)
- Exhibit E – Forms HUD-92264A, Forms HUD 92264, 2328, 92329 and 92447
- Exhibit F – Davis-Bacon Wage Decision(s)
- Exhibit G – N/A - Equity Contribution Schedule
- Exhibit H – Cover Sheet for Plans and Specifications

EXHIBIT A
Legal Description
HUD Project No. 113-35205
221(d)(4), New Construction

Lot 3B, Replat B, Quality Care Subdivision, Alamogordo, Otero County, New Mexico.

EXHIBIT B
Additional Conditions
HUD Project No. 113-35205

1. The signatory for Section 50 of the Regulatory Agreement will be Eduardo Valencia and Robert Keener.
2. Initial Operating Deficit escrow in the amount of \$630,084 (5.48 months of DS) has been accepted for the Firm Application Stage.
3. Funds to meet the cash requirements to close are approximately \$4,296,067.
4. Based on the Identity of Interest between the General Contractor and Mortgagor, all side agreements specifying how the General Contractor will be paid for its work must be submitted for review and approval prior to initial closing.
5. Construction Schedules Reminders: The GC and Third Party should review the Construction Schedules and extend as much as possible to mitigate delays.
6. The Architect must clearly mark all accessibility features on the plans (Examples: HC units, HC parking spaces, clear floor spaces, accessible routes, etc.). A parking summary identifying standard and handicap parking spaces for all types will be helpful. Plans must clearly indicate the Accessibility standards that will apply to the project. Third-party reviewers should conduct a thorough and adequate accessibility review that will enable us to confirm compliance of all applicable Accessibility Standards. An Architect letter certifying that the design meets the Accessibility requirements needs to be included.
 - Fair Housing Act (FHA)
 - 504/Uniform Federal Accessibility Standards (UFAS)
 - The Americans with Disabilities Act of 1990 (ADA)
 - Local Accessibility Requirements
7. The proposed design DOES intend to achieve and maintain the HUD Green Energy Efficiency Initiative. At Firm: If seeking HUD Green Energy Efficiency Initiative, the Plans and Specs must clearly indicate that the proposed design will be complying with the Energy Efficiency requirements. Energy Initiatives documents must be included on the plans and specs.
8. Ensure the ALTA Survey & Surveyor's Report uses the new 2021 Survey Standards and latest forms.
9. Third-Party A&E/Cost reports must be adequate and complete with copies of accepted documents by the Third-Party consultant. Draft or incomplete reports will be rejected.
10. Radon: The proposed structures must be constructed to meet all the requirements of the ANSI/AARST CC-1000 2018 Soil Gas Control Systems in New Construction of Buildings. The plans and specs must include the required radon design elements.
11. Plans and Specs Requirements:
 - Submit to HUD (PDF) copies of Plan and Specs signed and sealed by all design professionals.
 - These should be submitted as a single PDF file, no individual plan sheets.
 - "Preliminary" drawings that are not signed and sealed will not be accepted. If the plans will be deferred per the MAP-Guide criteria, please explain that on the narrative.

- Organize the plan sheets in the same order they will be printed in one single PDF file. Same for specification books. In other words, only (2) PDF files are needed.
- Plans should be sent with the application to the Catalyst system.
- Cover pages need to have the Signature Block, Architect seal, FHA number, and dates.
- “Signature Block” is required on front cover and last page of Plans & specs to include Design Architect, Supervisory Architect, Owner, Contractor, Bonding Co, and Lender.

12. Management Agent/Management Agent Documents

- Management Agent approved by HUD cannot be replaced without PRIOR HUD approval. Any changes in the management agent during construction must be presented to the Mortgagee and to the assigned HUD Senior Underwriter, Charlotte Thompson-Brown, for review and subsequent
- The Account Executive assigned to the property is Willie White in the Fort Worth HUD Office.
- Provide proof of the fidelity bond prior to Final Endorsement. The Fidelity Bond coverage must equal a minimum of two (2) months of the project’s monthly rent potential.
- The Mortgagor must provide a fully signed Management Agreement, with the required HUD language reviewed and approved by Legal Counsel. The organizational documents must also conform to MAP required provisions

13. Monthly Accounting Reports:

Form HUD 93479, Monthly Report for Establishing Net Income, Form HUD 93480, Schedule of Disbursements and Form HUD 93481, Schedule of Accounts Payable must be submitted once the final endorsement has occurred. These reports must be sent by the 10th of each month following the end of the federal fiscal quarter to the electronic inbox, mfsouthwestmars@hud.gov. In the first submission includes the Project’s fiscal year and the name of the person to whom all financial correspondence should be sent. To provide further guidance, the current Southwest Regional policy for MARS is located at https://www.hud.gov/sites/dfiles/State/documents/MARs_Requirements.pdf.

14. Requisition for Disbursement of Funds, HUD 92403.

At least three days prior to the scheduled Initial Endorsement, the original Requisition for Disbursement of Funds, Form HUD-92403, along with the necessary backup, must be submitted to the Closing Coordinator, Leslie Winston for review. A draft copy must be submitted as soon as available after the issuance of this Commitment.

15. Preoccupancy Conference

At 80% completion, a Preoccupancy Conference must be scheduled with **Robert Frank, Account Executive**, who can be contacted at Robert.W.Frank@hud.gov.

16. Green MIP: a nationally recognized scoring standard that will be used to establish compliance and determine eligibility for HUD GREEN MIP Reduction program must be selected. In addition, the following requirements must be met:

- a. HUD-92013-D or other Certification from Owner stating “Green Standard” selected, and level of achievement sought, as applicable.
- b. Evidence of standard keeper’s review/approval/acceptance.

EXHIBIT C
Listing of Drawing and Specifications
HUD Project No. 113-35205
221(d)(4), New Construction



**SPECIFICATIONS FOR:
PATRIOT POINTE APTMENTS.
HUD PROJECT NO. 115-35835
ALAMOGORDO, NM**

ARCHITECT: TED TROUT ARCHITECT & ASSOCIATES, LTD.
11111 KATY FREEDWAY SUITE 625
HOUSTON, TEXAS 77079
(713) 266-7887
(713) 266-7948 FAX

OWNER: PATRIOT POINTE APARTMENTS LLC
10728 ADALTO CT.
EL PASO, TEXAS 79935
(915) 855-0622
CONTACT: Eddie Valencia (eddie@ecom-ep.com)

STRUCTURAL: SCHULTZ BURMAN ENGINEERING, PLLC
12804 WILLOW CENTRE DRIVE, SUITE B
HOUSTON, TEXAS 77066
(832) 286-1622
(832) 286-1660 FAX
CONTACT: Charles Johnson (cjohnson@schultzburman.com)

GENERAL CONTRACTOR: ECOM CONSTRUCTION & DEVELOPMENT SERVICES, LLC
10728 ADALTO CT.
EL PASO, TEXAS 79935
(915) 855-0622
CONTACT: Eddie Valencia (eddie@ecom-ep.com)

CIVIL ENGINEER: MAGRYM
11011 LOUISIANA AVE., STE 314
MIDLAND, TEXAS 79701
(432) 999-2737
Contact: Zeying Zhu (zeying.zhu@magrym.com)

LANDSCAPE: DESERT ELEMENTS LANDSCAPE DESIGN, LLC
1-3 ARDOVINO Dr.
SUNLAND, NM 88063
(915) 503-9100
(575) 589-9104-FAX
CONTACT: Selene Armijo (de-selene@elpur.com)

MEP ENGINEER: INNODEZ
325 NORTH ST. PAUL STREET, STE 3100
DALLAS, Texas 75201
(424) 414-0987
(469) 949-8204
CONTACT: Mohamed S Mahmoud (moe@innodez.com)



APPROVAL	
ARCHITECT:	TED TROUT ARCHITECT & ASSOCIATES, LTD.
OWNER:	PATRIOT POINTE APARTMENTS LLC
CONTRACTOR:	ECOM CONSTRUCTION & DEVELOPMENT SERVICES, LLC
BONDING COMPANY:	
INSPECTING ARCHITECT:	TED TROUT ARCHITECT & ASSOCIATES, LTD.
MORTGAGE COMPANY:	MASON JOSEPH COMPANY

EXHIBIT D
Reserve for Replacement Funding Schedule
 HUD Project No. 113-35205

This schedule is to be attached to the Firm Commitment letter

The following amounts and assumptions are incorporated by reference into the terms of the Commitment Letter for the referenced project. Lender may complete the section below.
 (Figures are e-Tool Data, per the RfR Deposit Test workbook)

Project Name	Patriot Pointe
FHA #	116-35205
Project City	Alamogordo
Project State	NM
SOA	221d4
Lender	Mason Joseph

Date of Commitment letter (HUD Input) 6/19/2025

Initial Deposit at Endorsement

Initial deposit to the Reserve for Replacement escrow, (incl.any transferred reserves) \$0

Annual Deposits to the Reserve for Replacements Escrow (ADRR)

ADRR/unit	Approved annual % rate(s) of change in ADRR:		
\$250	Initial Rate of Change: 0.00%		
Number of units	Relative Year of Change: Constant Rate		
114	New Rate of Change: 0.00%		
1st Year Deposit			
\$28,500			
	<u>Initial ADRR per unit x the # of units is the base ADRR below:</u>	<u>Adjusted ADRR based on rate(s) of change:</u>	<u>Adjusted ADRR per month</u>
Relative Year			
1	\$28,500	\$28,500	\$2,375.00
2	\$28,500	\$28,500	\$2,375.00
3	\$28,500	\$28,500	\$2,375.00
4	\$28,500	\$28,500	\$2,375.00
5	\$28,500	\$28,500	\$2,375.00
6	\$28,500	\$28,500	\$2,375.00
7	\$28,500	\$28,500	\$2,375.00
8	\$28,500	\$28,500	\$2,375.00
9	\$28,500	\$28,500	\$2,375.00
10	\$28,500	\$28,500	\$2,375.00
Total	<u>\$285,000</u>	<u>\$285,000</u>	

The ADRR may be amended in future years based on HUD review of actual repair and replacement needs and in any event ADRR will be adjusted based on a new capital needs assessment (CNA) which must be completed not later than 10 years after the date of Endorsement/Final Endorsement.

R4R Schedule – Cont.

Year 1 (R	Year 2 (R	Year 3 (R	Year 4 (R	Year 5 (R	Year 6 (R	Year 7 (R	Year 8 (R	Year 9 (R	Year 10 (R	Year 11 (R	Year 12 (R	Year 13 (R	Year 14 (R	Year 15 (R	Year 16 (R	Year 17 (R	Year 18 (R	Year 19 (R	Year 20 (R
2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041	2042	2043	2044	2045	2046	2047
0	28500	57011.4	86189.8	115715	144898	174412	204261	198272	191374	133755	94055.1	52298	-151090	-364837	-580835	-772694	-964786	-1089273	-1217232
0	11.4	678.44	1025.66	1377.01	1724.28	2075.5	2430.7	2359.44	2277.36	1591.69	1119.26	622.35	0	0	0	0	0	0	0
28500	28500	28500	28500	28500	28500	28500	28500	28500	28500	28500	28500	28500	28500	28500	28500	28500	28500	28500	28500
0	0	0	0	0	608	608	608	30210	30210	69157	53390	53390	170059	173248	170976	150676	147487	100016	100016
0	0	0	0	0	694.64	710.41	726.54	36919.2	37757.3	88396.3	69792.1	71376.4	232510	242248	244498	220359	220592	152987	156459
28500	57011.4	86189.8	115715	144898	174412	204261	198272	191374	133755	94055.1	52298	-151090	-364837	-580835	-772694	-964786	-1089273	-1217232	-1698044
78450.4	83792.9	85695	87640.2	89629.7	91664.3	93745	95873.1	98049.4	100275	102551	104879	107260	109695	112185	114731	117336	119999	122723	125509
0.04	0.04	1.19	1.19	1.19	1.19	1.19	1.19	1.19	1.19	1.19	1.19	1.19	1.19	1.19	1.19	1.19	1.19	1.19	1.19
0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
0	6.81	2.27	2.27	2.27	2.27	2.27	2.27	2.27	2.27	2.27	2.27	2.27	2.27	2.27	2.27	2.27	2.27	2.27	2.27
250	250	250	250	250	250	250	250	250	250	250	250	250	250	250	250	250	250	250	250
0	0	0	0	6.09	6.23	6.37	323.85	331.2	775.41	612.21	626.11	2039.56	2124.98	2144.72	1932.98	1935.01	1341.99	1372.45	4467.65
0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0

Minimum Balance Test Result Summary: CNA eTool FINANCIAL SCHEDULE DATA

YEAR 1-10: REQUIRED MINIMUM BALANCE TEST RESULT	YEAR 11+: REQUIRED MINIMUM BALANCE TEST RESULT	YEAR 11+: AMORTIZATION TEST REQUIRED?	YEARS 11+: AMORTIZATION TEST MITIGATION RESULT
PASS	FAIL →	REQUIRED →	PASS
# of Violations: 0 See Results	# of Violations: 10 See Results		# of Violations: 0 See Results

OVERALL RESULT:

REQUIREMENTS MET

If "Violation Exists," the CNA eTool submission does not meet MAP Guideline requirements.

"Requirements Met"

[Go to Firm Commitment Letter Attachment Tab](#)

"Violation Exists"

[Go to Trial Deposit Analysis Tab for adjustments trial](#)

RISK ANALYSIS

To meet RMB for the entire Est. Period, increase **annual deposit** starting **RY 1** by:

Per unit

To meet RMB for the entire Est. Period, increase **annual deposit** starting **RY 11** by:

Per unit

One-time deposit amount required in **RY 11** to meet RMB for remaining Est. Period (i.e. RY 11+):

Lump sum

[Go to Year 11- Risk Analysis Tab for details](#)

[Go To Trial Deposit Analysis Tab to test deposit amounts](#)

Note: The amounts reflected in the Risk Analysis are all approximate and for estimation purposes only.

EXHIBIT E

HUD Forms

HUD Project No. 113-35205
92264, 92264A, 92328, 92329 and 92447

Multifamily Summary Appraisal Report

U.S. Department of Housing
and Urban Development
Office of Housing
Federal Housing Commissioner

OMB No. 2502-0029
(Exp. 04/30/2020)

This form is in compliance with the requirements of the Uniform Standards of Professional Appraisal Practice for written reports, except where the Jurisdictional Exception is invoked to allow for minor deviations, as noted throughout.

Additional technical direction is contained in the HUD Handbooks referenced in the lower right corner.

Application Processing Stage	☐ SAMA	☐ Feasibility (Rehab)	☒ Firm
Property Rights Appraised	☐ Fee Simple	☐ Leasehold	
Project Name			Project Number
Patriot Pointe Townhomes			116-35205

Purpose. This appraisal evaluates the subject property as security for a long-term insured mortgage. Included in the appraisal (consultation for Section 221) are the analysis of the market need, location, earning capacity, expenses, taxes, and warranted cost of the property.

Scope. The Appraiser has developed, and hereunder reports, conclusions with respect to: feasibility; suitability of improvements; extent, quality, and duration of earning capacity; the value of real estate proposed or existing as security for a long-term mortgage; and several other factors which have a bearing on the economics of the subject property.

A. Location and Description of Property

1. Street No.		2. Street		3. Municipality	
4th and Moonglow St				Alamogordo	
4a. Census Tract No.		4b. Placement Code		4c. Legal Description (Optional)	
5. County		6. State & Zip			
Otero		New Mexico 88008			
7. Type of Project		8. No. Stories		9a. Foundation	
☐ Highrise ☐ Elevators: 0 ☐ Detached		☐ 2-5 sty. Elev ☐ Row House ☒ Town House		☒ Slab on Grade ☐ Partial Basement	
		2		☐ Full Basement ☐ Crawl Space	
9b. Basement Floor		10. ☒ Proposed ☐ Existing			
☐ Structural Slab ☐ Slab on Grade		11. Number of Units			
		Revenue Non-Rev.			
		114 0			
		12. No. of Bldgs		13a. List Accessory Bldgs. and Area	
		13		Clubhouse	

13b. List Recreation Facilities and Area

See narrative

13c. Neighborhood Description

Location	☐ Urban	☒ Suburban	☐ Rural	Present Land Use	50% 1 Family	2 to 4 Family
Built Up	☐ Over 75%	☒ 25% to 75%	☐ Under 25%		15% Multifamily	Condo/Coop
Growth Rate	☐ Rapid	☒ Steady	☐ Slow		25% Commer.	Industrial
Property Values	☐ Increasing	☒ Stable	☐ Declining		10% Vacant	
Demand/Supply	☐ Shortage	☒ In Balance	☐ Oversupply	Change in Use	☒ Not Likely	☐ Likely
Rent Controls	☐ Yes	☒ No	☐ Likely		☐ Taking Place	
				Occupancy	☒ Owner	☐ Tenant
						2% Vacant

Description of Neighborhood. (Note: Race and racial composition of the neighborhood are not appraisal factors.) Describe the boundaries of the neighborhood and those factors, favorable or unfavorable, that affect marketability, including neighborhood stability, appeal, property conditions, vacancies, rent control, etc.

Site Information

14. Dimensions		15a. Zoning (If recently changed, submit evidence)	
259,051 Square Feet		R-4	
15b. Zoning Compliance		15c. Highest and Best use as Improved	
☒ Legal ☐ Illegal ☐ Legal nonconforming (Grandfathered Use) ☐ No Zoning		☐ Present Use ☒ Proposed Use ☐ Other Use	
15d. Intended MF Use (summarize: e.g. Market Rent: Hi - Med. - Lo- End; Rent Subsidized; Rent Restricted with or without Subsidy; Applicable Percentages)			
16.a Yr. Built	16.b.	17a. Structural System	17b. Floor System
Proposed	☐ Manufac. Housing ☐ Modules	Wood Frame	Concrete
	☒ Conven. Built ☐ Components		17c. Exterior Finish
			Hardy
			18. Heating-A/C
			Central A/C

Previous editions are obsolete

Based on MJC Analysis 25

Page 1

form HUD-92264 (8/95)
ref Handbook 4465.1

19. Date Acquired	20. Purchase Price	21. Additional Costs	22. If Leasehold, Annual Ground Rent	23a. Total Cost	23b. Outstanding Balance
	\$368,025	\$0		\$0	\$0
24a. Relationship (Business, Personal, or Other) Between Seller & Buyer			24b. Has the Subject property been sold in the past 3 years? ☒ Yes ☐ No		
Business			10/26/2022		
25. Utilities	Public ☒	Community ☐	Distance from Site	26. Unusual Site Features	
Water	☒	☐		☐ Cuts ☐ Fills ☐ Rock Formations ☐ Erosion ☐ Poor Drainage	
Sewers	☒	☐		☐ High Water Table ☐ Retaining Walls ☐ Off Site Imp. ☒ None	
				☐ Other	

[illegible]

29. Number of Parking Spaces		Off-street Parking and Other Non-Commercial Ancillary Income (Not Included in Unit Rent)				
Attended	0	Carport	40	\$50 /month =	\$2,000	
Self Park	158	Garages (Detached)	0	\$0 /month =	\$0	
Total Spaces	158	RUBS	114	\$48 /month =	\$5,522	
		Miscellaneous (Other)	114	\$67 /month =	\$7,600	
		Total Ancillary Income				\$15,122

31. Total Estimated Monthly Gross Income at 100 Percent Occupancy	\$195,372
--	------------------

33. Gross Floor Area	34. Net Rentable Residential Area	35. Net Rentable Commercial Area
124,996 SF	109,158 SF	0 SF

36. Non Revenue Producing Space			
Type of Employee	No. Rms.	Composition of Unit	Location of Unit in Project

36a. Personal Benefit Expense (PBE) (May produce additional revenue and expenses to be considered above and below.)

Tenant Employee-Paid Utilities	Type	Monthly Cost
Tenant Employee-Paid Utilities	Type	Monthly Cost

D. Amenities and Services Included in Rent (Check and circle appropriate items; fill-in number where indicated)

37a. Unit Amenities <table style="width:100%;"><tr><td>☒ Ranges (Gas or Elec.)</td><td>☒ Disposal/Compactor</td></tr><tr><td>☒ Refrig. (Gas or Elec.)</td><td>☒ Air Conditioning (Central or Window)</td></tr><tr><td>☒ Micro Wave</td><td>☒ Dishwasher</td></tr><tr><td>☒ Carpet</td><td>☒ Window treatment (blinds, drapes, shades)</td></tr><tr><td>☒ Balcony/Patio</td><td>☐ Fireplace(s)</td></tr><tr><td>☒ Laundry Hookups (in units)</td><td>☐ Security System</td></tr><tr><td>☐ Upper level vaulted ceilings/Skylights</td><td></td></tr><tr><td>☒ Wash/Dryer (in units)</td><td></td></tr><tr><td>☐ Other (Specify)</td><td></td></tr></table>	☒ Ranges (Gas or Elec.)	☒ Disposal/Compactor	☒ Refrig. (Gas or Elec.)	☒ Air Conditioning (Central or Window)	☒ Micro Wave	☒ Dishwasher	☒ Carpet	☒ Window treatment (blinds, drapes, shades)	☒ Balcony/Patio	☐ Fireplace(s)	☒ Laundry Hookups (in units)	☐ Security System	☐ Upper level vaulted ceilings/Skylights		☒ Wash/Dryer (in units)		☐ Other (Specify)		37b. Project Amenities <table style="width:100%;"><tr><td>☐ Guest Room(s)</td><td>☒ Community Room(s)</td></tr><tr><td>☐ Sauna/Steam Room(s)</td><td>☒ Swimming Pool(s)</td></tr><tr><td>☒ Exercise Room(s)</td><td>☐ Racquetball Court(s)</td></tr><tr><td>☐ Tennis Court(s)</td><td>☒ Picnic/Play Area(s)</td></tr><tr><td>☐ Laundry Facilities (coin)</td><td></td></tr><tr><td>☒ Project Security System(s)</td><td></td></tr><tr><td>☐ Jacuzzies/Community Whirlpool(s)</td><td></td></tr><tr><td>☐ Other (Specify)</td><td></td></tr></table>	☐ Guest Room(s)	☒ Community Room(s)	☐ Sauna/Steam Room(s)	☒ Swimming Pool(s)	☒ Exercise Room(s)	☐ Racquetball Court(s)	☐ Tennis Court(s)	☒ Picnic/Play Area(s)	☐ Laundry Facilities (coin)		☒ Project Security System(s)		☐ Jacuzzies/Community Whirlpool(s)		☐ Other (Specify)																																																																																		
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38. Services Gas: ☐ Heat ☐ Hot Water ☐ Cooking ☐ AC Elec: ☒ Heat ☒ Hot Water ☒ Cooking ☒ AC ☒ Lights Other: ☐ Heat ☐ Hot Water ☐ Water ☐ AC	39. Special Assessments a. ☐ Prepayable ☐ Non-Prepayable b. Principal Balance \$0 c. Annual Payment \$0 d. Remaining Term 0 Years																																																																																																																			

E. Estimate of Annual Expense

Administrative <table style="width:100%;"><tr><td>1 Advertising</td><td style="text-align: right;">\$14,250</td></tr><tr><td>2 Management Fee</td><td style="text-align: right;">\$65,410</td></tr><tr><td>3 Other Administrative</td><td style="text-align: right;">\$34,200</td></tr><tr><td>4 Total Administrative</td><td style="text-align: right;">\$113,860</td></tr></table>	1 Advertising	\$14,250	2 Management Fee	\$65,410	3 Other Administrative	\$34,200	4 Total Administrative	\$113,860	Maintenance <table style="width:100%;"><tr><td>15 Cleaning & Decorating</td><td style="text-align: right;">\$22,800</td></tr><tr><td>16 Repair & Maintenance</td><td style="text-align: right;">\$22,800</td></tr><tr><td>17 Exterminating</td><td style="text-align: right;">\$0</td></tr><tr><td>18 Insurance</td><td style="text-align: right;">\$39,900</td></tr><tr><td>19 Grounds Keeping</td><td style="text-align: right;">\$13,110</td></tr><tr><td>20 Contract Services</td><td style="text-align: right;">\$0</td></tr><tr><td>21 Total Maintenance</td><td style="text-align: right;">\$98,609</td></tr><tr><td>22 Replacement Reserve</td><td style="text-align: right;">\$28,500</td></tr><tr><td>Total Operating Expense</td><td style="text-align: right;">\$127,109</td></tr></table>	15 Cleaning & Decorating	\$22,800	16 Repair & Maintenance	\$22,800	17 Exterminating	\$0	18 Insurance	\$39,900	19 Grounds Keeping	\$13,110	20 Contract Services	\$0	21 Total Maintenance	\$98,609	22 Replacement Reserve	\$28,500	Total Operating Expense	\$127,109																
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F. Income Computations			
30a Estimated Residential Project Income	\$2,163,000	c. Effective Gross Commercial Income (Line 32a x Line 32b)	\$0
b. Estimated Ancillary Project Income	\$181,462	d. Total Commercial Project Expenses (from attached analysis)	\$0
c. Residential and Ancillary Occupancy Percentage	93.0%	33 Net Commercial Income to Project (Line 32c. minus Line 32d)	\$0
d. Effective Gross Residential and Ancillary Income (Line 30c x (Line 30a + Line 30b))	\$2,180,350	34 Total Project Net Income	\$1,584,192
e. Total Residential and Ancillary Project Expenses (Line E29)	\$596,158	35a Residential and Ancillary Project Expense Ratio (Line E29 divided by Line 30d)	27.34%
31 Net Residential and Ancillary Income to Project (Line 30d minus Line 30e)	\$1,584,192	35b Commercial Expense Ratio (Line 32d divided by 32c)	0%
32a Estimated Commercial Income	\$0	* Vacancy and collection loss rates and corresponding residential and commercial occupancy percentages are analyzed through market data, but subject by Jurisdictional Exception to overall HUD underwriting mandates.	
b. Commercial Occupancy (80% Maximum)	N/A		

G. Estimated Replacement Cost			
36a Unusual Land Improvements	\$0	Carrying Charges & Financing	
b. Other Land Improvements	\$3,751,860		
c. Total Land Improvements	\$3,751,860		
Structures		53 Interest on \$21,002,800 @ 5.65% for 20 months	\$988,882
37 Main Buildings	\$14,457,920	54 Taxes	\$200,000
38 Accessory Buildings	\$621,669	55 Insurance	\$125,000
39 Garages	\$0	56 FHA Mtg. Ins. Prem.	\$105,014
40 All Other Buildings	\$0	57 FHA Exam Fee	\$63,008
41 Total Structures	\$15,079,589	58 FHA Inspection Fee	\$105,014
42 General Requirements	\$973,948	59 Financing Fee	\$420,056
		60 AMPO	\$0
		61 FNMA/GNMA Fee	\$52,500
		62 Title & Recording	\$76,342
		63 Total Carrying Charges & Financing	\$2,135,816
Fees		Legal, Organization & Audit Fee	
43 Builder's General Overhead	2% \$396,108	64 Legal	\$35,000
44 Builder's Profit	0% \$0	65 Organizational	\$63,000
45 Arch. Fee - Design	73% \$422,805	66 Cost Certification & Audit Fee	\$15,000
46 Arch. Fee - Supervisory	27% \$157,960	67 Total Legal, Organizational & Audit Fees	\$113,000
47 Bond Premium	\$202,015	68 Builder and Sponsor Profit & Risk	\$2,382,867
48 Other Fees	\$345,570	69 Consultant	\$0
49 Total Fees	\$1,524,458	70 FF&E	\$250,000
50 Total All Improvements (Lines 36c + 41 + 42 + 49)	\$21,329,855	71 Contingency Reserve (Sec. 202 or Rehab Only)	\$0
51 Cost Per Gross Square Foot	\$170.64	72 Total Est. Development Cost (Excl. Land or Off-Site Cost)	\$26,211,538
52 Estimated Construction Time (Months)	18	73a Warranted Price of Land 259,051 SF @ \$. PSF	\$375,000
		73b As Is Property Value (Rehab Only)	
		73c Off-Site (if needed, Rehab Only)	
		74 Total Estimated Replacement Cost of Project (72 + 73a or 73b and 73c)	\$26,586,538

H. Remarks	
(Note 2: For Rehab only: Estimated Value of land without Improvements)	
Estimated Value of land and improvements "As Is" by Residual Method, i.e. After Rehabilitation Correlated Value minus line G72 Cost of Rehabilitation Improvements equals \$ _____; line G73b is the lesser of this residual amount, and the amount estimated by Supplemental form HUD-92264 "As Is".)	

I. Estimate of Operating Deficit	
See attached Operating Deficit Worksheet	

J. Project Site Analysis and Appraisal (See Chapter 2, Handbook 4465.1)

1. Is Location and Neighborhood Acceptable?
2. Is Site adequate in Size for proposed Project?
3. Is Site Zoning permissive for intended use?
4. Are Utilities available now to serve the Site?
5. Is there a Market at this location for the Facility at the proposed rents?
6. X Site acceptable for type of Project proposed under Section 221(d)(4).
7. Site not acceptable (see reasons listed at bottom of page 6.)

☒	Yes	☐	No
☒	Yes	☐	No
☒	Yes	☐	No
☒	Yes	☐	No
☒	Yes	☐	No

Date of Inspection 5/30/2024 Note: The Effective Date of all land valuations is the date of inspection.

8. Value Fully Improved	Location of Project			Size of Subject Site	
	Alamogordo, New Mexico			259,051	Square Feet
	Comparable Sales Address No. 1	Comparable Sales Address No. 2	Comparable Sales Address No. 3	Comparable Sales Address No. 4	Comparable Sales Address No. 5
	Highway 70 West	5712 Production Lane	101 W Dale Scot Avenue	10100 Bataan Memorial E Hwy	2775 Pecos Hwy
Date of Sale	Aug-20	Jun-22	Aug-22	Sep-22	Mar-23
Sales Price	\$215,000	\$335,878	\$90,000	\$550,000	\$1,000,000
Size in Square Feet	196,020	183,823	45,738	456,073	871,200
Price per Square Foot	\$1.10	\$1.83	\$1.97	\$1.21	\$1.15
Conditions to Sale Adjustment	0%	0%	0%	0%	0%
Market Conditions	6%	4%	4%	3%	3%
Adj. \$/SF	\$1.16	\$1.90	\$2.05	\$1.24	\$1.18
Adjustments (%)					
Terms/Sale	0%	0%	0%	0%	0%
Time	0%	0%	0%	0%	0%
Location	5%	-5%	0%	10%	10%
Zoning	0%	0%	0%	0%	0%
Plottage	0%	0%	-10%	5%	10%
Demolition	0%	0%	0%	0%	0%
Pilling, Etc.	0%	0%	0%	0%	0%
Other	0%	0%	0%	0%	0%
Total Adjustment Factor	5%	-5%	-10%	15%	20%
Adjusted Sq. Ft. Price	\$1.22	\$1.81	\$1.84	\$1.43	\$1.42
Indicated Value by Comparison	\$316,241	\$467,653	\$477,119	\$370,040	\$367,524
9. Value of Site Fully Improved					\$375,000

10.	Value "As Is" No. 1	Value "As Is" No. 2	Value "As Is" No. 3	
Date of Sale				
Sales Price				
Size in Square Feet				
Price per Square Foot				
Adjustments (%)				
Terms/Sale				
Time				
Location				
Zoning				
Plottage				
Demolition				
Pilling, Etc.				
Other				
Total Adjustment Factor				
Adjusted Sq. Ft. Price				
Indicated Value by Comparison				
11. Value of Site Fully Improved				

12. Acquisition Cost: (Last Arms-Length Transaction)

Buyer	Address
Seller	Address
Date of Closing	Sales Price

Source Settlement Statement

13. Other Costs:

(1) Platting, Legal Fees and Zoning Costs	\$
(2) Recording and Title Fees	\$
(3) Interest on Investments	\$
(4) Other (Survey; Estimated Rollback taxes to be paid)	\$
(5) Acquisition Cost (From 12)	\$
(6) Total Cost to Sponsor	\$

14. Value of Land and Cost Certification:

(1) Fair Market Value of land fully improved (From 9 above)	\$	375,000
(2) Deduct unusual items from Section G, item 36a.	\$	
(3) Warranted price of land fully improved (Replacement Cost itemsexcluded) (enter G-7)	\$	375,000
For Cost Certification Purposes		
(3a) Deduct cost of Demol. (\$0) and required off-sites (\$0).		
to be paid by Mtgor. Or by special assessments.		0
(4) Estimate of "As Is" by subtraction from improved value	\$	-
(5) Estimate of "As Is" by direct comparison with similar with similar unimproved sites (fr	\$	0
(6) "As Is" based on acquisition cost to sponsor (From 13 above)	\$	
(7) Commissioner's estimated value of land "As Is" (the Lesser of [4] or [5] above)	\$	0

* Where land is purchased from LPA or other Governmental authority for specific reuse, use the lesser of 4, 5, or 6.

K. Income Approach to Value

(1)	Estimated Remaining Economic Life	55 Years
(2)	Capitalization Rate determined By (See Chapter 7, Handbook 4465.1)	1/14/2016
	Overall Rate From Compar	
	Rate From Band of Investn	
	Cash Flow to Equity	
(3)	Rate Selected	
(4)	Net Income (Line F 34)	\$ 1,584,192
(5)	Capitalization Value (Line 4 divided by Line 3)	\$
(6)	Value of Leased Fee (See Chapter 3, Handbook 4465.1) € _____ divided by Cap. Rate _____ % equals Value of Leased Fee	

Remarks:

L. Comparison Approach to Value

7. The undersigned has recited three sales of properties most similar and proximate to the subject property and has described and analyzed these in this analysis. If there is a significant variation between the subject and comparable properties, the analysis includes a dollar adjustment reflecting the market reaction to those items or an explanation supported by the market data. If a significant item in the comparable property is superior to, or more favorable than, the subject property, a minus (-) adjustment is made, thus reducing the indicated value of the subject property. If a significant item in the comparable property is inferior to, or less favorable than, the subject property, a plus (+) adjustment is made, thus increasing the indicated value of the subject property. *[(1) equals the Sales Price divided by Gross Annual Rent]

Item	Subject Property				Comparable Sale No. 2				Comparable Sale No. 3				Comparable Sale No. 4								
Address																					
Proximity to subject																					
Sales price		\$		Unf. Furn.		\$		Unf. Furn.		\$		Unf. Furn.		\$							
Sales price per NRA		\$		\$		\$		\$		\$		\$		\$							
Gross annual rent		\$		\$		\$		\$		\$		\$		\$							
Gross rent multiplier (1) *																					
Sales price per unit		\$																			
NOI per Unit																					
Data Source																					
Adjustments		Description				Description				+ (-) Adjust.		Description				+ (-) Adjust.		Description		+ (-) Adjust.	
Sales or financing concessions																					
Date of sale/time																					
Location																					
Site/View																					
Design and appeal																					
Quality of construction																					
Year built																					
Condition																					
Gross Building Area		Sq. ft.				Sq. ft.						Sq. ft.						Sq. ft.			
Unit Breakdown		No. of Units	Room count		No. Vac.	No. of Units	Room count		No. Vac.		No. of Units	Room count		No. Vac.		No. of Units	Room count		No. Vac.		
			Tot.	Br.	Ba.			Tot.	Br.	Ba.			Tot.	Br.	Ba.			Tot.	Br.	Ba.	
Restricted Rents																					
Functional utility																					
Heating/cooling																					
Parking on/off site																					
Project amenities and fee (if applicable)																					
Average Unit Size		Sq. ft.				Sq. ft.						Sq. ft.						Sq. ft.			
(\$/unit x)																					
Net Adjustment (Total)				+ -				+ -				+ -				+ -					
Adjusted price/Unit								\$0		\$0				\$0				\$0		\$0	

8. Indicated Value by Sales Comparison Approach

N/A**Reconciliation**

Capitalization

N/A

Summation

Comparison

N/A

9.

**** see note below**

**** Note: Detached Gara** For section 221 mortgage insurance application processing, acceptable risk analysis produces a supportable replacement cost estimate, and the estimate reflected here is the replacement cost new/summation approach result. In effect, such "appraisals" are in fact USPAP "consultations" concerning economically supportable cost limits. For section 207 and 223 processing, all three approaches to value are included in the appraisal, but the subject property is appraised for its intended multifamily use, not necessarily its "highest and best use". The definition provided in USPAP for "market value" is generally observed, but see Handbook 4465.1, paragraph 8-4, for qualifications.

Effective Dates: For new construction or substantial rehabilitation proposals, the effective date of the improvements component cost estimate is the Line G53 month estimates added to the report and certification date below. The land component is valued as of the date of the inspection. For section 223, the effective date of the appraisal is the same as the reporting, but assumes (hypothetically) the completion of all the required repairs/work write-up items.

Comments on:

1. Sales comparison (Including reconciliation of all indicators of value as to consistency and relative strength and evaluation of the typical investor's/purchaser's motivation in that market).
2. Analysis of any current agreement of sale, option, or listing of the subject property and analysis of any prior sales of subject and comparables within three years of the date of appraisal.

M. To Be Completed by Construction Cost Analyst			
Cost Not Attributable to Dwelling Use		Cost Not Attributable to Dwelling Use	
10 Parking		16 Off-Site	\$0
11 Garage		Demolition	\$0
12 Commercial			
13 Special Ext. Land Improvements			
14 Other (See CNA Attachment)	\$1,022,250		
15 Total	\$1,022,250		
	5.43%	17 Total Off-Site Costs	\$0

N. Signatures and Appraiser Certification			
Architectural Processor	Date	Architectural Reviewer	Date
Cost Processor	Date	Cost Reviewer	Date

I Certify that to the best of my knowledge and belief:

The Statements of fact contained in this report are true and correct.

The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are my personal, unbiased professional analyses, opinions, and conclusions.

I have no present or prospective interest in the property that is the subject of this report, and I have no personal interest with respect to the parties involved.

My compensation is not contingent upon the reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value estimate, the attainment of a stipulated result, or the occurrence of a subsequent event.

My analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice; HUD Handbook 4465.1, The Valuation Analysis Handbook for Project Mortgage Insurance; HUD Handbook 4480.1, Multifamily Underwriting Forms Catalog; and other applicable HUD handbooks and Notices.

I have made a personal inspection of the property that is the subject of this report.

No one provided significant professional assistance to the appraisers signing this report, except for the Architectural and Engineering, and Cost Estimation professionals signing above. These professionals' estimations of the subject property's dimensions and "hard" replacement costs have been relied upon by the Appraiser and Review Appraiser.

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1100, 1012; 31 U.S.C. 3729,3802)

Underwriter	Date	Underwriter Trainee	Date
	3/25/2025		3/25/2025
State Certification Number	Date	State Certification Number	Date

The Review Appraiser certifies that he/she ☐ Did ☐ Did not inspect the subject property.

Chief, Housing Programs Branch	Date	Director, Housing Development	Date
CHRISTOPHER MCDANIEL Digitally signed by: CHRISTOPHER MCDANIEL DN: CN = CHRISTOPHER MCDANIEL C = US O = U.S. Government OU = Department of Housing and Urban Development, Office of Housing Date: 2025.06.18 13:47:21 -0500		LANTRINA STEWART Digitally signed by: LANTRINA STEWART DN: CN = LANTRINA STEWART C = US O = U.S. Government OU = Department of Housing and Urban Development, Office of Administrator Date: 2025.06.18 14:02:34 -0500	
Field Office Manager/Deputy	Date		

O. Remarks and Conclusions (continue on separate page if necessary. Appraisal reports must be kept for a minimum of five years.)

Calculating Building Area Not Attributable to Dwelling Use

A.5.10.1.A Calculate the number of square feet assumed attributable to dwelling use:

1	Enter Net Residential Area (92264, Section C, Line 34)	109,158
2	Multiply the result in A1 by 1.1 (110%), rounding up to nearest whole number. This is the total SF assumed attributable to dwelling use	120,074
3	Enter the gross floor area of buildings (HUD 92264, Section C, item 33)	124,996
4	Subtract the result of Step A2 from the result of Step A3	4,922
5	Enter the net rentable commercial area from HUD 92264, Section C, Item 35.	0
6	Enter the greater of the result of Step A4 or Step A5	4,922
7	Divide the result of Step A6 by the result of Step A3. Enter the lesser of this calculation or 30%. (Round to the nearest mil, ie.e XX.xx%) This is the percent of area not attributable to dwelling use.	3.900%

A.5.10.2A Cost for New Construction

1	Enter the Total Estimated Development Cost, HUD form 92264, Section G, Line 72	\$26,211,538
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A.5.10.2B Cost for Substantial Rehabilitation Projects

1	Enter the Total Estimated Development Cost, HUD form 92264, Section G, Line 72	N/A
2	Enter the "As Is" Value of the property, HUD form 92264, Section G, Line 73b	N/A
3	Enter the Estimated value of the land without improvements, HUD form 92264, Section H, Note 2	N/A
4	Subtract the result of Step B3 from the result of Step B2	N/A
5	Add the results of Steps B1 and B4	N/A

A.5.10.3A Calculate Cost-Not-Attributable

1	Enter the percent of area not attributable to residential use	3.90%
2	Enter the cost determined A.5.10.2A or A.5.10.2B	\$26,211,538
3	Multiply the result of Step A1 times the result of Step A2	\$1,022,250

Patriot Pointe Townhomes

Alamogordo, New Mexico

221(d)4

116-35205

Contractor's Other Fees	\$217,500
Mortgagor's Other Fees	\$128,070
Organizational/Third Party Reports	\$63,000

Contractor's Other Fees

Item	Amount
1 Audit	\$17,500
2 Liability Insurance	\$100,000
3 Builder's Risk	\$100,000
Total	\$217,500

Mortgagor's Other Fees

Item	Amount
1 Geotech	\$5,000
2 Alta & Topo Survey	\$10,000
3 NGBS Fees	\$7,320
4 Consultants	\$32,500
5 Miscellaneous	\$55,750
6 Blue Prints & Reimbursables	\$7,500
7 Radon Testing	\$10,000
Total	\$128,070

Third Party Reports

Item	Amount
1 Market Study	\$6,500
2 Pre App Appraisal	\$8,000
3 Firm App Appraisal	\$6,500
4 Environmental	\$7,200
5 AIA/Cost Review	\$18,300
6 Permit Report	\$1,500
Total	\$48,000

Organizational Fee

Item	Amount
Organizational Fee	\$15,000

Supplement to Project Analysis

U.S. Department of Housing
and Urban Development
Office of Housing
Federal Housing Commissioner

OMB No. 2502-0029
(Exp. 04/30/2020)

Section or Title Number: 221(d)4

☐ Valuation Trial

☐ Conditional

☒ Firm

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Name of Mortgagor (Borrower) Patriot Pointe Apartments, LLC	Project Number 116-35205
---	------------------------------------

Name of Project
Patriot Pointe Townhomes

Location of Project
4th and Moonglow St, Alamogordo, New Mexico

Type of Borrower

☒ Private	☒ Profit	☐ Public	☐ Nonprofit	☐ State or Federal
☐ Management Coop.	☐ Sales Coop.	☐ Investor-Sponsor	☐ Builder-Seller	☐ Limited Distribution

Type of Project

☒ Rental Housing	☐ Mobile Home Court	☐ Board and Care	☒ New Construction	☒ Non-Elevator
☐ Cooperative	☐ Nursing Home	☐ Single Rm. Occ.	☐ Rehabilitation	☐ Elevator
☐ Condominium	☐ Intermediate Care		☐ Redevelopment	☐ Existing
☐ Capital Advance 202/811	☐ Housing for the Elderly		☐ Supplement Loan	☐

I Determination of Maximum Insurable Mortgage

Criteria	column 1	column 2	column 3
1 Mortgage or Loan Amount Requested in Application			\$21,002,800
2 Reserved			
3 Amount Based on Value or Replacement Cost			

a. Value (Replacement Cost) in Fee Simple	\$26,586,538	x	87%	\$23,130,200
b. (1) Value of Leased Fee	\$0			
(2) Grant/Loan Funds Attributable to RC Items	\$0			
(3) Excess Unusual Land Improvements	\$0			
(4) Cost Containment Mortgage Deduction	\$0			
(5) Total lines 1 to 4	\$0	x	87%	\$0
c. Unpaid Balance of Special Assessment				\$0
d. Total line b + c				\$0
e. Line a minus line d				\$23,130,200

4 Amount Based on Limitations Per Family Unit

a. Number of 0 Bedroom Units	0	\$61,646	\$0
Number of 1 Bedroom Units	4	\$69,980	\$755,784
Number of 2 Bedroom Units	108	\$84,589	\$24,666,152
Number of 3 Bedroom Units	2	\$106,172	\$573,329
Number of 4 Bedroom Units	0	\$119,973	\$0
b. Cost Not Attributable to Dwelling Use		\$1,022,250	x 100% \$1,022,250
c. Warranted Price of Land		\$375,000	x 100% \$375,000
d. Total lines a through c			\$27,392,515
e. Total Number of Spaces			\$0
f. Sum: Value of Leased Fee and Unpaid Balance of Special Assessment(s)			\$0
g. Line d or line e, whichever is applicable, minus line f			\$27,392,500

5 Amount Based on Debt Service Ratio

a. Mortgage Interest Rate		5.65%
b. Mortgage Insurance Premium Rate		0.25%
c. Initial Curtail Rate		0.66%
d. Sum of Above Rates		6.56%
e. Net Income	\$1,584,192	x 87%
f. Annual Ground Rent + Ann. Special Assess.	\$0	+ 0
g. Line e minus line f		\$1,378,247
h. Line g divided by line d		\$21,002,800
i. Annual Tax Abatement		\$0
j. Line h plus line i		\$21,002,800

Previous editions are obsolete

Page 1

form HUD-92264-A (03/2010)
ref Handbooks 4480.1 & 4470.1

Based on MIC Analysis 25

I Determination of Maximum Insurable Mortgage (cont.)

Criteria	column 1	column 2	column 3
6 Amount Based on Estimated Cost of Rehabilitation Plus			
(i) "As Is" Value, or (ii) Acquisition Cost, or (iii) Existing Mortgage Indebtedness Against the Property Before Rehabilitation			
a. Total Estimated Development Cost	\$0		
b. Estimated Cost of Off-site Construction	\$0		
c. Sum of lines a & b		\$0	
d. Grant/Loan Funds Attributable to R. C. Items	\$0		
e. Line c minus line d		\$0	
f. "As Is" Value of Prop. Before Rehab	_____ x _____		
g. Existing Mortgage Indebtedness or Purchase Price	\$0		
h. Line e plus line f or line g, whichever is less		\$0	
i. Line h x 87%			N/A
7 Amount Based on Borrower's Total Cost Acquisition Section 223(f)			
a. Purchase Price of Project	_____		
b. Repairs & Improvements, if any	_____		
c. Other Fees	_____		
d. Loan Closing Charges	_____		
e. Sum of lines a through d		_____	
f. Enter the Sum of any Grant/Loan and Reserves for Replacement and Major Moveable Equipment to be purchased as an asset of the project.		_____	
g. line e minus line f		_____	
h. Line g x 87%			N/A
8 Amount Based on Sum of Unit Mortgage Amounts			N/A
9 Amount Based on Estimated Cost to Borrower			
a. Total Estimated Cost	_____		
b. Purchase Price of Site	_____		
c. Total Cost of Clearing Site, if any	_____		
d. Expense of Relocating Occupants, if any	_____		
e. Cost of Off-Site Construction, if any	_____		
f. Sum of line a through line e		_____	
g. Line f x 87%			N/A
10 Amount Based on Existing Indebtedness, Repairs, and Loan Closing Charges Section 223(f)			
a. Total Existing Indebtedness	_____		
b. Required Repairs	_____		
c. Other Fees	_____		
d. Loan Closing Charges	_____		
e. Sum of line a through line d		_____	
Enter the Sum of any Grant/Loan and Reserves for Replacement and Major Moveable Equipment on Deposit		_____	
f. line e minus line f		_____	
g. 80% of Value		_____	
h. Greater of line g or line h			N/A
11 Amount Based on Deduction of Grant(s), Loan(s), Tax Credit(s) and Gift(s) or Mortgageable items:			
a. 100% Project Replacement Cost*	\$26,586,538		
b. (1) Grants/loans/gifts	\$0		
(2) Tax Credits	\$0		
(3) Value of Leased Fee	\$0		
(4) Excess Unusual Land Improvement Cost	\$0		
(5) Cost Containment Mtge Deductions	\$0		
(6) Unpaid Balance of Special Assessment	\$0		
(7) Sum of Lines (1) through (6)	\$0		
c. Line a minus line b (7)			\$26,586,500
*Project Cost applies to Criteria 7 and 10 under Section 223(f) and applications pursuant to 223(f). Project Replacement Cost applies to Section 221(d) and other Sections of the Act mortgages limited by Replacement Cost.			
* Attach format for computing loan closing charges.			
Maximum Insurable Mortgage (Lowest of the Foregoing Criteria)			\$21,002,800

Previous Editions are obsolete

Page 2

form HUD-92264-A (03/2010)
ref Handbooks 4480.1 & 4470.1

II. Total Requirements for Settlement

Part A		Part B	
1. Fees Not to be Paid in Cash:		1. a. Development Cost (or Cost to Refinance)	
a. BSPRA/SPRA	\$2,382,867	b. Adjustment for Contracted Amounts in Excess of form HUD-92264 Estimates:	\$26,211,538
b. Builder's Profit	\$0	(1) Construction Contract	
c. Other	\$0	(2) Architect's Contract	
Total (enter in Part B on line 5)	\$2,382,867	(3) Other	
2. Commitment, Mktg., Fees and Discounts and Escrows:		c. Total of lines a & b	
a. Fees:		\$26,211,538	
GNMA	\$0		
Other:	\$0		
b. Discounts:		2. Land Indebtedness (or Cash Req. for Land Acquisition or req. repairs)	
Permanent Loan	\$0	\$0	
Construction Loan	\$0		
c. Escrows:		3. Subtotal (lines 1c +2)	
Debt Service Reserve (Board & Care)		\$26,211,538	
Other:			
Total (enter in part B on line 9)	\$0		
3. Working Capital:		4. a. Mortgage Amount	
a. Working Capital	\$840,112	\$ 21,002,800	
b. Minimum Capital Investment (Sec. 202 & Sec. 811)		b. Grant/Loan	
c. Non-Realty Items Not Included in Mortgage		\$ 0	
Total (enter in part B on line 10)	\$840,112	5. Fees Not to be Paid in Cash	
		\$ 2,382,867	
		6. Subtotal (lines 4a +4b +5)	
		\$23,385,667	
		7. Cash Investment Required (line 3 minus line 6)	
		\$2,825,871	
		8. Initial Operating Deficit *	
		\$630,084	
		9. Commitment, Marketing Fees, Discounts and Escrows	
		\$0	
		10 Working Capital	
		\$840,112	
		11 Offsite Construction and Demolition Costs	
		(\$0 + \$0)	
		\$0	
		12 Total Estimated Cash Requirement	
		(sum of lines 7 + 8 + 9 + 10 + 11)	
		\$4,296,067	
		Front Money Escrow, If Any,	
		(subtract line 6 from line 1)	
		\$2,825,871	

* Note: for Section 223(f) cases, attach the format for computing the operating deficit.

III: Source of Funds to Meet Cash Requirements

Source:	Funds Available
A Partner's Cash	\$4,296,067
B Letters of Credit	\$0
C Deferred Developer Fee	\$0
D Grant/Tax Credit Funds	\$0
E Secondary Financing	\$0
Total Available Cash for Project	\$4,296,067

IV: Recommendations, Requirements and Remarks

- ☒ Recommend Approval; Subject to Conditions Stated Below, If Any
- ☐ Recommended Rejection for Reasons Stated Below (if more space is needed, continue on page 4).



Matthew Sims
Underwriter

3/25/2025
Date

3/25/2025
Date
Underwriter Trainee

Signature of Mortgage Credit Examiner:

Charlotte Thompson-Brown - Sr. Underwriter

6/18/2025

Remarks

Public Reporting Burden for this project analysis is estimated to average 8 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collection displays a valid OMB control number.

This information is being collected under Public Law 101-625 which requires the Department of to implement a system for mortgage insurance for mortgages insured under Sections 207,221,223,232, or 241 of the National Housing Act. The information will be used by HUD to approve rents, property appraisals, and mortgage amounts, and to execute a firm commitment. Confidentiality to respondents is ensured if it would result in competitive harm in accord with the Freedom of Information Act (FOIA) provisions or if it could impact on the ability of the Department's mission to provide housing units under the various Sections of the Housing legislation.

Previous editions are obsolete

Contractor's and/or Mortgagor's Cost Breakdown

U.S. Department of Housing
and Urban Development
Office of Housing

OMB No. 2502-0044 (exp. 12/31/2018)

Schedule of Values

Federal Housing Administrator

Public reporting burden for this collection of information is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This information is required to obtain benefits. HUD may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB Control Number.

Section 227 of the National Housing Act (Section 126 of the Housing Act of 1954, Public Law 560, 12 U.S.C., 1715r), authorizes the collection of this information. The information is required for a general contractor when an identity of interest exists between the general contractor and the mortgagor or when the mortgagor is a non-profit entity and a cost plus contract has been used. The information is used by HUD to facilitate the advances of mortgage proceeds and their monitoring.

Privacy Act Notice. The United States Department of Housing and Urban Development, Federal Housing Administration, is authorized to solicit the information requested in this form by virtue of Title 12, United States Code, Section 1701 et seq., and regulations promulgated thereunder at Title 12, Code of Federal Regulations. While no assurances of confidentiality is pledged to respondents, HUD generally discloses this data only in response to a Freedom of Information request.

Date	3/11/2025	Sponsor	Patriot Pointe Apartments, LLC
Project No.	116-35205	Building Identification	Master
Name of Project	Patriot Pointe Townhomes	Location	Alamogordo, NM

This form represents the Contractors and/or Mortgagors firm costs and services as a basis for disbursing dollar amounts when insured advances are requested. Detailed instructions for completing this form are included on the reverse side.

Line	Div	Trade Item	Cost	Trade Description
1	3	Concrete	686,905	Building Foundations, lightweight concrete, Gypcrete
2	4	Masonry	0	Stone Veneer, Stucco
3	5	Metals	213,209	Stairs, railings
4	6	Rough Carpentry	3,008,589	Rough Carpentry, Trusses, Cement Siding, Gutters, Framing Hardware
5	6	Finish Carpentry	40,493	Interior trim & Exterior trim, etc.
6	7	Waterproofing	0	-
7	7	Insulation	462,514	Batt & Blown insulation
8	7	Roofing	299,525	Asph Shingles, TPO
9	7	Sheet Metal	29,067	Sheet Metal
10	8	Doors	871,938	Int. & Ext. Doors
11	8	Windows	261,615	Ext Windows
12	8	Glass	0	-
13	9	Lath and Plaster	527,185	-
14	9	Drywall	1,104,713	Sheetrock & Finishes, Hard Ceiling
15	9	Tile Work	0	-
16	9	Acoustical	0	-
17	9	Wood Flooring	0	Includes carpet
18	9	Resilient Flooring	234,837	-
19	9	Painting and Decorating	784,797	Interior & Exterior prep and paint
20	10	Specialties	306,951	Mailboxes, door hardware, bathroom acc., signage, wire shelving, etc..
21	11	Special Equipment	0	-
22	11	Cabinets	483,092	Kitchen Cabinets, Vanities, tops & installation
23	11	Appliances	412,706	Residential Appliances
24	12	Blinds and Shades, Artwork	166,983	2" Blinds
25	12	Carpets	0	-
26	13	Special Construction	0	-
27	14	Elevators	0	-
28	15	Plumbing and Hot Water	2,294,557	Plumbing System
29	15	Heat and Ventilation	951,957	HVAC
30	15	Air Conditioning	0	Included in above line item 29
31	16	Electrical	1,316,287	Electrical systems, Fire alarm, int lights, phone & TV
32		Subtotal (Structures)	14,457,920	
33		Accessory Structures	621,669	Clubhouse
34		Total (Lines 32 and 33)	15,079,589	

Line	Div	Trade Item	Cost	Trade Description			
35	2	Earth Work	861,953	Earthwork, Roadway prep, Engineering & surveying			
36	2	Site Utilities	786,922	Site water, SS sewer, storm sewer, elec lights			
37	2	Roads and Walks	864,759	Paving, sidewalks, retaining walls, etc.			
38	2	Site Improvements	1,042,909	Site Fencing, Pool & Deck, Playground Equipment, Dumpster Enclosures			
39	2	Lawns and Planting	195,317	Landscape & Irrigation			
40	2	Unusual Site Condition					
41		Total Land Improvements	3,751,860	Nonresidential and Special Exterior Land Improvements (costs included in trade item breakdown)		Offsite Costs (costs not included in trade item breakdown)	
42		Tot. Struct. & Land Imprvts.	18,831,449	Description	Est. Cost	Description	Est. Cost
43	1	General Requirements	973,948			Offsite	0
44		Subtotal (Lines 42 and 43)	19,805,397				
45		Builder's Overhead	396,108				
46		Builder's Profit	0				
47		Subtotal (Lines 44 thru 46)	20,201,505	Total	0	Total	0
48				Other Fees		Demolition	
49		Other Fees	217,500	Cost Cert Fee	17,500	Description	Est. Cost
50		Bond Premium	202,015	Builder's Risk	100,000		
51		Total For All Improvements	20,621,020	General Liability	100,000		
52		Builder's Profit Paid By Means Other Than Cash					
53		Total For All Improvements Less Line 52	20,621,020	Total	217,500	Total	0

I hereby certify that all the information stated herein, as well as any information provided in the accompaniment herewith, is true and accurate.

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

Mortgagor Patriot Pointe Apartments, LLC	By <i>Eduardo Valencia</i>	Date 03/11/2025
Contractor ECOM Construction	By <i>Eduardo Valencia</i>	Date 03/11/2025
Architectural/Cost Reviewer <i>[Signature]</i>	Date 03/11/2025	Mortgagee <i>[Signature]</i>
FHA (Chief Underwriter) CHRISTOPHER MCDANIEL		Date 03/11/2025

Digitally signed by: CHRISTOPHER MCDANIEL
DN: cn = CHRISTOPHER MCDANIEL, c = US, o = U.S. Government, ou = Department of Housing and Urban Development, office of Housing
Date: 2025.06.18 13:48:07 -0500

Instructions for Completing Form HUD-2328

This form is prepared by the contractor and/or mortgagor as a requirement for the issuance of a firm commitment. The firm replacement cost of the project also serves as a basis for the disbursement of dollar amounts when insured advances are requested. A detailed breakdown of trade items is provided along with spaces to enter dollar amounts and trade descriptions.

A separate form is prepared through line 32 for each **structure type**. A summation of these structure costs are entered on line 32 of a master form. Land improvements, General Requirements and Fees are completed through line 53 on the master 2328 only.

Date—Date form was prepared.

Sponsor—Name of sponsor or sponsoring organization.

Project No.—Eight-digit assigned project number.

Building Identification—Number(s) or Letter(s) of each building as designated on plans.

Name of Project—Sponsors designated name of project.

Location—Street address, city and state.

Division—Division numbers and trade items have been developed from the cost accounting section of the uniform system.

Unusual Site Conditions—This trade item reflects rock excavation, high water table, excessive cut and fill, retaining walls, erosion, poor drainage and other on-site conditions considered unusual. Cost - Enter the cost being submitted by the Contractor or bid submitted by a qualified subcontractor for each trade item. These costs will include, as a minimum, prevailing wage rates as determined by the Secretary of Labor.

Trade Description—Enter a brief description of the work included in each trade item.

Other Fees—Includable are fees to be paid by the Contractor, such as sewer tap fees not included in the plumbing contract. Fees paid or to be paid by the Mortgagor are not to be included on this form.

Total For All Improvements—This is the sum of lines 1 through 50 and is to include the total builder's profit (line 46).

Line 52—When applicable, enter that portion of the builder's profit (line 46) to be paid by means other than cash and/or any part of the builder's profit to be waived during construction.

Non-Residential and Special Exterior Land Improvement Costs— Describe and enter the cost of each improvement, i.e. on-site parking facilities including individual garages and carports, commercial facilities, swimming pools with related facilities and on-site features provided to enhance the environment and livability of the project and the neighborhood. The Design Representative and Cost Analyst shall collaborate with the mortgagor or his representative in designating the items to be included.

Off-Site Costs—Enter description and dollar amount including fees and bond premium for off-site improvements.

Demolition—Enter description and dollar amount of demolition work necessary to condition site for building improvements including the removal of existing structures, foundations, utilities, etc.

Other Fees—Enter a brief description of item involved and cost estimate for each item.

Signatures—Enter the firm name, signature of authorized officer of the contractor and/or mortgagor and date the form was completed.

Contractor's and/or Mortgagor's Cost Breakdown

U.S. Department of Housing
and Urban Development
Office of Housing

OMB No. 2502-0044 (exp. 12/31/2018)

Schedule of Values

Federal Housing Administrator

Public reporting burden for this collection of information is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This information is required to obtain benefits. HUD may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB Control Number.

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Date	3/11/2025	Sponsor	Patriot Pointe Apartments, LLC
Project No.	116-35205	Building Identification	Type 1 (x1)
Name of Project	Patriot Pointe Townhomes	Location	Alamogordo, NM

This form represents the Contractors and/or Mortgagors firm costs and services as a basis for disbursing dollar amounts when insured advances are requested. Detailed instructions for completing this form are included on the reverse side.

Line	Div	Trade Item	Cost	Trade Description
1	3	Concrete	49,741	Building Foundations, lightweight concrete, Gypcrete
2	4	Masonry	0	Stone Veneer, Stucco
3	5	Metals	15,746	Stairs, railings
4	6	Rough Carpentry	181,192	Rough Carpentry, Trusses, Cement Siding, Gutters, Framing Hardware
5	6	Finish Carpentry	1,745	Interior trim & Exterior trim, etc.
6	7	Waterproofing	0	-
7	7	Insulation	35,578	Batt & Blown insulation
8	7	Roofing	18,039	Asph Shingles, TPO
9	7	Sheet Metal	2,103	Sheet Metal
10	8	Doors	47,767	Int. & Ext. Doors
11	8	Windows	15,755	Ext Windows
12	8	Glass	0	-
13	9	Lath and Plaster	31,750	-
14	9	Drywall	70,900	Sheetrock & Finishes, Hard Ceiling
15	9	Tile Work	0	-
16	9	Acoustical	0	-
17	9	Wood Flooring	0	Includes carpet
18	9	Resilient Flooring	14,144	-
19	9	Painting and Decorating	60,369	Interior & Exterior prep and paint
20	10	Specialties	16,530	Mailboxes, door hardware, bathroom acc., signage, wire shelving, etc..
21	11	Special Equipment	0	-
22	11	Cabinets	29,095	Kitchen Cabinets, Vanities, tops & installation
23	11	Appliances	30,874	Residential Appliances
24	12	Blinds and Shades, Artwork	9,906	2" Blinds
25	12	Carpets	0	-
26	13	Special Construction	0	-
27	14	Elevators	0	-
28	15	Plumbing and Hot Water	101,820	101820
29	15	Heat and Ventilation	53,138	HVAC
30	15	Air Conditioning	0	Included in above line item 29
31	16	Electrical	73,498	Electrical systems, Fire alarm, int lights, phone & TV
32		Subtotal (Structures)	859,690	
33		Accessory Structures	0	Clubhouse
34		Total (Lines 32 and 33)	859,690	

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Contractor's and/or Mortgagor's Cost Breakdown

U.S. Department of Housing
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Office of Housing

OMB No. 2502-0044 (exp. 12/31/2018)

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Date	3/11/2025	Sponsor	Patriot Pointe Apartments, LLC
Project No.	116-35205	Building Identification	Type 2 (x1)
Name of Project	Patriot Pointe Townhomes	Location	Alamogordo, NM

This form represents the Contractors and/or Mortgagors firm costs and services as a basis for disbursing dollar amounts when insured advances are requested. Detailed instructions for completing this form are included on the reverse side.

Line	Div	Trade Item	Cost	Trade Description
1	3	Concrete	40,222	Building Foundations, lightweight concrete, Gypcrete
2	4	Masonry	0	Stone Veneer, Stucco
3	5	Metals	9,965	Stairs, railings
4	6	Rough Carpentry	142,969	Rough Carpentry, Trusses, Cement Siding, Gutters, Framing Hardware
5	6	Finish Carpentry	2,094	Interior trim & Exterior trim, etc.
6	7	Waterproofing	0	-
7	7	Insulation	35,578	Batt & Blown insulation
8	7	Roofing	14,234	Asph Shingles, TPO
9	7	Sheet Metal	1,609	Sheet Metal
10	8	Doors	37,219	Int. & Ext. Doors
11	8	Windows	12,432	Ext Windows
12	8	Glass	0	-
13	9	Lath and Plaster	25,053	-
14	9	Drywall	60,728	Sheetrock & Finishes, Hard Ceiling
15	9	Tile Work	0	-
16	9	Acoustical	0	-
17	9	Wood Flooring	0	Includes carpet
18	9	Resilient Flooring	11,160	-
19	9	Painting and Decorating	60,369	Interior & Exterior prep and paint
20	10	Specialties	15,073	Mailboxes, door hardware, bathroom acc., signage, wire shelving, etc..
21	11	Special Equipment	0	-
22	11	Cabinets	22,957	Kitchen Cabinets, Vanities, tops & installation
23	11	Appliances	26,464	Residential Appliances
24	12	Blinds and Shades, Artwork	8,491	2" Blinds
25	12	Carpets	0	-
26	13	Special Construction	0	-
27	14	Elevators	0	-
28	15	Plumbing and Hot Water	90,068	Plumbing System
29	15	Heat and Ventilation	42,280	HVAC
30	15	Air Conditioning	0	Included in above line item 29
31	16	Electrical	60,422	Electrical systems, Fire alarm, int lights, phone & TV
32		Subtotal (Structures)	719,387	
33		Accessory Structures	0	Clubhouse
34		Total (Lines 32 and 33)	719,387	

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Contractor's and/or Mortgagor's Cost Breakdown

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Date	3/11/2025	Sponsor	Patriot Pointe Apartments, LLC
Project No.	116-35205	Building Identification	Type 2a (x1)
Name of Project	Patriot Pointe Townhomes	Location	Alamogordo, NM

This form represents the Contractors and/or Mortgagors firm costs and services as a basis for disbursing dollar amounts when insured advances are requested. Detailed instructions for completing this form are included on the reverse side.

Line	Div	Trade Item	Cost	Trade Description
1	3	Concrete	40,145	Building Foundations, lightweight concrete, Gypcrete
2	4	Masonry	0	Stone Veneer, Stucco
3	5	Metals	9,965	Stairs, railings
4	6	Rough Carpentry	142,969	Rough Carpentry, Trusses, Cement Siding, Gutters, Framing Hardware
5	6	Finish Carpentry	2,094	Interior trim & Exterior trim, etc.
6	7	Waterproofing	0	-
7	7	Insulation	35,578	Batt & Blown insulation
8	7	Roofing	14,234	Asph Shingles, TPO
9	7	Sheet Metal	1,609	Sheet Metal
10	8	Doors	37,219	Int. & Ext. Doors
11	8	Windows	12,432	Ext Windows
12	8	Glass	0	-
13	9	Lath and Plaster	25,053	-
14	9	Drywall	67,332	Sheetrock & Finishes, Hard Ceiling
15	9	Tile Work	0	-
16	9	Acoustical	0	-
17	9	Wood Flooring	0	Includes carpet
18	9	Resilient Flooring	11,160	-
19	9	Painting and Decorating	60,369	Interior & Exterior prep and paint
20	10	Specialties	15,073	Mailboxes, door hardware, bathroom acc., signage, wire shelving, etc..
21	11	Special Equipment	0	-
22	11	Cabinets	22,957	Kitchen Cabinets, Vanities, tops & installation
23	11	Appliances	26,464	Residential Appliances
24	12	Blinds and Shades, Artwork	8,491	2" Blinds
25	12	Carpets	0	-
26	13	Special Construction	0	-
27	14	Elevators	0	-
28	15	Plumbing and Hot Water	89,751	Plumbing System
29	15	Heat and Ventilation	42,446	HVAC
30	15	Air Conditioning	0	Included in above line item 29
31	16	Electrical	60,290	Electrical systems, Fire alarm, int lights, phone & TV
32		Subtotal (Structures)	725,631	
33		Accessory Structures	0	Clubhouse
34		Total (Lines 32 and 33)	725,631	

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Contractor's and/or Mortgagor's Cost Breakdown

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Date	3/11/2025	Sponsor	Patriot Pointe Apartments, LLC
Project No.	116-35205	Building Identification	Type 3 (x5)
Name of Project	Patriot Pointe Townhomes	Location	Alamogordo, NM

This form represents the Contractors and/or Mortgagors firm costs and services as a basis for disbursing dollar amounts when insured advances are requested. Detailed instructions for completing this form are included on the reverse side.

Line	Div	Trade Item	Cost	Trade Description
1	3	Concrete	57,043	Building Foundations, lightweight concrete, Gypcrete
2	4	Masonry	0	Stone Veneer, Stucco
3	5	Metals	18,346	Stairs, railings
4	6	Rough Carpentry	267,764	Rough Carpentry, Trusses, Cement Siding, Gutters, Framing Hardware
5	6	Finish Carpentry	3,840	Interior trim & Exterior trim, etc.
6	7	Waterproofing	0	-
7	7	Insulation	35,578	Batt & Blown insulation
8	7	Roofing	26,658	Asph Shingles, TPO
9	7	Sheet Metal	2,328	Sheet Metal
10	8	Doors	86,492	Int. & Ext. Doors
11	8	Windows	23,284	Ext Windows
12	8	Glass	0	-
13	9	Lath and Plaster	46,919	-
14	9	Drywall	94,390	Sheetrock & Finishes, Hard Ceiling
15	9	Tile Work	0	-
16	9	Acoustical	0	-
17	9	Wood Flooring	0	Includes carpet
18	9	Resilient Flooring	20,900	-
19	9	Painting and Decorating	60,369	Interior & Exterior prep and paint
20	10	Specialties	27,070	Mailboxes, door hardware, bathroom acc., signage, wire shelving, etc..
21	11	Special Equipment	0	-
22	11	Cabinets	42,995	Kitchen Cabinets, Vanities, tops & installation
23	11	Appliances	36,545	Residential Appliances
24	12	Blinds and Shades, Artwork	15,566	2" Blinds
25	12	Carpets	0	-
26	13	Special Construction	0	-
27	14	Elevators	0	-
28	15	Plumbing and Hot Water	233,151	Plumbing System
29	15	Heat and Ventilation	88,443	HVAC
30	15	Air Conditioning	0	Included in above line item 29
31	16	Electrical	118,433	Electrical systems, Fire alarm, int lights, phone & TV
32		Subtotal (Structures)	1,306,114	
33		Accessory Structures	0	Clubhouse
34		Total (Lines 32 and 33)	1,306,114	

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Date	3/11/2025	Sponsor	Patriot Pointe Apartments, LLC
Project No.	116-35205	Building Identification	Type 4 (x1)
Name of Project	Patriot Pointe Townhomes	Location	Alamogordo, NM

This form represents the Contractors and/or Mortgagors firm costs and services as a basis for disbursing dollar amounts when insured advances are requested. Detailed instructions for completing this form are included on the reverse side.

Line	Div	Trade Item	Cost	Trade Description
1	3	Concrete	49,073	Building Foundations, lightweight concrete, Gypcrete
2	4	Masonry	0	Stone Veneer, Stucco
3	5	Metals	12,983	Stairs, railings
4	6	Rough Carpentry	168,190	Rough Carpentry, Trusses, Cement Siding, Gutters, Framing Hardware
5	6	Finish Carpentry	2,094	Interior trim & Exterior trim, etc.
6	7	Waterproofing	0	-
7	7	Insulation	35,578	Batt & Blown insulation
8	7	Roofing	16,743	Asph Shingles, TPO
9	7	Sheet Metal	2,130	Sheet Metal
10	8	Doors	37,562	Int. & Ext. Doors
11	8	Windows	14,625	Ext Windows
12	8	Glass	0	-
13	9	Lath and Plaster	29,471	-
14	9	Drywall	70,762	Sheetrock & Finishes, Hard Ceiling
15	9	Tile Work	0	-
16	9	Acoustical	0	-
17	9	Wood Flooring	0	Includes carpet
18	9	Resilient Flooring	13,128	-
19	9	Painting and Decorating	60,369	Interior & Exterior prep and paint
20	10	Specialties	18,314	Mailboxes, door hardware, bathroom acc., signage, wire shelving, etc..
21	11	Special Equipment	0	-
22	11	Cabinets	27,006	Kitchen Cabinets, Vanities, tops & installation
23	11	Appliances	19,934	Residential Appliances
24	12	Blinds and Shades, Artwork	8,491	2" Blinds
25	12	Carpets	0	-
26	13	Special Construction	0	-
27	14	Elevators	0	-
28	15	Plumbing and Hot Water	88,407	Plumbing System
29	15	Heat and Ventilation	49,841	HVAC
30	15	Air Conditioning	0	Included in above line item 29
31	16	Electrical	71,222	Electrical systems, Fire alarm, int lights, phone & TV
32		Subtotal (Structures)	795,923	
33		Accessory Structures	0	Clubhouse
34		Total (Lines 32 and 33)	795,923	

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Contractor's and/or Mortgagor's Cost Breakdown

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Date	3/11/2025	Sponsor	Patriot Pointe Apartments, LLC
Project No.	116-35205	Building Identification	Type 5 (x3)
Name of Project	Patriot Pointe Townhomes	Location	Alamogordo, NM

This form represents the Contractors and/or Mortgagors firm costs and services as a basis for disbursing dollar amounts when insured advances are requested. Detailed instructions for completing this form are included on the reverse side.

Line	Div	Trade Item	Cost	Trade Description
1	3	Concrete	51,436	Building Foundations, lightweight concrete, Gypcrete
2	4	Masonry	0	Stone Veneer, Stucco
3	5	Metals	17,084	Stairs, railings
4	6	Rough Carpentry	239,365	Rough Carpentry, Trusses, Cement Siding, Gutters, Framing Hardware
5	6	Finish Carpentry	3,142	Interior trim & Exterior trim, etc.
6	7	Waterproofing	0	-
7	7	Insulation	35,578	Batt & Blown insulation
8	7	Roofing	23,830	Asph Shingles, TPO
9	7	Sheet Metal	2,325	Sheet Metal
10	8	Doors	74,604	Int. & Ext. Doors
11	8	Windows	20,814	Ext Windows
12	8	Glass	0	-
13	9	Lath and Plaster	41,943	-
14	9	Drywall	86,219	Sheetrock & Finishes, Hard Ceiling
15	9	Tile Work	0	-
16	9	Acoustical	0	-
17	9	Wood Flooring	0	Includes carpet
18	9	Resilient Flooring	18,684	-
19	9	Painting and Decorating	60,369	Interior & Exterior prep and paint
20	10	Specialties	24,364	Mailboxes, door hardware, bathroom acc., signage, wire shelving, etc..
21	11	Special Equipment	0	-
22	11	Cabinets	38,435	Kitchen Cabinets, Vanities, tops & installation
23	11	Appliances	29,900	Residential Appliances
24	12	Blinds and Shades, Artwork	12,736	2" Blinds
25	12	Carpets	0	-
26	13	Special Construction	0	-
27	14	Elevators	0	-
28	15	Plumbing and Hot Water	172,298	Plumbing System
29	15	Heat and Ventilation	72,273	HVAC
30	15	Air Conditioning	0	Included in above line item 29
31	16	Electrical	106,057	Electrical systems, Fire alarm, int lights, phone & TV
32		Subtotal (Structures)	1,131,456	
33		Accessory Structures	0	Clubhouse
34		Total (Lines 32 and 33)	1,131,456	

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Date	3/11/2025	Sponsor	Patriot Pointe Apartments, LLC
Project No.	116-35205	Building Identification	Type 6 (x1)
Name of Project	Patriot Pointe Townhomes	Location	Alamogordo, NM

This form represents the Contractors and/or Mortgagors firm costs and services as a basis for disbursing dollar amounts when insured advances are requested. Detailed instructions for completing this form are included on the reverse side.

Line	Div	Trade Item	Cost	Trade Description
1	3	Concrete	68,201	Building Foundations, lightweight concrete, Gypcrete
2	4	Masonry	0	Stone Veneer, Stucco
3	5	Metals	21,568	Stairs, railings
4	6	Rough Carpentry	316,354	Rough Carpentry, Trusses, Cement Siding, Gutters, Framing Hardware
5	6	Finish Carpentry	3,840	Interior trim & Exterior trim, etc.
6	7	Waterproofing	0	-
7	7	Insulation	35,578	Batt & Blown insulation
8	7	Roofing	31,495	Asph Shingles, TPO
9	7	Sheet Metal	3,001	Sheet Metal
10	8	Doors	55,899	Int. & Ext. Doors
11	8	Windows	27,509	Ext Windows
12	8	Glass	0	-
13	9	Lath and Plaster	55,434	-
14	9	Drywall	104,384	Sheetrock & Finishes, Hard Ceiling
15	9	Tile Work	0	-
16	9	Acoustical	0	-
17	9	Wood Flooring	0	Includes carpet
18	9	Resilient Flooring	24,693	-
19	9	Painting and Decorating	60,369	Interior & Exterior prep and paint
20	10	Specialties	33,519	Mailboxes, door hardware, bathroom acc., signage, wire shelving, etc..
21	11	Special Equipment	0	-
22	11	Cabinets	50,797	Kitchen Cabinets, Vanities, tops & installation
23	11	Appliances	36,545	Residential Appliances
24	12	Blinds and Shades, Artwork	15,566	2" Blinds
25	12	Carpets	0	-
26	13	Special Construction	0	-
27	14	Elevators	0	-
28	15	Plumbing and Hot Water	241,862	Plumbing System
29	15	Heat and Ventilation	105,218	HVAC
30	15	Air Conditioning	0	Included in above line item 29
31	16	Electrical	140,519	Electrical systems, Fire alarm, int lights, phone & TV
32		Subtotal (Structures)	1,432,351	
33		Accessory Structures	0	Clubhouse
34		Total (Lines 32 and 33)	1,432,351	

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Date	3/11/2025	Sponsor	Patriot Pointe Apartments, LLC
Project No.	116-35205	Building Identification	Clubhouse
Name of Project	Patriot Pointe Townhomes	Location	Alamogordo, NM

This form represents the Contractors and/or Mortgagors firm costs and services as a basis for disbursing dollar amounts when insured advances are requested. Detailed instructions for completing this form are included on the reverse side.

Line	Div	Trade Item	Cost	Trade Description
1	3	Concrete	66,338	Building Foundations, lightweight concrete, Gypcrete
2	4	Masonry	18,205	Stone Veneer, Stucco
3	5	Metals	2,118	Stairs, railings
4	6	Rough Carpentry	130,205	Rough Carpentry, Trusses, Cement Siding, Gutters, Framing Hardware
5	6	Finish Carpentry	4,884	Interior trim & Exterior trim, etc.
6	7	Waterproofing	0	-
7	7	Insulation	30,568	Batt & Blown insulation
8	7	Roofing	12,963	Asph Shingles, TPO
9	7	Sheet Metal	1,741	Sheet Metal
10	8	Doors	19,082	Int. & Ext. Doors
11	8	Windows	11,322	Ext Windows
12	8	Glass	0	-
13	9	Lath and Plaster	22,815	-
14	9	Drywall	45,202	Sheetrock & Finishes, Hard Ceiling
15	9	Tile Work	0	-
16	9	Acoustical	0	-
17	9	Wood Flooring	0	Includes carpet
18	9	Resilient Flooring	10,163	-
19	9	Painting and Decorating	12,722	Interior & Exterior prep and paint
20	10	Specialties	65,248	Mailboxes, door hardware, bathroom acc., signage, wire shelving, etc..
21	11	Special Equipment	0	-
22	11	Cabinets	8,400	Kitchen Cabinets, Vanities, tops & installation
23	11	Appliances	2,597	Residential Appliances
24	12	Blinds and Shades, Artwork	9,906	2" Blinds
25	12	Carpets	0	-
26	13	Special Construction	37,736	-
27	14	Elevators	0	-
28	15	Plumbing and Hot Water	28,637	Plumbing System
29	15	Heat and Ventilation	41,055	HVAC
30	15	Air Conditioning	0	Included in above line item 29
31	16	Electrical	39,762	Electrical systems, Fire alarm, int lights, phone & TV
32		Subtotal (Structures)	621,669	
33		Accessory Structures	0	Clubhouse
34		Total (Lines 32 and 33)	621,669	

form HUD-2328 (5/95)

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT HOUSING - FEDERAL HOUSING COMMISSIONER CONTRACTOR'S and/or MORTGAGOR'S LAND IMPROVEMENT COST ESTIMATE (SCHEDULES OF VALUES)							
Date: 03/11/25				Project No.: 116-35205			
Sponsor: Patriot Pointe Apartments, LLC							
Project Name: Patriot Pointe Townhomes				Location: Alamogordo, NM			
This form represents the Contractors and/or Mortgagors firm costs and services as a basis for disbursing dollar amounts when the insured advances are requested. Detailed instructions for completing this form are included on the reverse side.							
LINE	TRADE ITEM	ESTIMATED COST	TRADE DESCRIPTION				
1	EARTHWORK:	861,953					
2	Mobilization	44,435					
3	Remove Existing curb	2,623					
4	Cut and fill site, finish grade	305,254					
5	Light Duty Paving 6" basecourse	63,600					
6	Heavy Duty Paving 8" base course	99,887					
7	Surveying Services	28,000					
8	Prime Coat	9,214					
9	2" HMA Pavement 1 lift	108,780					
10	3" HMA Pavement 1lift	182,002					
11	Taxes for mesa verde	18,158					
12							
13	SITE UTILITIES:	786,922					
14	Drainage						
15	Sanitary Sewer & Related Items	330,402					
16	Water	275,041					
17	Storm Sewer & Drainage	0	This project is a gravity flow drainage				
18	Fire Hydrants	181,480					
19							
20	ROADS AND WALKS	864,759					
21	Retaining walls Concrete	300,500					
22	Site Flatwork concrete	564,259					
23							
24	SITE IMPROVEMENTS	1,042,909					
25	Fences, Walls, etc.	258,356					
26	Site Furnishings	0					
27	CMU For Dumpster	41,237					
28	Monument Sign	28,700					
29	Design 500 play ground landscape structures	24,601					
30	Swimming Pool	288,826					
31	Rockwall walls	234,501					
32	Carports	49,685					
33	Pavillion	117,004					
34							
35	LAWNS AND PLANTING:	195,317					
36	Top Soil & Improvement	58,595					
37	Irrigation System	78,127					
38	Planting	58,595					
39							
40	TOTAL LAND IMPROVEMENTS	3,751,860	UNUSUAL SITE CONDITIONS (Cost Included in Trade Item Breakdown)		OFF-SITE COSTS (Costs Not Included in Trade Item Breakdown)		
41	* Accessory Structures		Description	Est Cost	Description	Est. Cost	
42	TOTAL LAND IMPRVTS. & STRUCTS.						
43	General Requirements						
44	SUBTOTAL (Lines 42 and 43)						
45	Builder's Overhead						
46	Builder's Profit						
47	SUBTOTAL (Lines 44 thru 46)		TOTAL \$	0	TOTAL \$	0	
48			REFUNDABLE ITEMS (Costs Included in Trade Item Breakdown)		DEMOLITION (Costs Not Included in Trade Item Breakdown)		
49	Other Fees		Description	Est. Cost	Description	Est. Cost	
50	Bond Premium						
51	TOTAL FOR ALL IMPROVEMENTS						
52	Builder's Profit Paid by Means Other Than Cash						
53	TOTAL FOR ALL IMPROVEMENTS (Less Line 52)		TOTAL \$	0	TOTAL \$	0	
*Execute Standard Form 2328 to Line 33 for each structure type if the amount on Line 41 is significant to Total Land Improvements							
Mortgagor Patriot Pointe Apartments, LLC			By Eduardo Valencia		Date 03/11/2025		
Contractor ECOM Construction			By Eduardo Valencia		Date 03/11/2025		
Architectural/Cost Reviewer JPS & Associates, Inc.			By Christopher Mcdaniel		Date 03/11/2025		
FHA (Chief Underwriter) CHRISTOPHER MCDANIEL			By Digitally signed by: CHRISTOPHER MCDANIEL DN: cn = CHRISTOPHER MCDANIEL, c = US O = U.S. Government OU = Department of Housing and Urban Development, Office of Housing Date: 2025.08.18 13:48:58 -0600		Date		
HUD _____			Date _____				
Chief, Cost Evaluation or Cost Analyst			Dep. Dir. for Housing/Service Off. Supervisor				

Replaces Previous Edition

HUD-92328-LI (11-81)

General Requirements

Description of Work	Budget
Job Signs	8,000
Job Toilets	18,000
Temporary Electricity hook ups	28,000
Temporary Fence	17,066
Temporary Water	8,000
Temporary Electricity	32,000
Office Supplies	6,000
Permits	52,000
Office Trailer Rental	36,000
Sewer frontage fees	35,000
Dumpster	21,000
Postage & Delivery	8,000
Printing	6,882
Engineering	38,000
Safety & First Aid	108,500
Fire Extinguishers	500
Project Manager	20,000
Job Superintendent	144,000
Assistant Superintendent	117,000
Construction Labors Onsite	20,000
Site Erosion Control & Project Entrances	30,000
Mileage Allowance	25,000
Travel	12,000
Security	12,000
Punch Out Labor	26,000
Submeters	48,000
Soil & Concrete Testing	52,000
Final Clean	35,000
Small Tools & Supplies	10,000
Total	973,948



Property Insurance Schedule of Replacement Cost (HUD Form 92329)



OMB Approval No. 2502-0029

(exp. 12/31/2023)

CNA Number: 2024-103033

Property Name: Patriot Pointe
Townhomes

Date Run: 03/11/2025

Residential Buildings

Building Types	Building Id	SF Cost	Total SF	100 % Insurable Value
Walk-up	Building 3 (Type III)	\$135	10,520	\$1,424,934
Walk-up	Building 9 (Type VI)	\$126	12,420	\$1,561,070
Walk-up	Building 6 (Type V)	\$131	9,400	\$1,234,032
Walk-up	Building 7 (Type V)	\$131	9,400	\$1,234,032
Walk-up	Building 8 (Type III)	\$135	10,520	\$1,424,934
Walk-up	Building 2 (Type V)	\$131	9,400	\$1,234,032
Walk-up	Building 11 (Type III)	\$135	10,520	\$1,424,934
Walk-up	Building 4 (Type II)	\$138	5,602	\$774,645
Walk-up	Building 13 (Type II-A)	\$139	5,602	\$781,367
Walk-up	Building 1 (Type IV)	\$132	6,590	\$866,849
Walk-up	Building 5 (Type I)	\$132	7,044	\$928,681
Walk-up	Building 12 (Type III)	\$135	10,520	\$1,424,934
Walk-up	Building 10 (Type III)	\$135	10,520	\$1,424,934
				\$15,739,377

Accessory Buildings

Building Types	Building Id	SF Cost	Total SF	100 % Insurable Value
Detached	Clubhouse	\$132	5,488	\$726,282
				\$726,282

Property Total: \$16,465,659

CHRISTOPHER
MCDANIEL

Digitally signed by: CHRISTOPHER MCDANIEL
DN: CN = CHRISTOPHER MCDANIEL, C = US, O = U.S.
Government, OU = Department of Housing and Urban
Development, Office of Housing
Date: 2025.06.18 13:49:50 -05'00'

This report is electronically generated from data provided by borrowers or lenders as part of an automated Capital Needs Assessment (CNA) where the CNA data collection has OMB Approval No. 2502-0505. When an approval date is shown the form is deemed electronically signed by HUD staff authorized to approve CNAs. Information displayed here is form HUD-92329 bearing OMB Approval No. 2502-0029. Public Reporting Burden for this collection of information is estimated to average .08 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information. HUD may not conduct or sponsor, and a person is not required to respond to a collection of information unless that collection displays a valid OMB control number. This information is collected under Public Law 101-625 which requires HUD to implement mortgage insurance for mortgages under Sections 207, 221, 223, 232, or 241 of the National Housing Act. The information will be used by HUD to underwrite applications for mortgage insurance and to execute a firm commitment. Confidentiality for respondents is ensured if disclosure would result in competitive harm in accord with the Freedom of Information Act (FOIA) or if disclosure could impact HUD's ability to provide housing units under the referenced sections of the Act.

Property Insurance Requirements

U.S. Department of Housing and Urban Development Federal Housing Administration

OMB Approval No. 2502-0029
(exp. 04/30/2020)

Public reporting burden for this collection of information is estimated to average .08 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This is part of the basic application package for insured mortgages for construction of rental housing projects. This is a requirement under Section 207(b) of the National Housing Act (Public Law 479, 48 Stat. 1246, 12 U.S.C., 1701 et. seq.), authorizing the Secretary of HUD to insure mortgages. The information establishes property insurance requirements for a proposed multifamily project. The information is required to obtain benefits.

Privacy Act Notice - The United States Department of Housing and Urban Development, Federal Housing Administration, is authorized to solicit the information requested in this form by virtue of Title 12, United States Code, Section 1701 et. seq., and regulations promulgated thereunder at Title 12, Code of Federal Regulations. While no assurances of confidentiality is pledged to respondents, HUD generally discloses this data only in response to a Freedom of Information request. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collection displays a valid OMB control number.

6/17/2025

(Date)

TO: Patriot Pointe Apartments, LLC

(Mortgagee)

116-35205

(Project No.)

10728 Aduato Ct

(Street Address)

Patriot Pointe Apartments

(Project Name)

El Paso, Texas 79935

(City)

Alamogordo, New Mexico

(Project Location)

1. Reference is made to the applicable Administrative Regulations of the National Housing Act under which the mortgage on the above property (a) is insured by the Assistant Secretary for Housing, Federal Housing Commissioner in accordance with a Commitment For Insurance or (b) will be insured by the Assistant Secretary for Housing, Federal Housing Commissioner in accordance with a previously issued Commitment To Insure Upon Completion.

2. This notice is for the purpose of advising the Mortgagee of the Requirements of the Assistant Secretary for Housing, Federal Housing Commissioner as to the types of Property Insurance necessary to be maintained upon the subject property and of the estimate of the Commissioner of the Total 100% Insurable Value of the property. The attention of the Mortgagee is directed to the fact that these Requirements, with respect to the types of Property Insurance to be maintained, are continuous Requirements, as long as any mortgage upon the property is insured by the Assistant Secretary for Housing-Federal Housing Commissioner. It is the duty of Mortgagee to require of the Mortgagor maintenance of insurance in types and amounts necessary to comply with the Requirements hereinafter stated and as stated in the insured mortgage. The attention of the Mortgagee is also directed to the pertaining Administrative Regulations wherein of the insured mortgage upon failure of the Mortgagor to do so.

3. (a) Attached hereto and made a part hereof is Property Insurance Schedule, HUD Form No. 92329, dated 3/11/2025, constituting the estimate of the Assistant Secretary for Housing-Federal Housing Commissioner of the Total 100% Insurable Value of the property. The Property Insurance Schedule of Insurable Values is for the purpose of estimating the amount of Permanent Insurance, as well as the amount of Builders Risk Insurance.

(b) The Total 100% Insurable Value reflected upon the attached Property Insurance Schedule includes the cost of excavations, foundations, piers, or other supports which are below the surface of the lowest basement floor or where there is no basement, which are below the surface of the ground, underground flues, pipes, and drains. These items are generally excluded from the Property Insurance coverage when it is subject to the provisions of the Coinsurance Clause or similar clause. If the Builders Risk Insurance or the Permanent Fire and Extended Coverage Insurance does not insure these items, then an amount acceptable to the Mortgagee may be deducted from the Assistant Secretary for Housing-Federal Housing Commissioner's estimate of the Total 100% Insurable Value for the purpose of estimating the amount of Builders Risk Insurance or the amount of Permanent Insurance.

4. INSURANCE DURING CONSTRUCTION.

The Requirements for this type of insurance are inapplicable when a Commitment To Insure Upon Completion is issued.

(a) Concurrently with or prior to the issuance of mortgage insurance by the Assistant Secretary for Housing-Federal Housing Commissioner of any advance of mortgage proceeds for construction of the property, the Mortgagee shall have in its possession or control and in full force and effect, the standard form of Builders Risk Insurance policy or policies. It shall be written upon the standard Builders Risk Completed Value form, for Fire, Extended Coverage and Vandalism and Malicious Mischief Insurance, in an aggregate amount equal to 100% of the Insurable Value of the completed building or buildings.

(b) The Builders Risk Insurance policy or policies shall show the Mortgagor as the Insured and may also show as additional insureds the general contractor and other contractors and subcontractors, as their interests may appear. Each policy shall carry the standard form of Non-Contribution Mortgage or Mortgagee Clause showing loss, if any, payable to the Mortgagee (name and address) and the Assistant Secretary for Housing-Federal Housing Commissioner, DHUD, Washington, D.C., his successors or assigns, as interest may appear. The original of such policy or policies shall be retained in the possession or control of the Mortgagee and shall be maintained in full force and effect.

(c) Upon cancellation of the Builders Risk Insurance or any portion thereof, Permanent Insurance shall be effected as hereinafter stipulated.

5. PERMANENT INSURANCE

(a) Fire and Extended Coverage Insurance shall be provided for the subject property and may be either blanket coverage or by specific allocations to individual structures. Such insurance shall be evidenced by standard Fire and Extended Coverage Insurance policy or policies, in amounts not less than necessary to comply with the applicable Coinsurance Clause percentage, but in no event shall the amounts of coverage be less than 80% of the Insurable Values or not less than the unpaid balance of the insured mortgage, whichever is the lesser.

(b) The Permanent Insurance policy or policies show the Mortgagor as the Insured and shall carry the standard form of Non-Contribution Mortgage or Mortgagee Clause, showing loss, if any, payable to the Mortgagee (name and address) and the Assistant Secretary for Housing-Federal Housing Commissioner, DHUD, Washington, D.C., his successors or assigns, as interest may appear. The original of such policy or policies shall be retained in the possession or control of the Mortgagee shall be maintained in full force and effect.

(c) BOILER EXPLOSION INSURANCE. If the boiler or boilers located in the subject property are other than steam boilers, specific Boiler Explosion Insurance generally is not required. If there is a steam boiler or boilers in operation in connection with the subject property, specific Boiler Explosion Insurance is required. In determining the adequacy of the amount or amounts of this coverage there must be careful review and consideration of all the facts and exposures for the purpose of estimating the maximum possible amount of a single loss by steam boiler explosion. The minimum limit of Boiler Explosion Insurance, when required, is per accident, per location. After due examination of all the related information in any given case, it may be determined this required minimum limit of \$100,000 is inadequate. In that event a greater amount of coverage should be provided. Determination of such amount is the responsibility of the Mortgagee.

(d) Boiler Explosion Insurance, as herein required, shall be evidenced by standard form of Boiler and Machinery policy or policies showing the Mortgagor as the Insured and shall have attached standard Mortgagee Interest Endorsement, showing loss, if any, or property of the Insured, to be adjusted with and payable to the Insured and the Mortgagee (name and address) and the Assistant Secretary for Housing-Federal Housing Commissioner, DHUD, Washington, D.C., his successors or assigns, as their interests may appear. The original of such policy or policies shall be retained in the possession or control of the Mortgagee and shall be maintained in full force and effect.

6. FLOOD INSURANCE. *(Required whenever the property is located in an area of special flood hazards in which flood insurance is available under the National Flood Insurance Act.)*

☐ REQUIRED

☒ NOT REQUIRED

Flood insurance shall be provided for the subject property during the term of the mortgage loan. The insurance shall be in an amount at least equal to the outstanding principal balance of the loan, or the maximum amount at insurance available with respect to the project under the National Flood Insurance Act, whichever is lesser. The policy shall show the mortgagor as insured and shall show loss, if any, payable to the mortgagee (*name and address*) and the Assistant Secretary for Housing-Federal Housing Commissioner, Washington, D.C., his successors or assigns, as their interests may appear. The original of such policy or policies shall be retained in the possession or control of the mortgagee and shall be maintained in full force and effect.

7. INSURANCE CARRIERS.

The acceptability of insurance carriers, types of coverage and the forms, conditions, amounts and scope of insurance policies are responsibilities of the Mortgagee. The Assistant Secretary for Housing-Federal Housing Commissioner does not require that any duplicate policies, certificates or memoranda of insurance or other evidence of the foregoing insurance overages be submitted to him or to any of his field offices or authorized agents.

8. LOSS SETTLEMENT DRAFTS AND CHECKS.

(a) Loss settlement drafts and checks in settlement of losses sustained under any of the aforementioned types of insurance overages shall always include the Mortgagee and the Assistant Secretary for Housing-Federal Housing Commissioner as payees.

(b) Loss settlement drafts and checks should be forwarded to the Assistant Secretary for Housing-Federal Housing Commissioner DHUD, Field Office Director having jurisdiction over the area in which the property sustaining the loss is situated, and he is responsible for the endorsement and release of such instruments on behalf of the Assistant Secretary for Housing-Federal Housing Commissioner

ASSISTANT SECRETARY FOR HOUSING-FEDERAL
HOUSING COMMISSIONER

CHRISTOPHER
By MCDANIEL

(Authorized Agent)

Digitally signed by: CHRISTOPHER MCDANIEL
DN: CN = CHRISTOPHER MCDANIEL, C = US, O = U.S.
Government, OU = Department of Housing and Urban Development,
Office of Housing
Date: 2025.06.18 13:50:57 -05'00'

EXHIBIT F
Legal Description
HUD Project No. 113-36062

"General Decision Number: NM20250005 01/03/2025
Superseded General Decision Number: NM20240005
State: New Mexico

Construction Type: Residential

Counties: Catron, Chaves, Curry, De Baca, Eddy, Grant, Hidalgo, Lea, Lincoln, Luna, Otero, Roosevelt, Sierra and Socorro Counties in New Mexico.

RESIDENTIAL CONSTRUCTION PROJECTS (consisting of single family homes and apartments up to and including 4 stories)

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate ~~required under Executive Order 14026 or Executive Order~~

13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(1).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:	. Executive Order 14026 generally applies to the contract. . The contractor must pay all covered workers at least \$17.75 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2025.
---	---

If the contract was awarded on or after January 1, 2015 and the contract is not renewed or extended on or after January 29, 2022, and the	. Executive Order 13658 or generally applies to the contract. . The contractor must pay all covered workers at least
---	--

30, 2022:

| \$13.30 per hour (or the
| applicable wage rate listed
| on this wage determination,
| if it is higher) for all
| hours spent performing on
| that contract in 2025.

| _____ | _____ |

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at <http://www.dol.gov/whd/govcontracts>.

Modification Number Publication Date
0 01/03/2025

SUNM1999-004 08/05/1999

	Rates	Fringes
CARPENTER (excluding form work, and installation of drywall and soft floors)	\$ 11.69 **	.30
CARPENTER Form Work Only	\$ 10.50 **	
CEMENT MASON/CONCRETE FINISHER...	\$ 12.50 **	
DRYWALL FINISHER/TAPER	\$ 10.00 **	
ELECTRICIAN (excluding HVAC wiring)	\$ 12.00 **	.26
Laborer, Unskilled	\$ 8.36 **	
PAINTER (excluding drywall finishing)	\$ 10.57 **	
PLASTERER	\$ 12.00 **	
PLUMBER (excluding HVAC work) .	\$ 12.00 **	

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

=====

** Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 (\$17.75) or 13658 (\$13.30). Please see the Note at the top of the wage determination for more information. Please also note that the minimum wage requirements of Executive Order 14026 are not currently being enforced as to any contract or subcontract to which the states of Texas, Louisiana, or Mississippi, including their agencies, are a party.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (iii)).

The body of each wage determination lists the classifications and wage rates that have been found to be prevailing for the type(s) of construction and geographic area covered by the wage determination. The classifications are listed in alphabetical order under rate identifiers indicating whether the particular rate is a union rate (current union negotiated rate), a survey rate, a weighted union average rate, a state adopted rate, or a supplemental classification rate.

Union Rate Identifiers

A four-letter identifier beginning with characters other than ""SU"", ""UAVG"", ?SA?, or ?SC? denotes that a union rate was prevailing for that classification in the survey. Example:

PLUM0198-005 07/01/2024. PLUM is an identifier of the union whose collectively bargained rate prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. The date, 07/01/2024 in the example, is the effective date of the most current negotiated rate.

Union prevailing wage rates are updated to reflect all changes over time that are reported to WHD in the rates in the collective bargaining agreement (CBA) governing the classification.

Union Average Rate Identifiers

The UAVG identifier indicates that no single rate prevailed for those classifications, but that 100% of the data reported for the classifications reflected union rates. EXAMPLE: UAVG-OH-0010 01/01/2024. UAVG indicates that the rate is a weighted union average rate. OH indicates the State of Ohio. The next number, 0010 in the example, is an internal number used in producing the wage determination. The date, 01/01/2024 in the example, indicates the date the wage determination was updated to reflect the most current union average rate.

A UAVG rate will be updated once a year, usually in January, to reflect a weighted average of the current rates in the collective bargaining agreements on which the rate is based.

Survey Rate Identifiers

The ""SU"" identifier indicates that either a single non-union rate prevailed (as defined in 29 CFR 1.2) for this classification in the survey or that the rate was derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As a weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SUFL2022-007 6/27/2024. SU indicates the rate is a single non-union prevailing rate or a weighted average of survey data for that classification. FL indicates the State of Florida. 2022 is the year of the survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 6/27/2024 in the example, indicates the survey completion date for the classifications and rates under that identifier.

?SU? wage rates typically remain in effect until a new survey

is conducted. However, the Wage and Hour Division (WHD) has the discretion to update such rates under 29 CFR 1.6(c)(1).

State Adopted Rate Identifiers

The ""SA"" identifier indicates that the classifications and prevailing wage rates set by a state (or local) government were adopted under 29 C.F.R 1.3(g)-(h). Example: SAME2023-007 01/03/2024. SA reflects that the rates are state adopted. ME refers to the State of Maine. 2023 is the year during which the state completed the survey on which the listed classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 01/03/2024 in the example, reflects the date on which the classifications and rates under the ?SA? identifier took effect under state law in the state from which the rates were adopted.

WAGE DETERMINATION APPEALS PROCESS

1) Has there been an initial decision in the matter? This can be:

- a) a survey underlying a wage determination
- b) an existing published wage determination
- c) an initial WHD letter setting forth a position on a wage determination matter
- d) an initial conformance (additional classification and rate) determination

On survey related matters, initial contact, including requests for summaries of surveys, should be directed to the WHD Branch of Wage Surveys. Requests can be submitted via email to davisbaconinfo@dol.gov or by mail to:

Branch of Wage Surveys
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

Regarding any other wage determination matter such as conformance decisions, requests for initial decisions should be directed to the WHD Branch of Construction Wage Determinations. Requests can be submitted via email to BCWD-Office@dol.gov or by mail to:

Branch of Construction Wage Determinations

Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2) If an initial decision has been issued, then any interested party (those affected by the action) that disagrees with the decision can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Requests for review and reconsideration can be submitted via email to dba.reconsideration@dol.gov or by mail to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210.

=====

END OF GENERAL DECISION"

EXHIBIT H
Cover Sheet for Plans and Specs
HUD Project No. 113-36062

SIGNATURE PAGE FOR PLANS AND SPECIFICATIONS

This sheet is used in lieu of signatures on the actual plans/specifications and must remain attached to the document.

The undersigned acknowledge that the final plans and specs (date of approved set) are approved and are considered as part of the agreed upon construction contract. Further, they by their signatures, they certify that the date identified below is the date of final revision for the plan set, or the dates identified for individual sheets on an attached list of drawings.

Warning: Title 18 U.S.C. 1001, provides in part that whoever knowingly and willfully makes or uses a document containing any false, fictitious, or fraudulent statement or entry, in any manner in the jurisdiction of any department or agency of the United States, shall be fined or imprisoned not more than five years or both.

Project Name _____

Project Address _____

City, State ,Zip _____

FHA # _____ DATE _____ SET: 1. Master/ 2. Review/ 3. Job Site

Authorized Representative for the Borrower

Printed Name and Title	Signature	Date
------------------------	-----------	------

Authorized Representative for the Lender

Printed Name and Title	Signature	Date
------------------------	-----------	------

Authorized Representative for the General Contractor

Printed Name and Title	Signature	Date
------------------------	-----------	------

Authorized Representative for the Design Architect

Printed Name and Title	Signature	Date
------------------------	-----------	------

Authorized Representative for the Architect Administering the Contract

Printed Name and Title	Signature	Date
------------------------	-----------	------

Authorized Representative for the Bonding Company

Printed Name and Title	Signature	Date
------------------------	-----------	------

RECITALS:

- ** The City requires to contract with a Housing Development Company to provide services for providing Market Rate Housing to the City and Citizens of Lovington, New Mexico. The City has issued RFP # 011513 dated January 15, 2013 to solicit Developer proposals.
- ** Developer has submitted a written proposal to the City to complete the required Housing Developer Services work for market rate apartments, pursuant to the Developer proposal dated April 29, 2014.

NOW, THEREFORE, the City of Lovington and Developer do hereby agree as follows:

A. Work To Be Performed

1. The Developer shall furnish to the City its Professional Housing Developer Services for certain work regarding the Lovington Additional Family Housing Project, as requested by the City. All work completed under this agreement shall be pursuant to the City's RFP # 011513 which is attached hereto and made a part of this Agreement as Exhibit #1; and pursuant to Developers response proposal to that RFP, which is attached hereto and made a part of this Agreement as Exhibit #2, to the extent that its provisions are not inconsistent with the RFP and applicable laws. Both of these said documents are attached hereto and made a part of this agreement.
2. Developer shall furnish to City its professional Housing Developer Services as requested by City and as provided by this Agreement. The specific duties include all assistance as necessary to produce and operate Family Housing Development in Lovington. According to the RFP #011513 and Developer's Proposal, Developer is required to begin construction of additional family housing and associated infrastructure to serve the intended development property located on North Main Street, west of Nor Lea General Hospital. The Developer shall build a sixty-four (64) unit market rate apartment complex on the property identified in the Developer's Proposal. Developer shall raise sufficient funds to acquire real property and develop family housing in Lovington per Developer's attached proposal response to RFP 011513.
3. Specific activities required are to provide privately owned real property in the City including designing, building and operating market rate housing projects. For proposals deemed to best meet the needs of the City, the City shall provide financial incentives to assist with financing those family housing development proposals. The City's participation may include any or all of the following funding assistance from the City:
 - a. The City shall provide funding to the developer for the actual cost, up to the maximum grant amount of public infrastructure of newly constructed streets, sidewalk, and utilities, with these infrastructure items to be designed and installed by the developer.

Beginning at the northwest corner of Section 18, Township 22 South, Range 27 East, N.M.P.M., then N89°10'03"E along the north line of Section 18 for 1343.70', then N00°22'29"W for 98.27', then N44°07'15"E for 721.17', then N41°19'41"E for 406.18', then N53°15'58"E for 272.29', then N52°48'04"E for 279.24', then N59°01'27"E for 129.59' to a point in San Jose Boulevard, then S00°14'29"E for 1300.10' to the south 1/4 corner of Section 7, then S00°02'19"E for 765.03' to a point on the north R-O-W of the C.I.D. main canal, the M=578°42'11"W (R=578°42'18"W) for M=433.48' (R=433.58') along the north R-O-W of the C.I.D. main canal, then M=570°28'45"W (R=570°31'25"W) for M=39' (R=395.73'), then S61°47'44"W for 1247.59' then S61°28'49"W for 859.77', then S68°19'34"W for 21.47' to a point on the west line of Section 18, then N00°03'44"E for 1951.66' along the west line of Section 18 to the Point of Beginning and containing 101.32 acres more or less

and less

Tract One of the Old Rose Subdivision as described in Deed 321759 containing 6.98 acres more or less

Aggregately containing 94.35 acres more or less.

AND LESS AND EXCEPT

Tract 2 per plat, Cabinet 2, Slide 125-1, Old Rose Farm No. 2

Tract 3 and 4 per plat, Cabinet 3, Slide 341-1, Old Rose Farm No. 3

Tract 5 per plat, Cabinet 3, Slide 749-1, also described in Book 661, Page 0276, Old Rose Farm No. 4

Tract 6 per plat, Cabinet 5, Slide 29-1, Old Rose Farm No. 4 Replat

Tract 7 and 8 per plat, Cabinet 5, Slide 415-2 also described in Book 866, Page 1183, Old Rose Farm No. 6,

Tract 7 and 8 per plat, Cabinet 5, Slide 48D-1, Old Rose Farm No. 7,

Note:
Record description for parent parcel does not form a mathematically closed figure

LEGEND

● Found as noted

○ Set 5/8" rebar with red plastic cap

(the same being Section 18 lying in Township 22 North, Range 27 East, New Mexico.

e SE 1/4 of the County, New Mexico, and beginning at the 430'E along the fence N44°17'E, thence N53°25'E, thence N58°04'E, thence N59°01'27"E, thence SE 1/4 SW 1/4, beginning, said

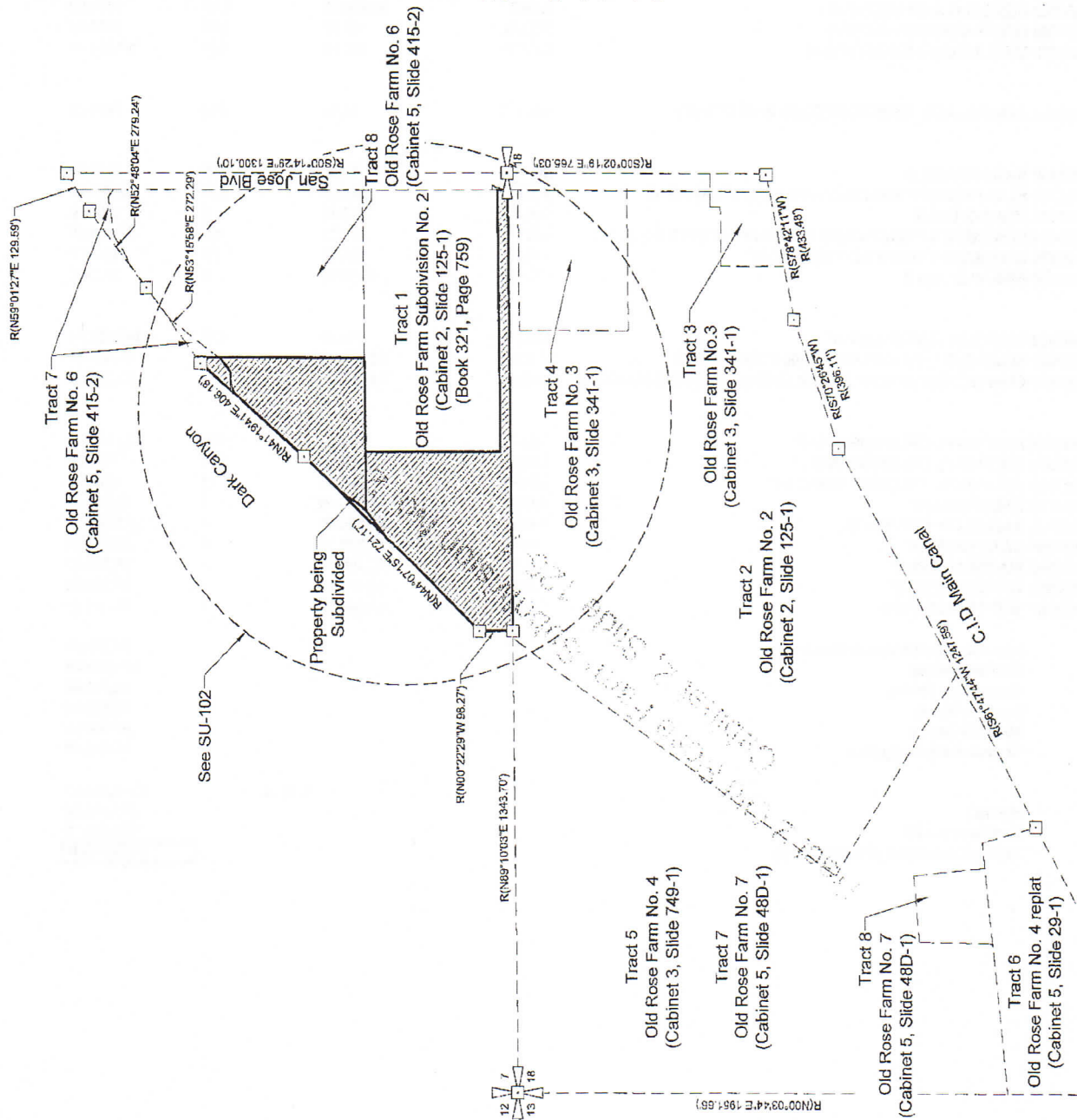
is shown on the county clerk of ore particularly

18, Township 22 North, Range 27 East, N.M.P.M., then N89°10'03"E along the north line of Section 18 for 1343.70', then N00°22'29"W for 98.27', then N44°07'15"E for 721.17', then N41°19'41"E for 406.18', then N53°15'58"E for 272.29', then N52°48'04"E for 279.24', then N59°01'27"E for 129.59' to a point in San Jose Boulevard, then S00°14'29"E for 1300.10' to the south 1/4 corner of Section 7, then S00°02'19"E for 765.03' to a point on the north R-O-W of the C.I.D. main canal, the M=578°42'11"W (R=578°42'18"W) for M=433.48' (R=433.58') along the north R-O-W of the C.I.D. main canal, then M=570°28'45"W (R=570°31'25"W) for M=39' (R=395.73'), then S61°47'44"W for 1247.59' then S61°28'49"W for 859.77', then S68°19'34"W for 21.47' to a point on the west line of Section 18, then N00°03'44"E for 1951.66' along the west line of Section 18 to the Point of Beginning and containing 101.32 acres more or less

scribed in Deed

183

1-1





**HOUSING DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF LOVINGTON
AND FAMILY HOUSING DEVELOPER**

THIS AGREEMENT is entered into on this 20th day of March, 2015

by and between the City of Lovington, New Mexico, a municipal corporation (hereinafter

“City”); and KM Partners, LLC

(hereinafter “Developer”) for the purpose of completing Housing Development services to be provided to the City.

Type of Infrastructure Project:

1.	Water Utility Extensions	SEE ATTACHED CIVIL ESTIMATE
2.	Sewer Utility	_____
3.	Street Extensions	_____
4.	Street or Driveway work access	_____
5.	Drainage Construction	_____
6.	Utility Taps	_____
7.	Engineering & Survey	_____
8.	Other _____	_____
9.	Other _____	_____
10.	Other _____	_____

Based on quantities of required publicly owned infrastructure installed with the project, the City shall determine if the value of the infrastructure is adequate as an equal exchange of value for the amount of City subsidy contributed to the housing project. The City shall resolve any issues concerning value or extent of infrastructure and amount of square footage of constructed housing units.

b. Cash payments to the Developer shall be paid by the City on basis, up to the Maximum Grant Amount, and per Developer's proposal, based on the following maximum subsidy schedule: **\$3,782.35 per completed unit. Maximum total award is \$242,070.46.**

c. Payment For Services

City subsidy shall be paid when the project is complete and certificate of occupancy is issued. If project proposal is for the construction of more than four (4) units, payment will be paid after completion of every four units. Payment will be made within fifteen (15) days following a written request from the Developer and upon City inspection of project completion.

d. Program features and requirements are detailed in the City RFP # 011513 and the Developer's response proposal.

1. The Minimum Project Development Size is 4 housing units per project location. Each approved project must be fully served by infrastructure when complete. Subsidy of privately owned on-site infrastructure is not permitted.
2. The City encourages infill property development. Infill infrastructure improvements will be funded to provide new or replacement water or sewer facilities, curbing, sidewalk, street improvements and paving, if additional housing is proposed as the project.
3. Full Developer Financing for 100% of a project must be in place prior to award of proposals. The design of the project must be complete within 90 days of award of the contract with the City.
4. Construction/Installation must be 50% complete within six months of award, with total completion within 1 year following award of the contract. Completion date may be extended for projects exceeding 20 units.

5. Construction and installation of housing units and public infrastructure will meet currently adopted State of New Mexico regulations and requirements and APWA standards.
 6. Construction/Installation shall be of energy-efficient design per New Mexico Energy Conservation Code 2009, utilizing either stucco, brick/stone or hardwood siding on all exterior surfaces.
- e. Performance Schedule of Actions Required of the Developer. Following are general guidelines of milestones or target dates for significant work items to begin. Specific dates established below which are firm dates not to be missed are 1) the date for completion of "dried in" status at Day 180, and 2) the date for Project 100% completion at Day 365. Nothing prohibits the Developer from starting or finishing these activities earlier than the following dates following.

Day	1	Development Agreement approved by City and executed by all parties.
Day	5	Developer submits draft site plan to City
Day	90	Developer submits final design and building plans.
Day	110	Developer complies with State of New Mexico and Building Code and receives Building Permit.
Day	130	Site grading complete. Survey started on building locations. Plumbing & Utility work started. Foundations and footers started. (Site Grading on or before 120 days
Day	150	Framing crews start.
Day	180	Project is "dried-in" with finished roofing, and all doors and windows installed, and exterior finishes completed.
Day	360	Project 100% completed. The City Manager may grant a one-time sixty (60) day extension for projects containing more than twenty (20) units.

B. ASSIGNMENT OF AGREEMENT

This Section refers to assignability of this Agreement, and not to assignability of the Project to be developed for housing. Developer shall not assign or transfer any interest in this Agreement. Except that Developer is permitted, upon City approval, to assign its interest to a Partnership or Corporation in which the Developer is the principal party or to an affiliated company, working with the Developer on the Project. Subject to the foregoing provision, this Agreement shall inure to the benefit of and be binding upon the parties to this Agreement and their respective successors and assigns; provided that upon any assignment of this Agreement by either party, the other party shall not be released from any obligation under, or liability accruing pursuant to this Agreement. Consent shall not unreasonably be withheld by either party.

C. INSURANCE REQUIREMENTS AND HOLD HARMLESS PROVISION

1. Developer agrees to obtain and maintain appropriate insurance during the course of the work program with the City of Lovington, as follows, and shall indemnify, defend and hold

harmless City, its employees, agents, officers and officials from any and all claims, losses, causes of action, and/or liabilities resulting from the conduct, negligence, errors or omissions of Developer or any employee or agent of Developer while engaged in performing the services called for herein. Developer will provide a current Certificate of Insurance to be attached to this agreement, with the City of Lovington as shown as an additional insured party.

2. The Developer shall maintain insurance coverage for General Liability, Automobile Liability, Errors and Omissions Insurance, and Workers' Compensation, subject to review and approval of the City Attorney.

D. GOVERNING LAW AND PROVISIONS

1. This Agreement shall be governed by the laws of the State of New Mexico. Jurisdiction and venue relating to any litigation or dispute arising out of this Agreement shall be in the District Court of Lea County, New Mexico, only. If any part of this contract shall be deemed in violation of the laws or Constitution of New Mexico, only such part thereof shall be thereby invalidated, and all other parts hereof shall remain valid and enforceable.
2. If any party is found by a court to have breached this Agreement, the breaching party agrees to pay all reasonable costs, attorney's fees and expenses that shall be made or incurred by another party in enforcing any covenant or provision of this Agreement, including the expenses of in house counsel.

E. FINAL PAYMENT AND RELEASE OF CLAIMS

1. Developer, upon final payment of all amounts due under this Agreement, releases the City and its officers and employees from all liabilities, claims and obligations whatsoever arising from or under this Agreement.
2. City, upon Developer's final completion of all work items and covenants required of the Developer under this Agreement, shall release the Developer from all liabilities, claims and obligations whatsoever arising from or under this Agreement, on the day that is one (1) year following the date of the issuance of a final certificate of occupancy on the Project.

F. AMENDMENTS

This Agreement shall not be altered, changed, or amended except by written instrument approved and executed by both parties hereto.

G. BREACH

1. The following events constitute a breach of this Agreement by Developer:
 - a. Developer's failure to perform or comply with any of the terms, conditions or provisions of this Agreement, including RFP # 011513.
 - b. Developer's failure to complete design plans and obtain a Building Permit within the initial thirty (30) day period following the execution of this Agreement.

- c. Developer's failure to complete the "dried-in" construction (finished roofing, and all doors and windows installed, and exterior finishes completed) within the initial one hundred eighty (180) day period following the execution of this Agreement.
- d. Developer's failure to complete the construction of the entire project within the initial three hundred sixty five (365) day period following the execution of this Agreement.

2. The following events constitute a breach of this Agreement by City:

- a. City's failure to perform or comply with any of the terms, conditions or provisions of this Agreement, including making timely and appropriate payments to the Developer.

H. REMEDIES UPON BREECH

- 1. Any party may sue to collect any and all damages that may accrue by virtue of the breach of this Agreement.
- 2. If any party is found by a court to have breached this Agreement, the breaching party agrees to pay all reasonable costs, attorney=s fees and expenses that shall be made or incurred by another party in enforcing any covenant or provision of this Agreement.
- 3. If Developer fails to complete design plans and obtain a Building Permit within the initial ninety (90) day period following the execution of this Agreement, this Agreement shall be automatically terminated.
- 4. If Developer fails to complete the "dried-in" construction (finished roofing, and all doors and windows installed, and exterior finishes completed) within the initial one hundred eighty (180) day period following the execution of this Agreement, the City Manager may authorize one thirty (30) day extension period. If the project is still not completed to the dried-in stage at the end of the thirty day extension, this Agreement shall be automatically terminated.
- 5. If Developer fails to complete the construction of the entire project within the initial three hundred sixty five (365) day period following the execution of this Agreement, the Manager may grant a one-time sixty (60) day extension of the completion date.

I. NOTICE

All notices given pursuant to or in connection with this Agreement shall be made in writing and posted by regular mail, postage prepaid, to the City, ATTN: City Manager, 214 S. Love St., Lovington, NM 88260; to Developer ATTN: KM Partners, 2420 Nantucket Unit C, Houston, TX, 77057, and to such other address as requested by either party. Notice shall be deemed to be received on the fifth day following posting.

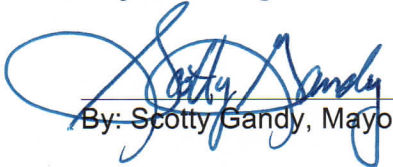
J. ENTIRE AGREEMENT

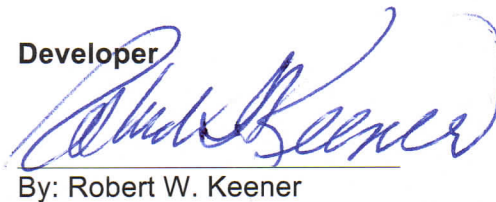
The foregoing constitutes the entire agreement between the parties hereto and may be modified only in writing by the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first written above.

City of Lovington

Developer

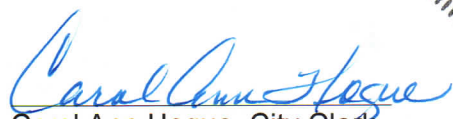

By: Scotty Gandy, Mayor

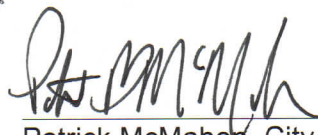

By: Robert W. Keener



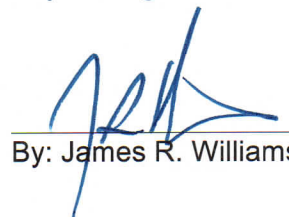
ATTEST:

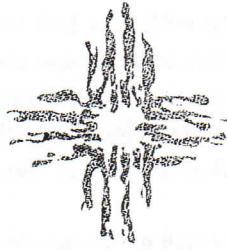
APPROVED AS TO FORM:


Carol Ann Hogue, City Clerk


Patrick McMahon, City Attorney

City Manager


By: James R. Williams



LOVINGTON

Economic Development Corporation

July 9, 2014

Lovington City Commission
213 S. Love
Lovington, NM 88260

Dear Commissioners,

The Lovington EDC makes the recommendation to reimburse the Lovington Trails Apartment Project located west of Nor-Lea General Hospital in the amount of \$ 242,070.46 for their project. **PLEASE NOTE:** Lovington Trails submitted the required information and information was verified. No reimbursement will be given until receipts of actual work are presented.

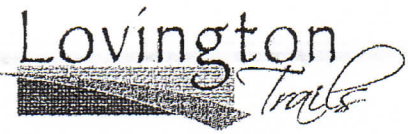
The Lovington Trails Apartments submitted for infrastructure reimbursements for: Labor bedding, backfill and trenching up to the property Line, Survey Work, Curb & Gutters, Sewer and Water tap to property line, fire hydrants and asphalt.

Project Description

This is a 64 unit market rate apartment project called "Lovington Trails Apartments" it contains 32 one bedroom/one bath and 32- two bedroom/two bath configurations ranging in size from 652 SF to 1, 147 SF.

These units will have granite counter tops in the kitchen and all electric appliances with washers and dryers. The air conditioning unit will be an energy efficient 14 SEER model and all appliances will be "Energy Star" rated that can be. All bedrooms will have ceiling fans.

This apartment project will be fenced and gated for security. There will be a swimming pool, tot lot and a dog park along with outside picnic tables. The club house will also have an exercise area with modern, up to date equipment along with a business center and meeting area.



April 29, 2014

Evelyn Holguin
Lovington Economic Development Corporation
201 South main
Lovington, NM 88260

Re: RFP No. 011513

Dear Ms. Holguin,

Per your "Request for Proposal No. 011513," we are enclosing 3 full packages and 5 CD's which all include the following:

1. Site Plan
2. Floor Plans and Elevations
3. Cost Estimate/Financials
4. Financial Statement of Developer
5. Appraisal
6. Engineering Cost Estimate
7. Applicant Information
8. Resumes
9. EIN No.
10. Project Scope
11. Furnish Family Housing Form/Campaign Contribution Disclosure
12. Project Narrative

A handwritten signature in black ink, appearing to read "Robert W. Keener", is written over a horizontal line.

Robert W. Keener-Manager
CC: Eduardo Valencia

REQUEST FOR PROPOSAL NO. 011513

City of Lovington, New Mexico

The City of Lovington, New Mexico is requesting proposals from qualified housing developers interested in providing **HOUSING PRODUCTION SERVICES – ADDITIONAL HOUSING UNITS**. Written proposals will be received by Lovington Economic Development Corporation at the office of the Executive Director, 201 S. Main, Lovington, NM 88260.

Copies of the Request For Proposals will be available on January 15, 2013 from the Lovington Economic Development Corporation Offices.

INITIAL SUBMITTAL DEADLINE - 2:00 p.m. on January 31, 2013. Thereafter, the City will continue to accept proposals pursuant to this RFP on the last work day of each month starting February 28, 2013 until December 31, 2015, or as long as City budgeted funds for market rate housing incentives are available, if earlier than December 31, 2015.

The proposal should be mailed or hand delivered to:

**Lovington Economic Development
Corporation 201 S. Main
Lovington, NM 88260
Phone: (575) 396-1417**

All proposals must be received on or before the above date and time in the Lovington Economic Development Corporation Office. Submitted proposals shall not be publicly opened. Any proposal received after the stated time will be returned unopened.

Copies of the specifications may be procured without charge from the Lovington Economic Development Corporation. All questions regarding this RFP should be referred to Evelyn Holguin at (575) 396-1417. The City reserves the right to reject any or all proposals and waive irregularities.

CITY OF LOVINGTON, NEW MEXICO

James Williams
City Manager

Publication Date: _____

- Construction\Installation must be 50% complete within six months of award, with total completion within 1 year following award of the contract. Completion date may be extended for projects exceeding 20 units.

C. Proposals shall include:

- Site plan of a location currently within the city limits of Lovington.
- Floor plan of proposed unit.
- Elevations of proposed structures.
- Cost estimates of entire development and needed city infrastructure, streets, and utilities.
- Financial statements demonstrating financial capacity of developer to complete the project.
- Fair Market Appraisal for each structure proposed by a certified appraiser.

D. Construction/Installation Requirements:

- All construction and installation of housing units and public infrastructure will meet currently adopted State of New Mexico regulations and requirements and APWA standards.
- Construction\Installation shall be of energy-efficient design per New Mexico Energy Conservation Code 2009, utilizing either stucco, brick/stone or hardwood siding on all exterior surfaces.

B. Interviews.

Interviews may be held with any or all of the firms submitting proposals, as determined in the best interest of the City.

C. Site Visit & Meetings

Site visits and tours of the prospective housing site(s) in Lovington may be conducted and necessary meetings held with City Manager and/or City/Lovington EDC staff. City/Lovington EDC representatives may also visit existing housing projects in other communities, and will check references. Housing proposals may also be reviewed as necessary by the City staff.

4. INSTRUCTIONS TO BIDDERS

- A.** Sealed bids will be received by the Lovington EDC, in accordance with the bid advertisement. Bidders shall use the bid form included with the specifications. Bid forms must bear the signature of the bidder to be considered. Pursuant to NMSA 1978, 13-1-191.1 (2006), bidders shall complete the attached Campaign Contribution Disclosure form. Failure of bidders to complete bidding documents in accordance with all instructions provided is cause for the City of Lovington to reject bids.
- B.** Proposals must be submitted in a sealed envelope with the outside marked: PROPOSAL NO. RFP # 011513.
- C.** Request for Proposal Amendments: All amendments to this Request for Proposal deemed necessary between issuance of the Request for Proposals and the proposal submission deadline will be distributed in writing to all recipients of the original RFP. If an amendment requires a time extension, the proposal submission date will be changed as part of the written amendment.
- D.** The bidder is responsible solely to deliver his/her proposal to the proper place and at the time designated. The fact that a proposal was dispatched will not be considered.
- E.** Proposal Evaluation: The EDC will review each proposal. Points will be allocated as outlined in the evaluation criteria of this RFP to determine the best responsible proposal. Negotiations may be conducted with responsible Offerer(s) who submit proposals found to be reasonably likely to be selected for award. The Lovington EDC will forward recommendations to the City Commission, which will make the final award(s). The city reserves the right to accept proposals in their entirety, or portions thereof, and to reject any or all proposals and to waive formalities.
- F.** It is agreed that proposals accepted by the City shall be valid for a period of ninety (90) days following the date of proposal opening. The City may request additional information from all applicants, if the City determines a submittal is incomplete and additional information is needed for any valid reason. Based on the above ranking schedule, the City will decide on each application at any time during the ninety day period. If determined the proposal is in the best interest of the City, the City may approve part of an application or may approve an application with conditions. All decisions of the City will be provided in writing.
- G.** Any questions or clarifications regarding this proposal must be submitted to the Lovington EDC in writing no later than five (5) days prior to the proposed submittal date. All clarifications will be issued in written format. No verbal changes shall take place during any conversations. No proposal conference is scheduled for this project. All questions regarding this RFP should be referred to Evelyn Holguin, Lovington EDC, at (575) 396-1417.

E. Miscellaneous Requirements

The Housing Developer shall provide as-built drawings (after construction is complete) of all public infrastructure to be constructed by this funding, together with necessary easements and rights-of-way.

6. Submittal Requirements

- A. One original application, with all required schedules, documents, or other such information that may be required by City must be included in application.
- B. A proposal describing the nature and scope of the housing project proposed by applicant and for which applicant is applying for funds, and which describes the type and/or amount of units.
- C. A Project Narrative Statement that addresses the evaluation criteria set forth in this RFP.
- D. Current financial statement for the Applicant, listing all other real estate investments as applicable, including a current independent financial audit, if available. (Please submit financial statements in a separate sealed envelope.)
- E. A proposed budget for the housing project including development costs, loan information and other costs.
- F. Information on the Applicant, including board members for a Corporation, number of employees, location of corporate headquarters, etc. Please include documentation that applicant is duly organized in accordance and is in good standing with any state authorities such as the Public Regulation Commission.
- G. The City may require that the applicant provide proof of available funds to complete the project, and documentation concerning the real estate interest in the proposed site.
- H. Certification that the Applicant has not defaulted on an obligation covered by a mortgage, a surety or performance bond. If such Applicant cannot certify to each of the above, such Applicant shall submit a signed statement to explain the facts and circumstances which such Applicant believes will explain the lack of certification. The City may then determine if such Applicant is or is not qualified.
- I. Proposal submission form, Campaign Contribution Disclosure Form and Cost Proposal as noted in the RFP.
- J. Eight (8) copies of the proposal shall be submitted.

**PROPOSAL # 011513
FURNISH FAMILY HOUSING**

TO: The City of Lovington, New Mexico

_____, 2012

Proposal of _____: (Company
Name)

A) A Corporation under the laws of the State of _____; or B) A
partnership consisting of _____; or C) An
individual trading as _____. The

undersigned offerer, pursuant to the foregoing "Request for Proposals", has carefully
examined the instructions to Offerers, this proposal form and the Detailed Specifications.

BY: _____

Typed or Printed Name

Address

City State Zip

Telephone Number

NOTE: To be valid, bid must be signed. The signature of a corporation is its president, or an authorized
representative. A signature of a partnership must be a valid partner or authorized representative.

Do Not Return Invitation to Bid Form in Case of a "NO BID"

If applicable - offerer acknowledges receipt of the following AMENDMENT(S):

Amendment No: _____ Dated: _____ Amendment No.: _____ Date:

Amendment No: _____ Dated: _____ Amendment No.: _____ Date:

DISCLOSURE OF CONTRIBUTIONS:

Contribution Made By: _____

Relation to Prospective Contractor: _____

Name of Applicable Public Official: _____

Date Contribution(s) Made: _____

Amount(s) of Contributions(s): _____

Nature of Contribution(s): _____

Purpose of Contribution(s): _____

(Attach extra pages if necessary)

Signature

Date

Position (title)

OR

NO CONTRIBUTIONS IN THE AGGREGATE TOTAL OVER TWO HUNDRED FIFTY DOLLARS (\$250) WERE MADE to an applicable public official by me, a family member or representative.

Signature

Date

CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Pursuant to NMSA 1978, 13-1-191.1 (2006), any person seeking to enter into a contract with any state agency or local public body **for professional services for a design and build project delivery system, or the design and installation of measures the primary purpose of which is to conserve natural resources** must file this form with that state agency or local public body. This form must be filed even if the contract qualifies as a small purchase or a sole source contract. The prospective contractor must disclose whether they, a family member or a representative of the prospective contractor has made a campaign contribution to an applicable public official of the state or a local public body during the two years prior to the date on which the contractor submits a proposal or, in the case of a sole source or small purchase contract, the two years prior to the date the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor, a family member or a representative of the prospective contractor to the public official exceeds two hundred and fifty dollars (\$250) over the two year period.

Furthermore, the state agency or local public body shall void an executed contract or cancel a solicitation or proposed award for a proposed contract if: 1) a prospective contractor, a family member of the prospective contractor, or a representative of the prospective contractor gives a campaign contribution or other thing of value to an applicable public official or the applicable public official=s employees during the pendency of the procurement process or 2) a prospective contractor fails to submit a fully completed disclosure statement pursuant to the law.

THIS FORM MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT THEY, THEIR FAMILY MEMBER, OR THEIR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.

The following definitions apply:

Applicable public official means a person elected to an office or a person appointed to complete a term of an elected office, which has the authority to award or influence the award of the contract for which the prospective contractor is submitting a competitive sealed proposal or who has the authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive proposal.

Campaign Contribution means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or expend contributions on that official=s behalf for the purpose of electing the official to either statewide or local office. A Campaign Contribution@ includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or un-reimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

Family member means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law.

Pendency of the procurement process means the time period commencing with the public notice of the request for proposals and ending with the award of the contract or the cancellation of the request for proposals.

Person means any corporation, partnership, individual, joint venture, association or any other private legal entity.

Prospective contractor means a person who is subject to the competitive sealed proposal process set forth in the Procurement Code or is not required to submit a competitive sealed proposal because that person qualifies for a sole source or a small purchase contract.

Representative of a prospective contractor means an officer or director of a corporation, a member or manager of a limited liability corporation, a partner of a partnership or a trustee of a trust of the prospective contractor.

COST PROPOSAL

Total number of housing units proposed	
Total proposed square footage of heated/cooled living area per unit	ft ²
Water utility extensions	\$
Sewer utility	\$
Street extensions	\$
Street or driveway work access	\$
Drainage construction	\$
Engineering & Survey of public infrastructure	\$
Other:	\$
Other:	\$
Other:	\$
INFRASTRUCTURE COST PER UNIT	\$
TOTAL LUMP SUM OF INFRASTRUCTURE COST REQUESTED	\$

Printed Name of Applicant

Signature of Applicant

Housing Production Services - Family Housing - Proposal #011513

The City requests that your proposal be made in conformance with the guidelines contained herein on the proposal form. The City intends to award a Development Agreement, hereinafter referred to as "Agreement", to those Housing Development Firms submitting a proposal deemed to be fully qualified to provide Additional Housing Development as required by the City. The Agreement to be executed shall be in substantially the form attached hereto. All responses to this Request for Proposals must comply with the City of Lovington Procurement Code.

5. ADDITIONAL REQUIREMENTS

A. Term of Agreement

The term of the Agreement shall be for one (1) year term from the date of written notification of award of proposal, with an option to extend for an additional sixty (60) days based on need as determined solely by the City.

B. Award of Contract(s)

1. The City Commission of the City of Lovington, New Mexico, reserves the right to waive irregularities in proposals, and to reject any or all proposals or portions thereof; and may award to the offerer(s) whose proposals are deemed to be in the best interest of the City of Lovington. The City may also deviate or amend or waive any design standard or project requirement herein as determined to be in the best interest of the City of Lovington.
2. Proposals may be withdrawn upon receipt of written request, prior to scheduled deadline for the purpose of making any corrections and/or changes. Such corrections must be properly identified and signed or initialed by bidder. Resubmitting must be prior to scheduled deadline for consideration.
3. Maximum Grant Amount is \$6,000.00 per housing unit. Actual grant amount will be awarded based upon actual costs of infrastructure improvements not to exceed market rates.

C. Payments

City subsidy shall be paid when the project is complete and certificate of occupancy is issued. If project proposal is for the construction of more than four (4) units, payment will be paid after completion of every four units. Payment will be made within fifteen (15) days following a written request from the Developer and upon City inspection of project completion.

D. Insurance

The successful offerer(s) shall obtain, and provide proof thereof, to the City the following insurance coverage:

- General Liability as follows: Premises, operations, explosions and collapse hazard, underground hazard, contractual insurance, products with completed operations, broad form property damage, independent contractors and personal injury. The limits of liability shall be no less than \$1,000,000 combined single limits for bodily injury and property damage.
- Automobile Liability as follows: Owned, hired and non-owned vehicles. The limits of liability shall be no less than \$1,000,000 combined single limit bodily injury and property damage.
- Errors and Omissions Insurance may be required on specific design projects with the amount of insurance commensurate with the size and nature of the Project. However, these insurance requirements will be negotiated with approved Engineering contractors at the time a work order is made.
- Workers' Compensation is required along with New Mexico statutory employer's liability limits regardless of number of employees.

The City of Lovington shall be named as an additional insured on all of the above.

3. PROPOSAL EVALUATION AND SELECTION.

Proposal will be evaluated on the following basis (all topics are as presented in the text of the proposal):

A. Proposal Evaluation

- All Technical Proposals will be evaluated by the City based on the following priorities. The exact basis or weight of each factor is shown below.

Priority	Weight
Capacity and capability of the Housing Development Company to build/install family housing in the City of Lovington, in compliance with State of New Mexico and City Building Codes and all City development regulations and policies; ability to perform the housing development work project in a timely manner; technical approach to the project. INCLUDES: Housing proposal with site plan and location, number and type of housing units, infrastructure needs and funding requirements.	30%
Performance of the firm with previous housing development projects, based on quality of work, ability to meet schedules and responsiveness to City requirements and agreements.	
Review and consideration of experience, knowledge, financial capabilities on Housing Development Projects or similar development projects, based on review of documents submitted with the project, and past experience with other housing development projects.	35%
Past performance of housing development activities either in Lovington or in other nearby cities	5%
New Mexico resident bidders preference provided a valid resident business certificate is submitted with the proposal.	30%

1. INTRODUCTION.

The City of Lovington desires additional new or renovated, rental or for sale, family homes, therefore existing occupied housing is ineligible. A minimum of 4 housing units per project location, in any combination of modular, manufactured, or site built.

The City of Lovington hereby invites competitive sealed proposals to encourage developers to build/install new family housing projects. The City Commission has determined that a severe shortage of housing exists currently in Lovington and the surrounding areas. The City Commission further finds that this shortage of housing represents a severe and substantial disadvantage to the City's economy and economic development.

"Housing" is defined as a permanently constructed\installed, rental or for sale housing development in Lovington, in any combination of modular, manufactured, or site built.

2. SCOPE OF WORK.

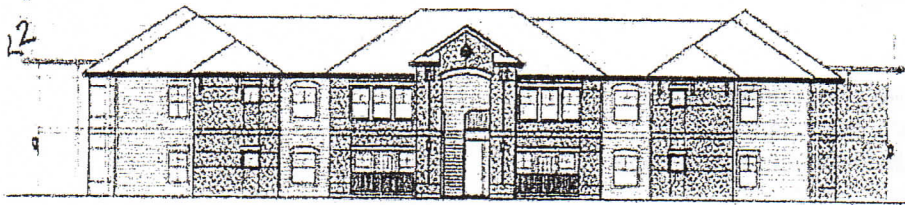
- A. The City of Lovington is seeking Housing Developer(s) to provide Housing Production Services to increase the supply of additional family housing units for the citizens of Lovington. Activities required are to provide privately owned real property in the City including designing, building\installing and operating market rate housing projects. Proposal offerings need not be submitted by licensed contractors, but all contractors employed must be duly licensed in New Mexico. For proposals deemed to best meet the needs of the City, the City shall provide financial incentives to assist with financing the public infrastructure to support those housing development proposals. The City's participation may include any or all of the following funding assistance from the City:

- The City shall provide funding to the developer for the actual cost, up to the maximum grant amount of public infrastructure of newly constructed streets, sidewalk, and utilities, with these infrastructure items to be designed and installed by the developer.

B. Program Features and Requirements

- The minimum project development size is 4 housing units per project location. Each approved project must be fully served by infrastructure when complete. Subsidy of privately owned on-site infrastructure is not permitted.
- The City encourages infill property development. Infill infrastructure improvements will be funded to provide new or replacement water or sewer facilities, curbing, sidewalk, street improvements and paving, if additional housing is proposed as the project.
- Full Developer Financing for 100% of a project must be in place prior to award of proposals. The design of the project must be complete within 90 days of award of the contract with the City.

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12

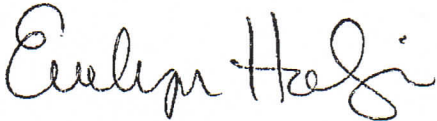


ELEVATION

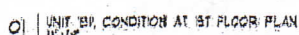
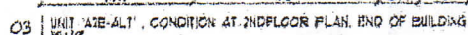
Lovington Trails is expected to be improved with four two story garden apartment buildings. Ancillary improvements include a (32) garage and storage unit (20) buildings, and six carports (32 spaces). The gross area is 70,707 square feet, total land area is 6.516 acres, with 3.67 acres being the primary site, plus 2.866 acres of excess land. Developer plans to do a phase II in which an additional 64 units will be developed when phase I is filled.

Attached are various maps, floor plans and civil estimates for your review. Please note page 2 are all the items the Due Diligence Committee carefully reviewed.

Thank you for your consideration and time,

A handwritten signature in black ink, reading "Evelyn Holguin". The signature is fluid and cursive, with the first name "Evelyn" and last name "Holguin" clearly distinguishable.

Evelyn Holguin
Executive Director



PLAN LEGEND:

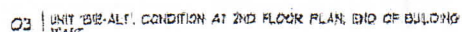
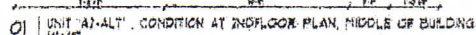
FILED TO ME PLANNED Society For 2014-2015

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CHARGE THE
BATTERY

85. 000012-011, 000012-012, 000012-013



FLOOR PLANS



PETTIGREW
& ASSOCIATES PA

ENGINEERING | SURVEYING | TESTING

Ted Trout Architect & Assoc.
Lovington Trails

Civil Estimate - City of Lovington / EDC Reimbursement

Date: June 19, 2014

Prepared By: William R. Reiser, EI

ITEM	ITEM DESCRIPTION	UNIT	UNIT PRICE	USE QUANTITY	ESTIMATED AMOUNT
621000	MOBILIZATION	L.S.	\$25,000.00	1	\$25,000.00
201000	CLEARING AND GRUBBING	ACRE	\$1,400.00	0.45	\$630.00
207000	SUBGRADE PREPARATION	SQ.YD.	\$3.50	110	\$385.00
203000	UNCLASSIFIED EXCAVATION	CU.YD.	\$12.00	603	\$7,233.60
601002	REMOVE AND DISPOSE OF CURB AND GUTTER	LIN.FT.	\$4.00	240	\$960.00
303160	BASE COURSE 6"	SQ.YD.	\$4.50	175	\$787.50
423270	PLANT MIX BITUMINOUS PAVEMENT (PMBP) SP IV	SQ.YD.	\$16.00	175	\$2,800.00
609200	HEADER CURB	LIN.FT.	\$12.50	8	\$100.00
609424	CONCRETE BARRIER CURB AND GUTTER TYPE B 6" X 24"	LIN.FT.	\$17.50	60	\$1,050.00
609636	CONCRETE VALLEY GUTTER 6" X 36"	LIN.FT.	\$28.00	35	\$980.00
602010	RIPRAP CLASS B	CU.YD.	\$190.00	1	\$190.00
663908	SANITARY SEWER LINE-8"	LIN.FT.	\$34.00	456	\$15,502.64
662001	MANHOLE TYPE C-4' DIAMETER 0' TO 6' DEPTH	EACH	\$2,400.00	2	\$4,800.00
663950	CONNECTION OF NEW SEWER LINE TO EXISTING MANHOLE	EACH	\$3,200.00	1	\$3,200.00
663608	POLYVINYL CHLORIDE PIPE-8"	LIN.FT.	\$48.00	659	\$31,615.68
663606	POLYVINYL CHLORIDE PIPE-6"	LIN.FT.	\$45.00	4	\$191.25
663625	POLYVINYL CHLORIDE PIPE-2 1/2"	LIN.FT.	\$22.00	13	\$286.00
663100	FIRE HYDRANT	EACH	\$3,750.00	1	\$3,750.00
663722	BACKFLOW PREVENTER	EACH	\$4,500.00	4	\$18,000.00
663898	GATE VALVE-8"	EACH	\$1,800.00	4	\$7,200.00
663862	WATER METER-2"	EACH	\$2,100.00	3	\$6,300.00
663864	WATER METER-3"	EACH	\$8,200.00	1	\$8,200.00
663887	WET CONNECTION	EACH	\$5,000.00	1	\$5,000.00
	Inspections and Engineer's Certification				\$4,250.00
	Civil Engineering				\$26,700.00
	Construction Staking				\$6,500.00
	Boundary Survey				\$3,500.00
	Materials Testing				\$7,000.00
	Geotechnical Investigation				\$6,685.00
				TOTAL	\$198,796.67
	NMGRT				\$13,543.02
	Contingency: 12%				\$25,480.76
	Total Estimated Cost of Improvements				\$242,070.46

██████████ COUNTY COMMISSIONERS' COURT
RESOLUTION OF SUPPORT OF THE ██████████ PROJECT

WHEREAS, on May 28, 2024, a presentation was made to the ██████████ County Commissioners Court regarding a request for public infrastructure reimbursement incentives for a planned multifamily development in the City of ██████████ "The ██████████" project, of a 70% tax reimbursement over a ten (10) year period;

WHEREAS, ██████████ County Commissioners Court recognizes the immediate need to develop affordable multifamily and single family housing;

WHEREAS, ██████████ County Commissioners Court encourages the construction of affordable housing in already developed areas with existing infrastructure;

THEREFORE, BE IT RESOLVED, that on this day, the ██████████ County Commissioners Court supports the concept of the request for public infrastructure reimbursement incentives for "The Bluewood" project, a planned multifamily development in the City of ██████████ and will consider the economic development incentives requested for The ██████████ project submitted to the County for review: (1) All such incentives authorized for Texas counties by Chapter 381 of the Texas Government Code, including tax abatement; and (2) all tax abatement authorized for Texas counties by Chapter 381 of the Texas Government Code and Chapter 312 of the Texas Tax Code; and (3) all such incentives and/or tax abatement authorized for Texas counties pursuant to other applicable authority, pursuant to the Kerr County, Texas Economic Development Program.

Approved on this 28th day of May, 2024.

— ██████████ —
██████████ County Judge

████████████████████
████████████████████

Commissioner, Precinct 1

████████████████████
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Commissioner, Precinct 2

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Commissioner, Precinct 3

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████████████████████

Commissioner, Precinct 4

CITY OF [REDACTED]
RESOLUTION NO. 25-2024

**A RESOLUTION SUPPORTING THE [REDACTED]
MULTIFAMILY DEVELOPMENT, TO INCLUDE THE FUTURE
WAIVER OF THE CITY'S PARKLAND DEDICATION FEES,
BUILDING PERMIT FEES, AND AN AGREEMENT FOR TAX
ABATEMENT**

WHEREAS, [REDACTED] (the "Developer") has plans to build and operate a 273 unit multifamily development to be called The Bluewood (the "Development"), with rentals for several different models set at market rates; and

WHEREAS, the Development is estimated to cost \$55 Million, with 1, 2, and 3 bedroom units, plus a number of amenities appropriate for the project; and

WHEREAS, the Developer is seeking a number of financial incentives from both [REDACTED] County and the City in an effort to overcome various economic conditions; and

WHEREAS, City Council finds it to be in the public interest to support the currently proposed financial incentives, subject to the terms provided below, to include the adoption of a future agreement(s) with the Developer;

NOW, THEREFORE. BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF [REDACTED] COUNTY, TEXAS:

City Council supports the Development as currently presented and agrees to the City incentivizing the project as follows:

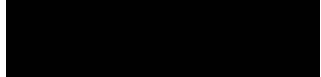
- a. City will waive its fees applicable to the building of the Development, such fees to include building, plumbing, mechanical, and similar fees.
- b. City will waive its parkland dedication fee applicable to the Development.
- c. City will approve a 10-year tax abatement for the Development, such agreement in accordance with Ch. 312, Texas Tax Code.

The incentives currently proposed by the Developer and supported by the City Council are subject to a written agreement(s) to be negotiated between the City and the Developer and brought back to City Council for its review and approval. The City's waiver of the various fees specified above shall not exceed \$480,000.00. Similarly, the total amount of the City's tax abatement shall not exceed \$520,000.00.

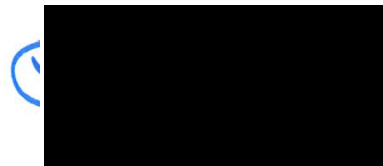
PASSED AND APPROVED ON this the 09 day of JULY A.D.,
2024.


 
_____, Mayor

APPROVED AS TO FORM:


_____
City Attorney

ATTEST:

City Secretary

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 8/12/2025

Report Date: 08/07/2025

Report No: 10.

Submitted By: Rachel Hughs

Subject: Consider, and act upon, Resolution 2025-24, updating the Notice of Right to Inspection of Public Records. *(Rachel, Hughs, City Clerk)* **(Roll Call Vote Required)**

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation: Approve the Resolution.

Background:

The City Manager wanted all public records requests under the Inspection of Public Records Act to be centrally located under the City Clerk. This is the reason for the Notice to Inspect Public Records amendment.

NOTICE OF RIGHT TO INSPECT PUBLIC RECORDS

- Provides the purpose of the Act
- How to submit requests, including a portal
- Required information
- Response time
- Board and Burdensome requests
- Inspection Hours
- Production of records
- Uncollected records
- Cost of records

RESOLUTION NO. 2025-24

**AMENDING THE NOTICE OF
RIGHT TO INSPECT PUBLIC RECORDS**

WHEREAS, NMSA 1978, § 14-2-1 the Inspection of Public Records Act (IPRA), states every person has the right to inspect public records of this state, with certain exceptions, and;

WHEREAS, the City of Alamogordo is committed to providing clear instructions for the public to submit a public records request, and;

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

WHEREAS, the City Manager desired all public records requests under the Inspection of Public Records Act to be centrally located under the City Clerk; and,

WHEREAS, the City of Alamogordo designates the City Clerk as the custodian of public records for the City to receive and respond to requests to inspect public records; and,

WHEREAS, IPRA is not intended to make the custodian of public records the only individual with power to respond to inspection requests; other employees may, on behalf of the records custodian, furnish public records for inspection, respond to requests, or fulfill other duties of the records custodian, therefore, an IPRA Division under the City Clerk was created; and,

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

WHEREAS, 2-03-240 of the Code of Ordinances states the Clerk shall furnish a copy of a record upon payment of a fee to be determined by the City Manager; and,

WHEREAS, the City Clerk may amend the IPRA fee schedule with the approval of the City Manager; and,

WHEREAS, this resolution will become effective on September 15, 2025.

NOW, THEREFORE BE IT RESOLVED, by the City Commission of the City of Alamogordo, that the Office of the City Clerk shall post the new Notice to Inspect Public Records.

PASSED, APPROVED, AND ADOPTED this _____ day of _____, 2025.

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

Susan L. Payne, Mayor

SEAL

ATTEST:

Rachel Hughs, City Clerk

APPROVED AS TO FORM:

Darrell Mori, City Attorney

NOTICE OF RIGHT TO INSPECT PUBLIC RECORDS

The Inspection of Public Records Act: Under the Inspection of Public Records Act (IPRA), NMSA 1978, 14-2-1 to -12, every person has the right to inspect public records of the City of Alamogordo. It is the responsibility of the City to make non-exempt public records available for inspection.

Submitting requests: Requests to inspect public records may be submitted to the Office of the City Clerk orally or in writing. However, the procedures and penalties prescribed by IPRA apply only to written requests. Requests may be submitted online through the City's online public records processing software at cityofalamogordonm.nextrequest.com. Alternatively, requests may be submitted in person or by mail to the Office of the City Clerk, located at 1376 E. Ninth Street, Alamogordo, NM 88310, or by phone at (575) 439-4100 option 6, by fax (575) 439-4396, or via email at IPRA@ci.alamogordo.nm.us.

Information required to process a written request:

- **Contact Information:** A written request must contain the name, address, and telephone number of the person making the request.
- **Description of Records:** The request must describe the records sought in sufficient detail to enable the records custodian to identify and locate the requested records.

Additional documents: Please provide any documents relating to your request. Such additional information has proven helpful in identifying, locating, and producing the records.

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

Broad and burdensome requests: If the records custodian determines that a written request is excessively broad or burdensome, IPRA states that the Custodian may have "an additional reasonable period of time" to complete the request.

- **Narrowing requests:** If your request is deemed excessively broad or burdensome, you may be able to reduce the time required to process your request by narrowing your request. Please work with us by clarifying what you need and providing us with additional information so we can identify the records you are interested in.
- **Multiple pending requests:** If a request is deemed broad or burdensome and the requester has multiple requests pending, we recommend that the requester advise on how they would like us to prioritize their requests. If we do not hear from the requester about how they would like their requests prioritized, then the request will be assigned to staff who will begin working on partial productions in the normal course and scope of their work.

(More information on next page.)

Inspection hours: The custodian of records or their designee will arrange for the requester to inspect records between 8:00 a.m. and 5:00 p.m. on regular business days, except for lunch hours of 12 p.m. and 1 p.m., and observed holidays.

Production of records: The City will provide a copy of a public record in an electronic format if the record is available in an electronic format and an electronic copy is specifically requested. Production of records in NextRequest, or on a flash drive will satisfy this requirement. NextRequest is a helpful tool for producing small amounts of records. Larger productions, including productions of emails and videos, will not be produced via NextRequest, and instead will be placed on a USB flash drive. If possible, the City will provide the electronic record in the file format in which it exists at the time of the request.

Uncollected records: Due to a significant number of uncollected requests, the City will make records responsive to public records requests available for thirty (30) days. If the records are not collected during that time, the copies will be destroyed or returned to the respective department. If the requester would like to access the records after thirty days, then the requester must submit a new request. The City will not continue processing a request if there are partial productions that have not been collected or fees that have not been paid.

Cost: The City may charge a reasonable fee for copying public records in paper form and for providing public data pursuant to IPRA. Although other fees sometimes apply, the most common City's fees are as follows:

Paper copies per page as authorized by NMSA 1978 § 14-2-9(C)(2).	\$1.00
Paper copies per page larger than 22 x 34 or larger (normally plats and plans).	Between \$3.00 - \$42.75
Records that are readily available electronically and are less than 30 pages.	No Charge.
Records available electronically and are over 31 pages will be put on a USB flash drive.	\$10.00 per USB flash drive (provided by the City)
Production of emails will be put on a USB flash drive.	\$10.00 per USB flash drive (provided by the City)
Faxed paper records per page, in addition to the records cost.	\$.50
Taxes will be added, in addition to the record cost.	Tax rate
Records that are mailed, in addition to the records cost.	Actual postage rates

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 8/12/2025

Report Date: 08/01/2025

Report No: 11.

Submitted By:

Subject: Consider, and act upon, Resolution 2025-27, delaying the sale of the fairgrounds parking lot for five years to allow Otero County time to identify an alternate location and develop a phased plan. (*Stephanie Hernandez, Acting City Manager, Priyam Chevdawala, Intern*) **(Roll Call Vote Required)**

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation:

Background:

RESOLUTION NO. 2025-27

A RESOLUTION TO DELAY THE SALE OF THE FAIRGROUNDS PARKING LOT FOR A PERIOD OF FIVE YEARS TO ALLOW OTERO COUNTY TIME TO IDENTIFY AN ALTERNATE LOCATION AND DEVELOP A PHASED RELOCATION PLAN FOR THE OTERO COUNTY FAIR

WHEREAS, On June 23, 2025, the City Commission held a special meeting with Otero County Commissioners, where all commissioners were in attendance to discuss the fairgrounds parking lot.

WHEREAS, the City of Alamogordo City Commission Owns 8.448552 Acres of the fairgrounds parking lot (Legal Description: S: 7 T: 16 R: 10 TR IN SW1/4NE1/4) (R018428).

WHEREAS, The Otero County Fair and Rodeo dates back to the 1930's and has evolved to encompass a variety of activities and events;

WHEREAS, The Otero County Fair and Rodeo attendance has increased annually according to the City of Alamogordo tourism software.

WHEREAS, The attendance, according to the city of Alamogordo's tourism software is as follows:

Year	Visits	Victors	50+ miles
2021	21,100	16,700	8.55%
2022	26,300	20,100	6.73%
2023	27,900	21,500	10.97%
2024	29,500	22,300	7.51%

WHEREAS, the City Commission stated in the joint meeting that the Fair and Rodeo has outgrown its current location.

WHEREAS, the City gets approached regularly to sell the parking lot as part of Alamogordo's growth and economic development;

WHEREAS, the City Commission has agreed to give the Otero County Commission, staff, and fair board time to identify a site and develop a phased plan.

THEREFORE BE IT RESOLVED, THAT the City Commission of the City of Alamogordo agrees not to sell the property for five (5) years from the adoption of this resolution.

PASSED, APPROVED AND ADOPTED this _____ day of _____, 2025.

CITY OF ALAMOGORDO, NEW MEXICO
a New Mexico municipal corporation

By: _____
Susan L. Payne, Mayor

ATTEST:

Rachel Hughs, City Clerk

APPROVED AS TO FORM:

Darrell Mori, City Attorney

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 8/12/2025

Report Date: 08/07/2025

Report No: 12.

Submitted By: Josh Rardin

Subject: Discussion on the Code of Ordinances sections 2-02-060 Code of conduct, 2-03-570 Code of conduct, and 2-02-050 City Commission use of social media. *(Josh Rardin, Commissioner)*

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation:

Background:

2-02-060. Code of conduct.

(a) *Purpose.* The City of Alamogordo seeks to foster and maintain transparency while conducting city business, creating policy, and undertaking the day-to-day operation of the city. This chapter establishes minimum standards of ethical behavior of elected and appointed officials. It sets forth explicit standards of conduct by requiring elected or appointed officials to disclose personal interests, financial or otherwise, in matters of the city and to remove themselves from decision-making when such interests exist.

(b) *Definitions.*

Administrative action. Action is based upon the application or interpretation of a city ordinance, state statute, or a proceeding involving a license permit, franchise, or development use.

Anything of value. As defined in §8-8-19(D), N.M.S.A.

Appointed official. A person who is not an elected official and has been appointed by the governing body.

Governing body of city commission. The Governing Body of the City of Alamogordo.

Confidential information. Information that has been classified confidential by law.

Conflict of interest. A situation in which a person exercising a duty has an interest, financial or otherwise, that potentially conflicts with the exercise of the duty or that may be perceived as conflicting with the exercise of the duty.

Contract. An agreement between two (2) or more parties, whether express or arising by operation of law.

Ethics official. The city attorney, or another attorney designated by the city manager, will act as the ethics official, performing reviews of complaints, conducting investigating actions, gathering information, and making recommendations to this chapter.

Elected official. A governing body includes a city commissioner or the mayor.

Ex-parte communication. Direct or indirect communication with a party or the party's representative outside the presence of the other parties concerning a pending adjudication that deals with substantive matters or issues on the merits of the proceedings. Ex-parte communications do not include statements that are limited to providing publicly available information about a pending adjudication or solely related to the status of the proceeding.

Family. An individual's spouse, domestic partner, parent, child, sibling, and like in-laws, by consanguinity or affinity, or persons, related or unrelated, living within the household.

Financial interest. Any interest of an elected official or an appointed official that is:

- a. An ownership interest or other interest in any contract or prospective contract with the city;
- b. An interest in the sale of real or personal property to or from the city;
- c. A financial relationship with a person or business whose interests may be affected by the city;
- d. Any employment or prospective employment for which negotiations have already begun where the prospective employer has an interest in the sale of real or personal property from the city; or
- e. Any other interest that may be affected by the city.

For this chapter, interest shall be one either as owner, part owner, partner, or shareholder, in which such individual owns more than two (2) percent of the outstanding stock or more than two (2) percent of the ownership interest of any other business that is doing business with the city in an amount in excess of seven thousand five hundred dollars (\$7,500.00) annually. An interest held by the elected official's spouse or minor children shall be considered the interest of the elected or appointed officials for the purposes of this chapter.

Frivolous. A determination is made by the ethics panel when two (2) or more complaints made by an individual or entity have been determined to be unsubstantiated and contain allegations that are found to have no factual basis.

Harassment. Harassment consists of knowingly pursuing a pattern of conduct intended to annoy, alarm, bully or intimidate another person and that serves no lawful purpose. The behavior must be such that it would cause a reasonable person to suffer substantial emotional distress.

Non-public information. Information that is obtained during an elected official's, appointed official's, or employee's duties and is subject to public inspection under state law, but that, because of its nature, is not readily accessible to the public; and if used or disclosed, a personal benefit or advantage is likely to result.

Party. A person who has submitted to the city an application seeking affirmative relief; a person who has filed a formal complaint or protest; a person who is the subject of a formal complaint or investigation; and members of the general public who participate in a pending adjudication.

Pending adjudication. Any application, petition, complaint, protest, investigation, or other administrative adjudicatory proceeding requiring a decision or action by the governing body.

Personal benefit. The obtaining or promise of obtaining anything of value.

Substantiated claim. Competent facts verify a violation of this chapter, and substantial evidence exists to support it.

Unsubstantiated claim. A claim that is not supported by competent facts or substantial evidence or existent of facts or an allegation that is not a per se violation of this chapter.

Non-partisanship. All actions, decisions, and votes on matters relating to city government shall be on the merits. Decisions shall be made objectively, without party or partisanship considerations, and without facts that are not directly and properly related to the matter requiring action.

(c) *Public trust.*

- (1) Elected or appointed officials shall act according to the highest principles of representative democracy to ensure that city government is worthy of public respect, trust, and support.
- (2) Elected or appointed officials shall not engage in conduct that they know or reasonably should know is likely to create in the minds of reasonable, objective, fair-minded observers the perception that they have misused their public positions unethically or otherwise have not conducted themselves in accordance with the standards of conduct of this chapter.
- (3) Elected or appointed officials shall not provide or disseminate to the public any information or data that they should reasonably know to be untrue, inaccurate, or misleading. It is incumbent upon elected or appointed officials to correct such information as quickly as reasonably possible.
- (4) It is a violation of this chapter for elected officials and appointed officials to knowingly violate their own rules of procedure or any other law or ordinance.

(d) *Conduct avoiding impropriety.*

- (1) Elected or appointed officials shall avoid conduct that creates the appearance of impropriety or that is otherwise unbecoming a public official. An impropriety can mean misconduct or behavior demonstrating an unethical process or improper influence.
- (2) Elected or appointed officials shall not knowingly engage in conduct that violates the rights of others to be treated fairly.

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- (3) Elected or appointed officials shall refrain from engaging in conduct, even if lawful, where personal gain or advantage is involved in a way that creates a reasonable inference that such office has been used for personal benefit.
- (e) *Prohibited financial interest in city business.*
- (1) No elected or appointed officials may have a financial interest if the elected or appointed official is in a decision-making capacity concerning the financial interest.
- (2) Elected or appointed officials with any financial interest shall disclose such interest in writing to the city attorney's office or by making an official record at a commission meeting. By filing a disclosure of interest with the city attorney or recording into the record at a commission meeting, the elected or appointed official shall be disqualified from participating in any debate, decision, or vote relating thereto.
- (f) *Conflict of interest, disclosure.*
- (1) Elected or appointed officials shall strictly avoid transactions and relationships that create a conflict of interest. Where a conflict of interest is unavoidable, the elected or appointed official shall disclose the conflict of interest and shall subordinate the conflicting interest to the public interest. The clerk shall record the disclosure as part of the minutes of the meeting at which the disclosure is made.
- (2) Elected or appointed officials shall exercise their duties, powers, and prerogatives without prejudice or favoritism to hire, promote, or reward family members, relatives, friends, or political supporters, or to hinder or punish enemies and opponents.
- (3) Elected or appointed officials shall assure that constituents and others who may be affected by decisions of the city have a fair and reasonable opportunity to express their concerns, grievances, and ideas without regard to their willingness or ability to provide benefits or political support to the elected or appointed official.
- (4) Elected or appointed officials shall not engage in any conduct that could create in the mind of a reasonable observer the belief that persons will receive better or different services if gifts, personal benefits, or political or charitable contributions are provided.
- (5) Elected or appointed officials shall not solicit or receive gifts, personal benefits, favors, gratuities or political or charitable contributions, or anything of value under circumstances that create a reasonable belief that special access, services, favors, or official or unofficial actions will be provided as a result. Nor may anything of value be solicited or received from a person or business doing business with the city, contracting with the city, regulated by the city, has an application pending before the city, or whose interests may be affected by the city.
- (6) Elected or appointed officials shall not accept anything of value from a person, business, or other entity when the elected or appointed official or employee knows or reasonably should know that said person, business, or entity does any business with the city, desires to do business with the city, contracts with the city, is regulated by the city, has an application pending before the city, or whose interests may be affected by the city.
- (g) *Confidential information and misuse of non-public confidential information.* No elected official or appointed official shall disclose or use confidential information maintained by the city without proper authorization. No elected or appointed official shall use confidential information for personal benefit. Such information shall not be used to advance said person's financial or other private interests.
- (h) *Use of position to obtain information.* No elected or appointed official shall use their position to obtain information from another entity or individual for personal benefit. Nor shall an elected or appointed official to obtain, or attempt to obtain, information from an individual or entity on behalf of the city when the information will be used for their personal interest or benefit.

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- (i) *Misuse of city property and resources for private gain or personal advantage.*
- (1) An elected or appointed official shall not use public property for any private or nongovernmental purpose except as expressly provided by law. Public property includes public funds, staff time, facilities, property, equipment, mailing lists, computer data, services, or any other governmental asset or resource. This section does not prohibit reserving or renting city property designated as either public or meeting space and is otherwise made available to all members of the public.
 - (2) Unless authorized by the City of Alamogordo employee manual, no city employee shall be asked or permitted to perform personal services for an elected or appointed official. An elected or appointed official shall not require a city employee to perform personal services or assist in a private activity.
- (j) *Misuse of city property or resources for political purposes.* No municipal resources, including funds, facilities, and personnel, may be used for political campaign purposes or to influence an election; provided that this shall not prohibit the use of public resources proposed for the limited purpose of educating voters about the details of a ballot question placed on the ballot as authorized by the City of Alamogordo Governing Body pursuant to § 1-16-3 N.M.S.A. 1978 (as amended). An elected official shall not use or authorize municipal funds, time, facilities, equipment, mailing lists, computer data, social media platforms, resources, services, or other government assets for political fundraising, campaigning, or influencing an election.
- (k) *Use of confidential information for private gain.* An elected, appointed, or former elected official who terminated city service within one (1) year shall not use or disclose confidential information to obtain a benefit for any person. This section does not allow the disclosure of information made confidential by law.
- (l) *Misuse of title or prestige of office for private gain or personal advantage.*
- (1) An elected or appointed official shall not use, induce, cause, or encourage others to use the authority, title, official letterhead, or prestige of the elected or appointed official for private gain or personal advantage.
 - (2) An elected or appointed official shall not solicit or accept anything of value under terms and conditions where the compensation is not commensurate with the services performed or where a reasonable person would believe that the authority, title, or prestige of office had been exploited.
- (m) *Political activity.*
- (1) No elected or appointed officials shall compel, coerce or intimidate any elected or appointed officials to make, or refrain from making, any political contribution. No elected or appointed officials shall solicit or obtain any political contribution from employees by coercion. Nothing in this subsection shall be interpreted to provide that an elected or appointed official is precluded from voluntarily making a contribution or receiving a voluntary contribution.
 - (2) No elected officer of the city shall hold any other elected office or be employed by the city during the term for which the member was elected.
 - (3) Nothing in this section shall be construed to prohibit the governing body from selecting any current, former mayor or city commissioner to represent the city before any other governmental entity.
 - (4) An elected or appointed official shall not require an employee to perform political activity:
 - a. As part of the employee's duties;
 - b. As a condition of city employment; or
 - c. During any time off that is compensated by the city.
 - (5) No elected or appointed official shall engage in any conduct that would, to an objective third party, constitute an undue threat to an employee's continued employment.

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- (6) The city shall employ no former mayor or city commissioner until one (1) year after the expiration of the term for which the member was elected.
- (n) *Coercion.*
- (1) An elected or appointed official shall not, directly or by authorizing another to act on their behalf, state or imply that the elected official's willingness to meet with a person or organization is dependent on the person or organization making a campaign contribution, donating to a cause favored by the official, or providing anything of value to the official; or
 - (2) An elected official shall not directly or by authorizing another to act on the elected official's behalf; or
 - (3) Agree or threaten to take or withhold any city governmental action as a result of a person's decision to provide or not provide a political contribution; or
 - (4) State or imply that the elected official will perform or refrain from performing a lawful constituent service as a result of a person's decision to provide or not provide a political contribution; or
 - (5) Agree to or participate in a scheme or plan intended to evade the requirements of any applicable state ethics statutes, this chapter, or another financial disclosure provision of state or city law; or
 - (6) Knowingly accept a contribution given or offered in violation of any applicable state ethics statutes or this chapter.
- (o) *Ex-parte communications.*
- (1) Ex-parte communications prohibited.
 - (2) An elected official or appointed official designated to hear an administrative adjudicatory matter pursuant to city ordinance shall not initiate, permit or consider a communication directly or indirectly with a party or the party's representative outside of the hearing and outside of the presence of all other interested parties concerning the pending matter.
 - (3) An administrative adjudicatory matter involves the use of a discretionary standard, as specified by code or other city ordinance, to an application for discretionary approval.
 - (4) Notwithstanding the provisions of subsection (a)(1) of this section, ex-parte communications for procedural or administrative purposes, during emergencies, or that do not deal with the merits of the application shall not be prohibited if the elected official or appointed official reasonably believes that no party will gain an advantage as a result of the ex-parte communication and promptly notifies all other parties of the substance of the ex-parte communication.
 - (5) An elected or appointed official who receives or who makes or knowingly causes to have communication prohibited by this chapter shall disclose the communication to all parties and allow other parties to respond.
- (p) *Recusal.*
- (1) An elected official or appointed official shall recuse themselves in any pending administrative adjudicatory matter in which the official is unable to make a fair and impartial decision or in which there is reasonable doubt about whether the official can make a fair and impartial decision, including:
 - a. When the official has a personal bias or prejudice concerning a party or its representative or has prejudged a disputed evidentiary fact. For the purposes of this paragraph, "personal bias or prejudice" means the predisposition toward a person based on a previous or ongoing relationship, including a professional, personal, familial, or other intimate relationship, that renders the official unable to exercise their functions impartially; or
 - b. When the official has a pecuniary or financial interest in the outcome of the proceeding; or

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- c. When, during the previous employment, the official served as an attorney, advisor, consultant, or witness in the matter of controversy (previous employment is employment during the previous twelve (12) months); or
 - d. When the official announced how they would rule on the adjudicatory proceeding or a factual issue in the adjudicatory proceeding.
 - (2) An elected or appointed official shall not be required to recuse themselves in any pending administrative adjudicatory matter merely because the official possesses and discusses general viewpoints on public policy that an application may raise. Similarly, an elected official shall not be required to recuse themselves in any pending administrative adjudicatory matter merely because the elected official made representations during a political campaign on viewpoints on public policy that an application may raise.
 - (3) The elected or appointed official recusing themselves shall disclose the reason for recusal.
 - (4) If, before the hearing, an elected official or appointed official fails to recuse themselves when it appears that grounds exist, a party shall promptly notify the elected official or appointed official of the grounds for recusal. If the elected or appointed official declines to recuse themselves upon request of a party, the official shall provide a complete explanation as to why they refuse.
 - (5) If during the hearing, an elected official or appointed official fails to recuse themselves when it appears that grounds exist, a party shall promptly notify the mayor of the grounds for recusal. If the elected official or appointed official declines to recuse themselves, the chair may entertain a motion to excuse the official from further participation in the matter. If the motion is successful, the official shall be excused from further participation in the matter.
 - (q) *Restrictions on the governing body; personnel system and management.* The governing body shall not perform general executive management functions in the administration of city government; these functions shall be delegated to the city manager, including administration of the personnel system. This paragraph shall not apply to matters of policy, the responsibility, and the authority of the governing body to approve the annual budget.
 - (r) *Reporting, investigating, and determination of violations pertaining to this chapter.*
 - (1) Any elected or appointed official, employee, entity, or member of the public may submit a complaint of unethical conduct to the city attorney's office, a complaint alleging facts which, if true, would constitute a violation of this chapter. If the city attorney is not appointed as the ethics official, the city attorney shall forward the complaint to ethics official.
 - (2) Ethics official shall investigate all applicable complaints forwarded to them and make one (1) of the following recommendations regarding the complaint:
 - a. Unsubstantiated claim under this chapter; or
 - b. Substantiated claim under this chapter.
 - (3) If an unsubstantiated claim is a recommendation made by the ethics official, the ethics official shall produce a report reflecting their findings and details of the investigation. An unsubstantiated claim shall not be forwarded to the ethics panel unless necessary to determine a frivolous claim.
 - (4) Upon the completion of an investigation, the ethics official may determine that a claim is substantiated. At such time, the ethics official will produce a report which contains their findings and recommendations. The ethics panel shall conduct a public hearing of all substantiated claims and shall decide, by majority vote, if a provision(s) under this chapter has been violated. Penalties shall be determined according to this chapter. The ethics official shall be present at the public hearing to respond to questions from the ethics panel regarding their findings and recommendations. The

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- complaining party and the respondent to the complaint shall be notified via certified mail to all hearings. The respondent or a legal representative hired by the respondent shall be allowed to respond to the complaint at a public hearing.
- (5) If an individual or entity files two (2) or more unsubstantiated complaints directed at the same individual for harassment or to cause the individual public shame or embarrassment, the ethics official may recommend a public hearing to the ethics panel.
- a. Notice shall be provided to the complaining party no later than fourteen (14) calendar days before the scheduled public hearing.
 - b. The ethics panel shall conduct a public hearing to determine if the complaints are frivolous and if the complaints were intended to annoy, harass or otherwise cause the targeted individual public shame or embarrassment.
 - c. If the ethics panel determines by majority vote that the complaints are frivolous and intended to annoy, harass, or cause the targeted individual shame or embarrassment, they may prescribe a penalty under this chapter.
 - d. If the complaining party disagrees, that may be appealed to the twelfth judicial district court.
- (s) *City ethics panel.*
- (1) If the ethics official substantiates a complaint, an ethics panel shall be created.
 - (2) A City of Alamogordo Ethics Panel shall be created that shall consist of three (3) members plus one (1) alternate.
 - a. The city manager will appoint the chair of the ethics panel. The chair preferably shall be a lawyer, former judicial official, or former law enforcement.
 - b. The remaining two (2) members and alternate shall be appointed by the ethics panel chair.
 - (3) All ethics panel members shall not be affiliated with the city government in any capacity. This includes, but is not limited to, employment, employment for which the salary is in any way funded by or through the city, appointment, or election. The members of the ethics panel may not hold elected public office or office with any political party within the city.
 - (4) The jurisdiction of the ethics panel is limited to acting within the scope of matters covered by this chapter but may periodically review and recommend amendments to this chapter.
 - (5) The ethics panel shall adopt rules of procedure for conducting hearings pursuant to this chapter. The rules of procedure shall be consistent with the rules for conducting administrative hearings in Alamogordo and shall be reviewed by the city attorney.
 - (6) The ethics panel shall have the power to issue administrative subpoenas compelling attendance of witnesses at hearings and the production of documents and the authority to seek enforcement of those subpoenas by the twelfth judicial district court.
 - (7) If the ethics panel finds, by a preponderance of evidence and upon a majority vote, that the elected or appointed official has violated this chapter, the ethics panel may impose any of the following penalties after the written findings of fact and conclusions of law:
 - a. A civil fine not to exceed five hundred dollars (\$500.00); or
 - b. A written finding of censure; or
 - c. A referral to the district attorney or appropriate governmental office for commencement of criminal or other proceedings; or

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- d. A recommendation to the district attorney that proceedings to remove the person from elected office be commenced pursuant to § 10-4-1 et seq., N.M.S.A. 1978 (as amended).
 - (8) No action may be taken by the ethics official or ethics panel on any complaint filed later than one (1) year after a violation of this chapter is alleged to have occurred, or that is filed more than six (6) months from the date of the discovery of the alleged violation upon due diligence by the complaining party of facts constituting a violation, whichever event occurs later.
 - (9) The ethics panel may also provide advisory opinions regarding the applicability or interpretation of the provisions of this chapter upon the request of any elected official or appointed official.
 - (10) Members of the ethics panel shall not receive any salary or compensation for services.
 - (t) *Right of appeal.* Any decision of the ethics panel finding a violation of this chapter may be appealed to the twelfth judicial district court pursuant to 1978 § 39-3-1.1, N.M.S.A. 1978 (1998, as amended). Should the respondent appeal and wish to have legal representation, it is their responsibility to hire said representation.
 - (u) *Non-retaliation.* The governing body does not tolerate retaliation, workforce discrimination, or harassment of any kind against any person who has reported a violation of this chapter. This non-retaliation provision applies whether the complaint is ultimately determined to be unsubstantiated or substantiated. All elected or appointed officials are specifically prohibited from taking any adverse employment action, engaging in workplace discrimination or harassment of any kind, or other retaliatory action against anyone for reporting a claim of violation. Anyone who believes that they have been subject to workplace discrimination or harassment of any kind or that has been retaliated against in violation of this chapter should submit a complaint of unethical conduct to the ethics panel by delivering a complaint to the city attorney's office.

(Ord. No. 1662, 11-1-22)

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 11/1/2022

Report Date:

Report No: 4.

Submitted By:

Subject: Consider, and act upon, the adoption and final publication of Ordinance 1662, amending Chapter 2 of the Alamogordo Code of Ordinances, by adding 02-060 "Code of Conduct." (*Brian Cesar, City Manager*)
(Roll Call Vote Required)

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation: Adopt the ordinance.

Background:

On October 11, 2022, the Commission approved the ordinance for first publication with a vote of 6-0.

ORDINANCE NO. 1662

ALAMOGORDO CODE OF ORDINANCES ELECTED AND APPOINTED OFFICIAL'S CODE OF CONDUCT

WHEREAS, the City Commission of the City of Alamogordo, New Mexico, recognizes that elected or appointed officials of the city are bound to uphold the Constitution of the United States, the New Mexico Constitution, and federal, state, and local laws.

WHEREAS, the City Commission of the City of Alamogordo, New Mexico, acknowledges that elected or appointed officials adhere to the highest standards in the exercise of powers and duties of the office.

WHEREAS the City Commission of the City of Alamogordo, New Mexico, recognizes that elected or appointed officials must impartially carry out their duties regardless of personal considerations

WHEREAS the City Commission of the City of Alamogordo, New Mexico, recognizes that public interest is their primary objective.

BE IT THEREFORE ORDAINED by the City Commission of the City of Alamogordo, New Mexico that Chapter 2 of the *code of ordinances* is amended to include 02-060 “*Code of Conduct*” and shall read as follows

02-02-060 CODE OF CONDUCT

(a) Purpose

The City of Alamogordo seeks to foster and maintain transparency while conducting city business, creating policy, and undertaking the day-to-day operation of the city. This chapter establishes minimum standards of ethical behavior of elected and appointed officials. It sets forth explicit standards of conduct by requiring elected or appointed officials to disclose personal interests, financial or otherwise, in matters of the city and to remove themselves from decision-making when such interests exist.

(b) Definitions

- (1) *Administrative Action*. Action is based upon the application or interpretation of a city ordinance, state statute, or a proceeding involving a license permit, franchise, or development use.
- (2) *Anything of Value*. As defined in NMSA §8-8-19 (D).
- (3) *Appointed Official*. A person who is not an elected official and has been appointed by the Governing Body.
- (4) *Governing Body of City Commission*. The Governing Body of the City of Alamogordo.
- (5) *Confidential Information*. Information that has been classified confidential by law.

- (6) *Conflict of Interest*. A situation in which a person exercising a duty has an interest, financial or otherwise, that potentially conflicts with the exercise of the duty or that may be perceived as conflicting with the exercise of the duty.
- (7) *Contract*. An agreement between two or more parties, whether express or arising by operation of law.
- (8) *Ethics Official*. The City Attorney, or another attorney designated by the City Manager, will act as the ethics official, performing reviews of complaints, conducting investing actions, gathering information, and making recommendations to this chapter.
- (9) *Elected Official*. A Governing Body includes a City Commissioner or the Mayor.
- (10) *Ex-Parte Communication*. Direct or indirect communication with a party or the party's representative outside the presence of the other parties concerning a pending adjudication that deals with substantive matters or issues on the merits of the proceedings. Ex-parte communications do not include statements that are limited to providing publicly available information about a pending adjudication or solely related to the status of the proceeding.
- (11) *Family*. An individual's spouse, domestic partner, parent, child, sibling, and like in-laws, by consanguinity or affinity, or persons, related or unrelated, living within the household.
- (12) *Financial Interest*. Any interest of an elected official or an appointed official that is:
 - a. an ownership interest or other interest in any contract or prospective contract with the city;
 - b. an interest in the sale of real or personal property to or from the city;
 - c. a financial relationship with a person or business whose interests may be affected by the city;
 - d. any employment or prospective employment for which negotiations have already begun where the prospective employer has an interest in the sale of real or personal property from the city; or
 - e. any other interest that may be affected by the city.

For this chapter, interest shall be one either as owner, part owner, partner, or shareholder, in which such individual owns more than two percent of the outstanding stock or more than two percent of the ownership interest of any other business that is doing business with the city in an amount in excess of \$7,500 annually. An interest held by the elected Official's spouse or minor children shall be considered the interest of the Elected or appointed officials for the purposes of this chapter.

- (13) *Frivolous*. A determination is made by the Ethics Panel when two or more complaints made by an individual or entity have been determined to be unsubstantiated and contain allegations that are found to have no factual basis.
- (14) *Harassment*. Harassment consists of knowingly pursuing a pattern of conduct intended to annoy, alarm, bully or intimidate another person and that serves no lawful purpose. The behavior must be such that it would cause a reasonable person to suffer substantial emotional distress.

- (15) *Non-Public Information*. Information that is obtained during an elected official's, appointed official's, or employee's duties and is subject to public inspection under state law, but that, because of its nature, is not readily accessible to the public; and if used or disclosed, a personal benefit or advantage is likely to result.
- (16) *Party*. A person who has submitted to the city an application seeking affirmative relief; a person who has filed a formal complaint or protest; a person who is the subject of a formal complaint or investigation; and members of the general public who participate in a pending adjudication.
- (17) *Pending Adjudication*. Any application, petition, complaint, protest, investigation, or other administrative adjudicatory proceeding requiring a decision or action by the Governing Body.
- (18) *Personal Benefit*. The obtaining or promise of obtaining anything of value.
- (19) *Substantiated Claim*. Competent facts verify a violation of this chapter, and substantial evidence exists to support it.
- (20) *Unsubstantiated Claim*. A claim that is not supported by competent facts or substantial evidence or existent of facts or an allegation that is not a per se violation of this chapter.
- (21) *Non-Partisanship*. All actions, decisions, and votes on matters relating to city government shall be on the merits. Decisions shall be made objectively, without party or partisanship considerations, and without facts that are not directly and properly related to the matter requiring action.

(c) *Public Trust*

- (1) Elected or appointed officials shall act according to the highest principles of representative democracy to ensure that city government is worthy of public respect, trust, and support.
- (2) Elected or appointed officials shall not engage in conduct that they know or reasonably should know is likely to create in the minds of reasonable, objective, fair-minded observers the perception that they have misused their public positions unethically or otherwise have not conducted themselves in accordance with the standards of conduct of this chapter.
- (3) Elected or appointed officials shall not provide or disseminate to the public any information or data that they should reasonably know to be untrue, inaccurate, or misleading. It is incumbent upon elected or appointed officials to correct such information as quickly as reasonably possible.
- (4) It is a violation of this chapter for elected officials and appointed officials to knowingly violate their own rules of procedure or any other law or ordinance.

(d) *Conduct Avoiding Impropriety*

- (1) Elected or appointed officials shall avoid conduct that creates the appearance of impropriety or that is otherwise unbefitting a public official. An impropriety can mean misconduct or behavior demonstrating an unethical process or improper influence.
- (2) Elected or appointed officials shall not knowingly engage in conduct that violates the rights of others to be treated fairly.

(3) Elected or appointed officials shall refrain from engaging in conduct, even if lawful, where personal gain or advantage is involved in a way that creates a reasonable inference that such office has been used for personal benefit.

(e) Prohibited Financial Interest in City Business

(1) No elected or appointed officials may have a financial interest if the elected or appointed official is in a decision-making capacity concerning the financial interest.

(2) Elected or appointed officials with any financial interest shall disclose such interest in writing to the City Attorney's office or by making an official record at a commission meeting. By filing a disclosure of interest with the City of Attorney or recording into the record at a commission meeting, the elected or appointed official shall be disqualified from participating in any debate, decision, or vote relating thereto.

(f) Conflict of Interest, Disclosure

(1) Elected or appointed officials shall strictly avoid transactions and relationships that create a conflict of interest. Where a conflict of interest is unavoidable, the elected or appointed official shall disclose the conflict of interest and shall subordinate the conflicting interest to the public interest. The Clerk shall record the disclosure as part of the minutes of the meeting at which the disclosure is made.

(2) Elected or appointed officials shall exercise their duties, powers, and prerogatives without prejudice or favoritism to hire, promote, or reward family members, relatives, friends, or political supporters, or to hinder or punish enemies and opponents.

(3) Elected or appointed officials shall assure that constituents and others who may be affected by decisions of the city have a fair and reasonable opportunity to express their concerns, grievances, and ideas without regard to their willingness or ability to provide benefits or political support to the elected or appointed official.

(4) Elected or appointed officials shall not engage in any conduct that could create in the mind of a reasonable observer the belief that persons will receive better or different services if gifts, personal benefits, or political or charitable contributions are provided.

(5) Elected or appointed officials shall not solicit or receive gifts, personal benefits, favors, gratuities or political or charitable contributions, or anything of value under circumstances that create a reasonable belief that special access, services, favors, or official or unofficial actions will be provided as a result. Nor may anything of value be solicited or received from a person or business doing business with the city, contracting with the city, regulated by the city, has an application pending before the city, or whose interests may be affected by the city.

(6) Elected or appointed officials shall not accept anything of value from a person, business, or other entity when the elected or appointed official or employee knows or reasonably should know that said person, business, or entity does any business with the city, desires to do business with the city, contracts with the city, is regulated by the city, has an application pending before the city, or whose interests may be affected by the city.

(g) Confidential Information and Misuse of Non-Public Confidential Information

No elected official or appointed official shall disclose or use confidential information maintained by the city without proper authorization. No elected or appointed official shall

use confidential information for personal benefit. Such information shall not be used to advance said person's financial or other private interests.

(h) Use of Position to Obtain Information

No elected or appointed official shall use their position to obtain information from another entity or individual for personal benefit. Nor shall an elected or appointed official to obtain, or attempt to obtain, information from an individual or entity on behalf of the city when the information will be used for their personal interest or benefit.

(i) Misuse of City Property and Resources for Private Gain or Personal Advantage

(1) An elected or appointed official shall not use public property for any private or nongovernmental purpose except as expressly provided by law. Public property includes public funds, staff time, facilities, property, equipment, mailing lists, computer data, services, or any other governmental asset or resource. This section does not prohibit reserving or renting city property designated as either public or meeting space and is otherwise made available to all members of the public.

(2) Unless authorized by the City of Alamogordo employee manual, no city employee shall be asked or permitted to perform personal services for an elected or appointed official. An elected or appointed official shall not require a city employee to perform personal services or assist in a private activity.

(j) Misuse of City Property or Resources for Political Purposes

No municipal resources, including funds, facilities, and personnel, may be used for political campaign purposes or to influence an election; provided that this shall not prohibit the use of public resources proposed for the limited purpose of educating voters about the details of a ballot question placed on the ballot as authorized by the City of Alamogordo Governing Body pursuant to Section 1-16-3 NMSA 1978 (as amended). An elected official shall not use or authorize municipal funds, time, facilities, equipment, mailing lists, computer data, social media platforms, resources, services, or other government assets for political fundraising, campaigning, or influencing an election.

(k) Use of Confidential Information for Private Gain

An elected, appointed, or former elected official who terminated city service within one year shall not use or disclose confidential information to obtain a benefit for any person.

This section does not allow the disclosure of information made confidential by law.

(l) Misuse of Title or Prestige of Office for Private Gain or Personal Advantage

(1) An elected or appointed official shall not use, induce, cause, or encourage others to use the authority, title, official letterhead, or prestige of the elected or appointed official for private gain or personal advantage.

(2) An elected or appointed official shall not solicit or accept anything of value under terms and conditions where the compensation is not commensurate with the services performed or where a reasonable person would believe that the authority, title, or prestige of office had been exploited.

(m) Political Activity

(1) No elected or appointed officials shall compel, coerce or intimidate any elected or appointed officials to make, or refrain from making, any political contribution. No elected or appointed officials shall solicit or obtain any political contribution from

employees by coercion. Nothing in this subsection shall be interpreted to provide that an elected or appointed official is precluded from voluntarily making a contribution or receiving a voluntary contribution.

(2) No elected officer of the city shall hold any other elected office or be employed by the city during the term for which the member was elected.

(3) Nothing in this section shall be construed to prohibit the Governing Body from selecting any current, former mayor or city commissioner to represent the city before any other governmental entity.

(4) An elected or appointed official shall not require an employee to perform political activity:

- a. as part of the employee's duties;
- b. as a condition of city employment; or
- c. during any time off that is compensated by the city.

(5) No elected or appointed official shall engage in any conduct that would, to an objective third party, constitute an undue threat to an employee's continued employment.

(6) The city shall employ no former mayor or city Commissioner until one year after the expiration of the term for which the member was elected.

(n) Coercion

(1) An elected or appointed official shall not, directly or by authorizing another to act on their behalf, state or imply that the elected official's willingness to meet with a person or organization is dependent on the person or organization making a campaign contribution, donating to a cause favored by the official, or providing anything of value to the official.

(2) An elected official shall not directly or by authorizing another to act on the elected official's behalf:

(3) Agree or threaten to take or withhold any city governmental action as a result of a person's decision to provide or not provide a political contribution; or

(4) State or imply that the elected official will perform or refrain from performing a lawful constituent service as a result of a person's decision to provide or not provide a political contribution; or

(5) Agree to or participate in a scheme or plan intended to evade the requirements of any applicable state ethics statutes, this chapter, or another financial disclosure provision of state or city law; or

(6) Knowingly accept a contribution given or offered in violation of any applicable state ethics statutes or this chapter.

(o) Ex-Parte Communications

(1) Ex parte communications prohibited.

(2) An elected official or appointed official designated to hear an administrative adjudicatory matter pursuant to city ordinance shall not initiate, permit or consider a communication directly or indirectly with a party or the party's representative outside of the hearing and outside of the presence of all other interested parties concerning the pending matter.

(3) An administrative adjudicatory matter involves the use of a discretionary standard, as specified by code or other city ordinance, to an application for discretionary approval.

(4) Notwithstanding the provisions of subsection (A)(1) of this section, ex parte communications for procedural or administrative purposes, during emergencies, or that do not deal with the merits of the application shall not be prohibited if the elected official or appointed official reasonably believes that no party will gain an advantage as a result of the ex parte communication and promptly notifies all other parties of the substance of the ex parte communication.

(5) An elected or appointed official who receives or who makes or knowingly causes to have communication prohibited by this chapter shall disclose the communication to all parties and allow other parties to respond.

(p) Recusal.

(1) An elected official or appointed official shall recuse themselves in any pending administrative adjudicatory matter in which the official is unable to make a fair and impartial decision or in which there is reasonable doubt about whether the official can make a fair and impartial decision, including:

- a. When the official has a personal bias or prejudice concerning a party or its representative or has prejudged a disputed evidentiary fact. For the purposes of this paragraph, "personal bias or prejudice" means the predisposition toward a person based on a previous or ongoing relationship, including a professional, personal, familial, or other intimate relationship, that renders the official unable to exercise their functions impartially; or
- b. When the official has a pecuniary or financial interest in the outcome of the proceeding; or
- c. When, during the previous employment, the official served as an attorney, advisor, consultant, or witness in the matter of controversy (previous employment is employment during the previous 12 months); or
- d. When the official announced how they would rule on the adjudicatory proceeding or a factual issue in the adjudicatory proceeding.

(2) An elected or appointed official shall not be required to recuse themselves in any pending administrative adjudicatory matter merely because the official possesses and discusses general viewpoints on public policy that an application may raise. Similarly, an elected official shall not be required to recuse themselves in any pending administrative adjudicatory matter merely because the elected official made representations during a political campaign on viewpoints on public policy that an application may raise.

(3) The elected or appointed official recusing themselves shall disclose the reason for recusal.

(4) If, before the hearing, an elected official or appointed official fails to recuse themselves when it appears that grounds exist, a party shall promptly notify the elected official or appointed official of the grounds for recusal. If the elected or appointed official declines to recuse themselves upon request of a party, the official shall provide a complete explanation as to why they refuse

(5) If during the hearing, an elected official or appointed official fails to recuse themselves when it appears that grounds exist, a party shall promptly notify the Mayor of the grounds for recusal. If the elected official or appointed official declines to recuse themselves, the Chair may entertain a motion to excuse the official from further participation in the matter. If the motion is successful, the official shall be excused from further participation in the matter.

(q) Restrictions on the Governing Body; Personnel System and Management

The Governing Body shall not perform, collectively or individually, general executive management functions in the administration of city government; these functions shall be delegated to the City Manager, including administration of the personnel system. This paragraph shall not apply to matters of policy, the responsibility, and the authority of the Governing Body to approve the annual budget.

(r) Reporting, Investigating, and Determination of Violations Pertaining to this Chapter

(1) Any elected or appointed official, employee, entity, or member of the public may submit a complaint of unethical conduct to the City Attorney's office, a complaint alleging facts which, if true, would constitute a violation of this chapter. If the City Attorney is not appointed as the Ethics Official, the City Attorney shall forward the complaint to Ethics Official.

(2) Ethics Official shall investigate all applicable complaints forwarded to them and make one of the following recommendations regarding the complaint:

- a. Unsubstantiated claim under this chapter; or
- b. Substantiated claim under this chapter.

(3) If an unsubstantiated claim is a recommendation made by the Ethics Official, this ethics official shall produce a report reflecting their findings and details of the investigation. An unsubstantiated claim shall not be forwarded to the Ethics Panel unless necessary to determine a frivolous claim.

(4) Upon the completion of an investigation, the Ethics Official may determine that a claim is substantiated. At such time, the Ethics Official will produce a report which contains their findings and recommendations. The Ethics Panel shall conduct a public hearing of all substantiated claims and shall decide, by majority vote, if a provision(s) under this chapter has been violated. Penalties shall be determined according to this chapter. The Ethics Official shall be present at the public hearing to respond to questions from the Ethics Panel regarding their findings and recommendations. The complaining party and the respondent to the complaint shall be notified via certified mail to all hearings. The respondent or a legal representative hired by the respondent shall be allowed to respond to the complaint at a public hearing.

(5) If an individual or entity files two or more unsubstantiated complaints directed at the same individual for harassment or to cause the individual public shame or embarrassment, the Ethics Official may recommend a public hearing to the Ethics Panel.

- a. Notice shall be provided to the complaining party no later than 14 calendar days before the scheduled public hearing.

- b. The Ethics Panel shall conduct a public hearing to determine if the complaints are frivolous and if the complaints were intended to annoy, harass or otherwise cause the targeted individual public shame or embarrassment.
- c. If the Ethics Panel determines by majority vote that the complaints are frivolous and intended to annoy, harass, or cause the targeted individual shame or embarrassment, they may prescribe a penalty under this chapter.
- d. If the complaining party disagrees, that may be appealed to the Twelfth Judicial District Court.

(s) City Ethics Panel

- (1) If the Ethics Official substantiates a complaint, an ethics panel shall be created.
- (2) A City of Alamogordo Ethics Panel shall be created that shall consist of three members plus one alternate.
 - a. The City Manager will appoint the Chair of the Ethics Panel. The Chair preferably shall be a lawyer, former judicial official, or former law enforcement.
 - b. The remaining two members and alternate shall be appointed by the Ethics Panel Chair.
- (3) All ethics panel members shall not be affiliated with the city government in any capacity. This includes, but is not limited to, employment, employment for which the salary is in any way funded by or through the city, appointment, or election. The members of the Ethics Panel may not hold elected public office or office with any political party within the city.
- (4) The jurisdiction of the Ethics Panel is limited to acting within the scope of matters covered by this chapter but may periodically review and recommend amendments to this chapter.
- (5) The Ethics Panel shall adopt rules of procedure for conducting hearings pursuant to this chapter. The rules of procedure shall be consistent with the rules for conducting administrative hearings in Alamogordo and shall be reviewed by the City Attorney.
- (6) The Ethics Panel shall have the power to issue administrative subpoenas compelling attendance of witnesses at hearings and the production of documents and the authority to seek enforcement of those subpoenas by the Twelfth Judicial District Court.
- (7) If the Ethics Panel finds, by a preponderance of evidence and upon a majority vote, that the elected or appointed official has violated this chapter, the Ethics Panel may impose any of the following penalties after the written findings of fact and conclusions of law:
 - a. A civil fine not to exceed \$500; or
 - b. A written finding of censure; or
 - c. A referral to the District Attorney or appropriate governmental office for commencement of criminal or other proceedings; or
 - d. A recommendation to the District Attorney that proceedings to remove the person from elected office be commenced pursuant to NMSA 1978 § 10-4-1 et seq. (as amended).
- (8) No action may be taken by the Ethics Official or Ethics Panel on any complaint filed later than one year after a violation of this chapter is alleged to have occurred, or that is

filed more than six months from the date of the discovery of the alleged violation upon due diligence by the complaining party of facts constituting a violation, whichever event occurs later.

(9) The Ethics Panel may also provide advisory opinions regarding the applicability or interpretation of the provisions of this chapter upon the request of any elected official or appointed official.

(10) Members of the Ethics Panel shall not receive any salary or compensation for services.

(t) Right of Appeal

Any decision of the Ethics Panel finding a violation of this chapter may be appealed to the Twelfth Judicial District Court pursuant to NMSA 1978 § 39-3-1.1 (1998, as amended).

Should the respondent appeal and wish to have legal representation, it is their responsibility to hire said representation.

(u) Non-Retaliation

The Governing Body does not tolerate retaliation, workforce discrimination, or harassment of any kind against any person who has reported a violation of this chapter. This non-retaliation provision applies whether the complaint is ultimately determined to be unsubstantiated or substantiated. All elected or appointed officials are specifically prohibited from taking any adverse employment action, engaging in workplace discrimination or harassment of any kind, or other retaliatory action against anyone for reporting a claim of violation. Anyone who believes that they have been subject to workplace discrimination or harassment of any kind or that has been retaliated against in violation of this chapter should submit a complaint of unethical conduct to the Ethics Panel by delivering a complaint to the City Attorney's office.

2-03-570. Code of conduct.

(a) *Overview of roles and responsibilities of the governing body.*

(1) *Mayor (City Charter, article VIII, § 2).*

- Presides at all meetings of the commission.
- Perform such duties as are imposed by the commission.
- Has the same speaking and voting rights as any other commissioner.
- Is the official head of the city for all ceremonial and military purposes.
- With the advice and approval of the commission, appoints and removes members to boards, commissions and committees.
- Leads the commission and management in developing short and long range plans and goals relating to city growth and development.
- Required to present an annual state of the city message or report.

(2) *Mayor pro-tem (City Charter, article VIII, §§ 1 and 3).*

- Elected by the commission.
- Performs the duties of the mayor if the mayor is absent.

(3) *Commission members.*

- All members of the city commission, including the mayor and mayor pro-tem, have equal votes. No member has more power than any other member, and all should be treated with equal respect (City Charter, article VII, § 1).
- Responsible to pass ordinances and other measures conducive to the welfare of the city, and to do all acts required for the general welfare of the city, except as are delegated to the city manager or other city officials (Alamogordo Municipal Code § 2-02-040).
- Creates all necessary administrative offices (Alamogordo Municipal Code § 2-02-040).

(b) *Code of conduct.*

(1) *Application.* This code of conduct applies to all members of city commission (including the mayor).

(2) *Definitions.* When used in section 2-03-051, the following words, terms and phrases shall have the following meanings, unless expressly stated otherwise or unless the context indicates otherwise:

City commission means the legislative and governing body of the city, consisting of the mayor and city commission members.

City shall mean the City of Alamogordo, Otero County, New Mexico.

Confidential information means any information to which an official has access in such person's official capacity which may not be disclosed to the public except pursuant to state and/ or federal law and which is not otherwise a matter of public record or public knowledge.

Elected official means the mayor and all other city commissioners.

Employee means any person employed by the city, including those individuals on a full-time, part-time or internship basis, but does not include independent contractors.

Intentionally means a person acts intentionally, or with intent, with respect to the nature of his conduct or to a result of his conduct when it is the person's conscious objective or desire to engage in the conduct or cause the result.

Knowingly means a person acts knowingly, or with knowledge, with respect to the nature of the person's conduct or to circumstances surrounding the conduct when the person is aware of the nature of the conduct or that the circumstances exist. A person acts knowingly, or with knowledge, with respect to a result of the person's conduct whether the person is aware that the conduct is reasonably certain to cause the result.

Official action means any vote, decision, recommendation, approval, disapproval or other action, including inaction, which includes use of discretionary authority of any city official.

Public employee or city staff means any non-appointed person holding any paid position of employment with the city.

(3) *Code of Conduct.* Each member of the city commission has a duty to:

- a. *Act in the public interest.* Recognizing that stewardship of the public interest must be their primary concern, the commissioners will work for the common good of the people of Alamogordo and not for any private or personal interest, and they will endeavor to treat all persons, claims and transactions in a fair and equitable manner.
- b. *Comply with the law.* Commissioners shall comply with the laws of the federal government, the State of New Mexico and the City of Alamogordo in the performance of their public duties. These laws include, but are not limited to: the United States and New Mexico constitutions; the New Mexico Governmental Conduct, Inspection of Public Records, and Open Meetings Acts; and the City of Alamogordo Charter, Municipal Code, resolutions and policies.
- c. *Conduct of members.* The professional and personal conduct of commissioners must be above reproach and avoid even the appearance of impropriety. Commissioners shall refrain from abusive conduct, personal charges or verbal attacks upon the character or motives of other members of the commission, city staff or the public.
- d. *Respect for process.* Commissioners shall perform their duties in accordance with the processes and rules of order established by the city commission governing the deliberation of public policy issues, the involvement of the public, and the implementation of policy decisions of the city commission by city staff.
- e. *Conduct at public meetings.* Members shall prepare themselves for public issues; listen courteously and attentively to all public discussions before the body; and focus on the business at hand. They shall refrain from interrupting other speakers; making personal comments not germane to the business of the body; or otherwise interfering with the orderly conduct of the meetings. Members shall commit to practice civility and decorum in discussions and debates. Members shall commit to honoring the role of the chair person in maintaining order, keeping discussion on track, and focusing discussion on agenda items at hand. Commissioners shall avoid debate and argument with the public. Commissioners shall not engage in personal attacks of any kind under any circumstance.
- f. *Communication.* Commissioners shall publicly share substantive information that is relevant to a matter under consideration by the commission which they have received from sources outside of the public decision-making process.
- g. *Confidential information.* Commissioners shall respect the confidentiality of information concerning the property, personnel or affairs of the city. They shall neither disclose confidential

information without proper legal authorization, nor use such information to advance their personal, financial or other private interests.

- h. *Representing an official city position.* Commissioners may use their title only when conducting official city business, for information purposes, or as an indication of background and expertise, carefully considering whether they are exceeding or appearing to exceed their authority. Once the commission has taken a position on an issue, all official city correspondence regarding that issue will reflect the commission's adopted position. If a member of the commission appears before another governmental agency organization to give a statement on an issue affecting the city, the commissioner should indicate the majority position and opinion of the commission. Personal opinions and comments may be expressed only if the commissioner clarifies that these statements do not reflect the official position of the city commission. Personal opinions and comments may be expressed only if the commissioner clarifies that these statements do not reflect the official position of the city commission.
 - i. *Improper influence.* Commissioner shall not attempt to pressure or influence the decisions, recommendations or priorities of advisory boards absent the approval of the majority of the commission.
 - j. *Policy role of members.* Commissioners shall respect and adhere to the commission-manager structure of city government as provided by state law, City Charter and City Code. In this structure, the commission determines the policies of the city with the advice, information and analysis provided by the public, advisory boards, and city staff. Commissioners therefore shall not interfere with the administrative functions of the city or the professional duties of city staff; nor shall they impair the ability of staff to implement commission policy decisions. Commissioners should never express concerns about the performance of a city employee in public, to the employee directly, or to the employee's director. Comments about staff performance should be made only to the city manager through private correspondence or conversation.
 - k. *Other public agencies.* If a commission member appears before another governmental agency or organization to give a statement on an issue, the commissioner must clearly state if his or her statement reflects personal opinion or is the official stance of the city. Even if the commissioner is representing his or her own personal opinions, remember that this still may reflect upon the city as an organization. If the commissioner is representing the city, the commissioner must support and advocate the official city position on an issue, not a personal viewpoint. If the commissioner is representing another organization whose position is different from the city, the commissioner should withdraw from voting on the issue if it significantly impacts or is detrimental to the city's interest. Commissioners should be clear about which organizations they represent and inform the mayor and commission of their involvement. City letterhead may be used only when the commissioner is representing the city and the city's official position. A copy of official correspondence should be given to the city clerk to be filed as part of the permanent public record.
- (4) *Violations.*
- a. For the purpose of this section, the following words shall be interpreted as follows:
 - 1. *Warning.* This is the least severe form of action. Warning warns the commissioner that his or her conduct violated the code of conduct. The warning cautions the commissioner that further violations could lead to a more severe action.
 - 2. *Sanction.* This is the next most severe form of action. Sanction should be directed to a particular member of the city commission based on a particular action (or set of actions) that is determined to be in violation of the code of conduct, but is considered by the

commission to be not sufficiently serious to require censure. A sanction is distinguished from censure in that it is not a punishment.

3. *Censure.* Censure is the most severe form of action contemplated in this policy. Censure is a formal statement of the city commission officially reprimanding one (1) of its members. It is a punitive action, which serves as a penalty imposed for wrongdoing. Censure should be used for cases in which the commission determines that the violation of the code of conduct is a serious offense. In order to protect the overriding principle of freedom of speech, the city commission shall not impose censure on any of its members for the exercise of his or her First Amendment rights, no matter how distasteful the expression was to the commission and the city. However, nothing herein shall be construed to prohibit the city commission from collectively condemning and expressing their strong disapprobation of such remarks.
 4. *Cause.* More than mere suspicion. There must be facts and circumstances within the preliminary review committee members' knowledge, and of which they have trustworthy information, sufficient to justify the belief of a reasonable person that a violation of the code of conduct has occurred.
 5. *Complainant.* Complainant means a person or entity that makes a complaint alleging a violation of the code of conduct.
- b. *Preliminary review committee established.* There is hereby created a city preliminary review committee consisting of the three (3) most senior members of the commission. Seniority will be determined using the length of a commissioner's continuous service as a commissioner. Length of service will be calculated from the date that the commissioner took the oath of office. In the event two (2) or more commissioners began their service at the same time, prior service on the commission shall be used to determine seniority. For commissioners who are elected or appointed to fill a vacancy, the commissioner's time in office commences after he/she is sworn into office. Any commissioner who is the subject of the complaint shall be disqualified from serving on the committee.
- c. *Complaints against commissioner.* Any person who believes a commissioner in her or his official capacity has violated the code of conduct may file a sworn written complaint with the city attorney identifying:
1. The complainant's name, address, and telephone number;
 2. The name of the commissioner who is the subject of the complaint;
 3. The nature of the alleged violation, including the specific provision of the code of conduct allegedly violated;
 4. A statement of facts constituting the alleged violation and the dates on which or period of time in which the alleged violation occurred;
 5. All documents or other material in the complainant's possession that are relevant to the allegation, a list of all documents or other material relevant to the allegation that are available to the complainant but not in the complainant's possession, and a list of all other documents or other material relevant to the allegations but unavailable to the complainant, including the location of the documents, if known;
 6. A list of witnesses, what they may know, and their contact information, if known; and
 7. If the alleged violation occurred more than ninety (90) days before the sworn complaint is filed with the city attorney, then the complaint must identify the date the complainant learned of the alleged violation and provide a statement of the facts surrounding the

discovery of the violation, a list of the persons with knowledge about the date the violation was discovered, and a summary of the information they possess about the discovery.

The complaint shall include an affidavit stating that the information contained in the complaint is true and correct, or that the complainant has good reason to believe and does believe that the facts alleged constitute a violation of the code of conduct. If the complaint is based on information and belief, the complaint shall identify the basis of the information and belief, including all sources, contact information for those sources, and how and when the information and/or belief was conveyed to the complainant by those sources. The complainant shall swear to the facts by oath before a notary public or other person authorized by law to administer oaths under penalty of perjury.

- d. *Time for filing.* A complaint must be filed on or before the ninetieth day after the violation is alleged to have occurred. All complaints will be time barred after the lapse of ninety (90) days from the date of the alleged incident.
- e. *Procedures.* The city attorney will develop written rules of procedure to govern the review process, including the right of a city commissioner against whom the complaint has been lodged to respond to the complaint, attend any hearing, and present witnesses and other evidence on her or his own behalf.
- f. *Initial screening of complaints.* Upon receipt of a complaint, the city attorney shall notify in writing the city commissioner who is the subject of the complaint. The commissioner who is the subject of the complaint shall have the right to respond to the complaint. Any such response shall be provided to the city attorney in writing within fourteen (14) days of the commissioner being provided with notification and a copy of the complaint. The city attorney shall review each complaint filed alleging a violation of the code of conduct by a member of the city commission within twenty-one (21) days and either:
 - 1. Return it for being incomplete;
 - 2. Dismiss it for being untimely;
 - 3. Refer alleged violations of New Mexico or federal laws to an appropriate law enforcement agency if the complaint states on its face allegations that, if true, would constitute a violation of New Mexico or federal law; or
 - 4. If the city attorney determines that the complaint complies with the requirements of subsection (b)(4)c. above, forward a copy to the preliminary review committee along with any response submitted by the commissioner who is the subject of the complaint.

When the city attorney receives a vague complaint or one lacking in detail, the city attorney shall contact the complainant to request written clarification. If the complainant fails to provide the city attorney with written clarification, a written report to that effect shall be submitted to the preliminary review committee.

- g. *Committee review.* The members of the preliminary review committee shall individually review the complaint and all other documents or other material submitted including any response submitted by the commissioner who is alleged to have violated the code of conduct. Members of the committee shall not communicate or cause another to communicate with another member of the committee, the person who submitted the complaint, the commissioner who is the subject of the complaint, or any other member of the city commission during their period of review regarding the allegations contained in the complaint. Based on a review of the material provided to them, each individual member of the preliminary review committee shall determine whether there is cause to believe that the commissioner violated the code of conduct. Each committee

member shall, within twenty-one (21) calendar days of receipt of the material, return their finding of cause or no-cause to the city attorney.

h. *Commission consideration.*

1. *Review of committee's findings.* After receiving the finding of cause or no-cause from the preliminary review committee, the city attorney shall place the matter on the next regularly scheduled city commission meeting for review by the full commission.
2. *Presumptions.* A finding of cause by two (2) or more members of the preliminary review committee does not mean that any of the complaint's allegations are true or that the commissioner has violated this code of conduct.
3. *No-cause finding.* If two (2) or more members of the preliminary review committee make a finding of no-cause, a vote of at least five (5) commissioners shall be required in order for the commissioner to take any further action on the complaint.
4. *Cause finding.* If two or more members of the preliminary review committee make a finding of cause, the city commission shall consider the complaint.
 - i. If the commission determines there is no cause to believe that the commissioner violated the code of conduct, then the commission shall take no further action in the matter.
 - ii. If the commission determines there is cause to believe that the commissioner violated the code of conduct, but decides not to conduct a formal hearing on the matter, the commission shall take no further action in the matter, except that the commission may issue a warning to the commissioner.
Notwithstanding a decision not to conduct a formal hearing, the affected commissioner shall have the right to request a full and complete hearing before the city commission if the commission issues a warning.
 - iii. If the commission determines there is cause to believe that the commissioner violated the code of conduct, and also decides to pursue action more severe than a warning, the commission shall order that a formal hearing be conducted. If deemed necessary, the city commission may direct the city manager with the concurrence of the city attorney to appoint a special legal counsel to conduct a further investigation and to provide a written report to the commission. The commission shall make reasonable attempts to conduct a formal hearing into the allegations contained in the complaint within ninety (90) calendar days of the commission's decision to conduct a hearing. The city clerk shall give notice of the hearing at least fourteen (14) days prior to the date set for the hearing. The affected commissioner shall have the right to file a written answer to the charge and to appear at the hearing with or without legal counsel, submit testimony, be fully heard, and to examine and cross examine witnesses.

i. *Commission action.*

1. It is the intent of the city commission to educate, and where necessary, discipline commissioners who violate the code of conduct. Discipline shall be progressive, from the least punitive to the most punitive measures, unless the commission believes progressive discipline does not provide the appropriate sanction because of the gravity of the offense, or because the commission does not believe the sanction would deter future misconduct. In all instances, the totality of the circumstances shall be taken into consideration in resolving a matter, including the intent of the one accused of wrongdoing.

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2. Based on a review of the evidence presented, the commission shall, by a concurring vote of at least four (4) members, determine whether there is cause to believe that the respondent violated the code of conduct; and, if so, whether to impose any sanctions against the commissioner. In making a determination, the commission should determine if taking all the facts and evidence into consideration, there are reasonable grounds to believe or not believe that the commissioner violated the code of conduct. Any commission member found in violation of the code of conduct may face the following:
 - i. Warning;
 - ii. Sanction;
 - iii. Censure by the commission, which may include:
 - A. Loss of city-related travel privileges for a specified time period;
 - B. A civil fine;
 - C. A demand for non-monetary restitution (e.g., a public apology, the return of gifts); and/or
 - D. A demand for reimbursement of administrative, legal, and/or investigation costs and expenses incurred in investigating and prosecuting the violation of the code of conduct.
 3. The amount of any civil fine imposed by the commission for a violation of this code of conduct shall not exceed the fine which may be imposed for a municipal code violation.
 4. In determining whether to impose a civil fine and the amount of the civil fine, the commission shall consider the totality of the circumstances, including, but not limited to:
 - i. The nature and seriousness of the violation;
 - ii. The duration of the violation;
 - iii. The effort taken by the commissioner to correct the violation;
 - iv. The presence or absence of any intention to conceal, deceive or mislead;
 - v. Whether the violation was negligent or intentional;
 - vi. Whether the commissioner demonstrated good faith by consulting staff or another government agency or an attorney;
 - vii. Whether the commissioner had prior notice that his or her conduct was prohibited;
 - viii. The amount, if any, of the financial or other loss to the city as a result of the violation;
 - ix. The value of anything received or sought in the violation;
 - x. Whether the officer was truthful and cooperative in the investigation; and
 - xi. Any other relevant circumstance.
 5. Any civil fines imposed pursuant to this section may be setoff against the expense reimbursement funds received by the commissioner.

All action or decisions with regard to the complaint shall be made during a regularly scheduled meeting which is open to the public.

(Ord. No. 1478, 12-2-14)

Editor's note(s)—Ord. No. 1478, adopted December 2, 2014, amended the Code by adding a new § 2-03-051. In order to avoid duplication of section numbers, the new provisions have been designated as § 2-03-570 at the discretion of the editor.

2-02-050 City commission use of social media.

- (a) These terms and conditions apply to all our current and future official City of Alamogordo social media sites.
- (b) Elected or appointed officials shall request to publish or post information under the city's official social media platforms.
- (c) Elected or appointed officials should know that social media posts, comments, and replies to those posts and any direct or private messages sent to us may be public records subject to applicable public records release.
- (d) The City of Alamogordo's social media accounts are not monitored 24/7. Automatic replies will be set up, asking citizens to use official communications, such as city email or phone, to contact city staff or report a complaint.
- (e) Elected or appointed officials are prohibited from conducting city business on their private pages.

Violation of this section is subject to steps outlined in *The City of Alamogordo Code of Conduct for Elected and Appointed Officials*.

(Ord. No. 1659, 11-1-22)

**CITY OF ALAMOGORDO, NEW MEXICO
CITY COMMISSION REGULAR MEETING MINUTES
6:30 P.M., COMMISSION CHAMBERS
September 27, 2022**

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

**DUSTY WRIGHT, MAYOR PRO-TEM
KARL MELTON, COMMISSIONER
BRIAN CESAR, CITY MANAGER
ASHLEY SMITH, CITY ATTORNEY
RACHEL HUGHS, CITY CLERK**

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

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

APPROVAL OF AGENDA

Commissioner Rardin moved to approve the agenda.
Commissioner Melton seconded the motion.
Motion carried with a vote of 7-0-0.

PRESENTATIONS

1. Honor Flight Mission presentation. (Scott Fredrick, US Veterans MC NM State Chapter Treasurer)

Mr. Fredrick said this was an opportunity for the community to come together and celebrate something we can all get our arms around and appreciate, which is our veterans. He said Saturday at roughly 8 PM, weather dependent, we should be arriving back with two local veterans, hopefully a van provided by Holloman Air Force Base, seven to ten motorcycles, a Patriot Guard Rider's truck, and hopefully an escort provided by some of our law enforcement. He said the plan is to turn right slowly up White Sands, turn right on 10th, turn left onto New York, and then pull right in front of the County Courthouse, which has lots of room for people to stand there and welcome our veterans back. He said he wanted to thank Downtown, they have offered the Gardens on New York. He said we will have a gathering, a small reception, where the public can meet the veterans, talk to them, ask questions, and say thank you for your service and welcome home. Mr. Frederick proceeded to show a video for this presentation.

Mayor Payne said she will certainly be there.

2. Alamogordo Public School behind the scenes presentation. (Chuck Andreas, Citizen)

Mr. Andreas said he gave a presentation to the School Board on May 18th; and gave them about fifteen days' notice to respond to his questions and facts based on IPRA's and documents provided by New Mexico PED. He said silence, crickets. He said he gave a presentation to the County in June and same thing; he got a response from the County and citizens, but not from the schools. So, if it is fact, or is false, open it up for questioning, let's interrogate it. If it is the truth, it will stand the test no matter what. So tonight, this presentation is going to be a rapid-fire PowerPoint on Alamogordo Public Schools and it is going to be behind-the-scenes. Mr. Andreas proceeded to present the PowerPoint.

PUBLIC COMMENT

Gloria Killian said her parents, her grandparents, and her great-grandparents are all buried over at Monte Vista Cemetery in the old section. She said she would like to challenge all of you to drive through Monte Vista Cemetery in the old section, it is a disgrace to the community, the tumbleweeds are as tall as she is. She said we need to not wait for the Big Give Program, the volunteers from Holloman Airmen to come and clean it up like they did last year in October. They use weed eaters, and the stems on those weeds are not going to be cut down with a weed eater. It is awful. She said she understands that Gene, the Sexton, we are very happy to have him working there, he is a good worker, but he only has one other person. There are two people that maintain the Cemetery and her understanding is they are only allowed to maintain each side of the Cemetery, but they are not supposed to work in the older section. She said she would like to think that someone would be allowed to spray for weeds before they totally get out of hand, so it doesn't look like it does. She said she was told by someone that those are family plots, like where her parents and grandparents are, and that family is supposed to keep it up. She said there is no way that family members are going to go out and take care of family plots; she said she would like to see the City hire more people to work under the Parks and Recreation division and maybe help take care of it before it gets so out of hand.

CITY MANAGER'S REPORT

City Manager Cesar made the following remarks:

1. The area that is being talked about is the non-perpetual care, that is up to the family members to maintain that area. He said that on October 8th, Honored Past, along with Keep Alamogordo Beautiful will be doing a cleanup, cutting the weeds, etcetera. The way the Monte Vista Cemetery was set up, that area is not maintained by City staff. Keep Alamogordo Beautiful is a federally funded program and is designed for these types of cleanups, but it is not the only thing that Keep Alamogordo Beautiful does. She is exactly right, the weeds are very tall. It has been a challenging year, not just for City staff, but for the citizens in trying to keep up with the weeds.
2. From the State's Economic Development Outdoor Recreation Department, the City of Alamogordo was one of twenty communities around New Mexico that received a grant; ours was in the amount of \$99,000. That money is going to be used as part of outdoor recreation. The Community Services Department will be working with the Engineering Department on rehabilitating the walking trail on Indian Wells from Washington towards White Sands. They will go as far as the \$99,000 will take them. If we are a little bit short, we will be coming back to Commission through a budget resolution so that we are not stopping mid-block, but we need to have that costed out and bids-in first.
3. The other thing that has gone out on our social media accounts, the City is applying for a grant through the Land and Water Conservation Fund. The restoration project at Bonito Lake has been going on since the Little Bear Fire in 2012; the lake has been cleaned out and that project is complete. We are doing the final closeout documents and payments on that. At the tail-end of that project, we also received money to finally address the water dam refacing and the intake tower. That project, barring weather delays, will be wrapping up at the mid-part of next month. What we are looking at with this grant application is a 50/50 match, so we are applying for \$250,000 and the City match will be \$250,000. The first project we will be looking to fund is the actual roadway; the City of Alamogordo owns the roadway just below the dam, and then around to the West Lake Campground. That road is not in good condition at this point, it has had very little maintenance because of all the construction activities since 2012. As part of this grant application, and this is the information that went out on social media, one of the things we have to do in this grant is solicit public participation in a very short survey that has to do with outdoor recreation. Senator Ben Ray Lujan is encouraging the City to apply for this grant and will do what he can do to help let us be successful in obtaining that grant.

REMARKS AND INQUIRIES BY THE CITY COMMISSION

Commissioner Rardin made the following comments:

He addressed City Manager Cesar and said that over on Cuba Avenue, between 10th and 11th Street, he said he did not know if the City did this patch or if it was a contractor, but it is settling again. He said he didn't know if we could have staff look at that and get it redone. It has a good depression in it.

Later on the agenda we have a street maintenance program bid coming up; he said when he was on the Commission before, we used to utilize the Cutler process. If we could take a look at utilizing maybe Cutler again and try to get more bang for our buck for these roads when we are fixing them, instead of doing the old pulverize-and-pave and putting all brand-new down. City Manager Cesar said we went away from that maybe somewhere around 2013-2014; the City used to piggyback off the New Mexico DOT portion of the State contract. In that year, they changed the way they bid that out, which didn't allow for municipalities or other entities to piggyback off it. Once we have the Street Assessment, the Water and Sewer Assessment, everything is brought together and we are coming back before Commission to give the proposed projects and timelines to complete those; whether it is Cutler, it won't be like what you remember from the traditional Street Maintenance Program. We will be looking to get the most bang for the buck and use the most appropriate treatment on the various roadways. Commissioner Rardin said back in the day when they used to that, we would get ten or fifteen years out of those roads using that process, it is fairly quick and simple, and gives a very nice driving surface that you don't bounce down all the time. Maybe if we can get enough roads together, we can have them bid it directly to us rather through the State contractor.

Mayor Payne made the following comments:

Pastor Matt Celoria was assaulted, and she would just ask that you keep him in your prayers. It is a pretty sad day when a pastor of a local church is assaulted. There was an incident up in Albuquerque recently at Calvary Church, a security on-staff there was shot and killed. This is getting to be too much, and we need to pray for our churches.

CONSENT AGENDA

3. Approve the minutes for the September 13, 2022, Regular meeting. (Rachel Hughs, City Clerk)
4. Consider, and act upon, the award of RFQ 2022-07 Professional Services for Development of Master Plan for Community Services to Consensus Planning, Inc. (Veronica Ortega, Community Services Director)
5. Consider, and act upon, approval of Resolution No. 2022-42 requesting approval for the establishment of a new special revenue fund for the Cannabis Regulation Act funds totaling an estimated \$204,000. (Evelyn Huff, Finance Director) (Roll Call Vote Required)
6. Consider, and act upon, Resolution 2022-44 requesting written approval from the Local Government Division of the Department of Finance and Administration, State of NM for the revised budget numbers computed as of September 27, 2022. (Evelyn Huff, Finance Director) (Roll Call Vote Required)
7. Consider, and act upon, adoption and final publication of Ordinance 1658 Case Z-2022-0003(A), a map amendment to change the zoning of two parcels located south of Airport Rd. and west of Business Center Blvd. better known as Parcel Numbers 01N4052098330195 and

01N4052098462198 from R-1 Single Family Dwelling to M-2 Industrial Dwelling. (Stella Rael, City Planner) (Roll Call Vote Required)

8. Consider, and act upon, the intergovernmental agreement between Otero County and the City of Alamogordo Police Department for the City to receive \$150,000 annually to provide services from the Alamogordo Police Department Mobile Crisis Response Team to all of Otero County. (Richard Denton, Chief of Police, and Jeannette Borunda, Mobile Crisis Response Team Clinical Director)

Commissioner McDonald moved to approve the Consent Agenda.

Commissioner Paul seconded the motion.

Roll Call Vote was taken.

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

NEW BUSINESS

9. Consider, and act upon, Resolution 2022-43 naming the commission chambers the Donald E. Carroll Commission Chambers. (Commission) (Roll Call Vote Required)

City Clerk Hughs said she was asked to put the resolution on to be able to name this commission chambers the Donald E. Carroll Commission Chambers in honor of his serving 25 years of service. He served 12 straight years in the position of Mayor from March 1996 to March 2008.

Commissioner Rardin said he believed Donald was the longest serving Mayor in Alamogordo's history.

Mayor Payne said it looks like Community Services Director Ortega may have some information for us. Community Services Director Ortega said she understands that this was a request from Senator Ron Griggs, to have the chambers named after Donald E. Carroll who was our longest-standing Mayor for the City. With that, we are approaching the Commission to ask to have the approval to have this chamber named on his behalf.

Commissioner Rardin asked where we would put the plaque, outside or in here. Community Services Director Ortega said there would be a plaque outside. City Manager Cesar said a plaque just outside the door, named above the doorway, and then on the exterior the building also. Community Services Director Ortega said we would ask to do a dedication ceremony later with the family if it is approved.

Mayor Payne shared a story of former Mayor Don Carroll.

Commissioner Rardin moved to approve.

Mayor Pro-Tem Wright seconded the motion.

Roll Call Vote was taken.

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

10. Consider, and act upon, award of Public Works Bid No. 2022-006, to La Luz Dirt & Paving, LLC related to the FY21 Street Maintenance Program - Ridgecrest Drive project in an amount not to exceed \$384,519.19, including NMGR. (Bob Johnson, Engineering Manager)

Engineering Manager Johnson said the work consists of installing new six-inch water main valves, connections, and water services to about 50 residences. Fire hydrants, removal and replacement of concrete sidewalk, curb gutter, construction of one new driveway apron, earthwork, milling, paving, patchwork, and traffic control. We did advertise the project on August 14th and 21st, we opened bids

on September 14th, and we had three bidders. The recommendation to award by the engineer is also attached to your packet, along with bid tabulation. The performance period is about ninety days once we issue notice to proceed.

Mayor Payne asked if that was how long it will take. Engineering Manager Johnson said once we issues notice to proceed, but there are some items that have a substantial lead time

Commissioner Rardin asked Engineering Manager Johnson if there was a reason why we have one bid that is substantially higher than the engineer's estimate; we've got two that are consider lower, is there a reason for that. Engineering Manager Johnson said the engineer's estimate was based upon the ridiculous fluctuation in material prices that have been going on for the last year and continues to go. He said that they erred on the side of caution. Commissioner Rardin said that is why their estimate is considerably higher. Engineering Manager Johnson said it is about 25% higher than La Luz Dirt and Paving, although between the first and second bidders there is about an 11% spread, so they are not too far apart. Commissioner Rardin said yeah, they are not too far off.

Mayor Payne said it seems like in the past, this particular company has been on the lower end of the bids, but she could be wrong. Engineering Manager Johnson said La Luz Dirt and Paving is a smaller company, but they do good work.

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

11. Consider and act upon the first publication of ordinance 1660, amending Chapter 5 "Alcoholic Beverages" of the Alamogordo Code of Ordinances. (Rachel Hughs, City Clerk) (Roll Call Vote Required)

City Clerk Hughs said we did an amendment not too long ago on Chapter 5 for Alcoholic Beverages. These further amendments are staff recommendations to remove duplicate State language, and in doing so, if he State changes their language, we don't have to change our ordinance. The other amendment is to remove Temporary Alcoholic Beverage Dispensers Permits, however the City Clerk's Office will continue to sign the approval or disapproval for the State's Public Celebration Permits, or the Special Dispenser's Permit applications that an applicant would bring into our office.

Commissioner Rardin said it appears we are trying to be business friendly when it comes to this, so that is a good thing. Commissioner Rardin asked City Manager Cesar do you really think we can get this done in one day. City Manager Cesar said if you had a liquor license and you are going to participate in some temporary event, because you hold the license, but the City of Alamogordo controls the property, you would have to come in, and we have one portion we have to sign off on saying that where you are wanting to sell the alcohol meets our ordinances or zoning. So really, what we are checking is to make sure that the property is away from schools, churches, etcetera. The only reason we are saying one business day is because the City Clerk might not be right there available as you come in, but for the most part, the person should be walking out on the same day either with our signature on it saying to the State that yes we are approving, and it is upon the applicant to supply all the other information that the State looks at, to determine whether or not they will issue the temporary license. If we are disapproving it, or not signing off on it, we will be giving the applicant the reason, which primarily would be well, you are too close to school or church, in the wrong zoning or a residential area, so one business day should more than enough for us to say yes it is okay or it is not okay.

Commissioner Rardin moved to approve.

Commissioner Burnette seconded the motion.

Roll Call Vote was taken.

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

12. Consider and act upon the first publication of ordinance 1659, amending chapter 2 of the Alamogordo Code of Ordinances, by adding 02-050 "City Commission Use of Social Media". (Brian Cesar, City Manager) (Roll Call Vote Required).

City Manager Cesar said that this is something that has been a topic of discussion for years. As the Commission is aware, we do get records request on a very frequent basis, and for the most part, the records that are being requested are in the City's control. If someone requests information on your City emails, or staff members emails, the City Clerk has the ability to put in a work order and have all emails pulled. What we don't have control over is personal social media accounts and this has caused issues for many years now. So basically, what this is saying is that you as City Commissioners recognize the official City of Alamogordo pages if you want to conduct City business as a Commissioner. On a social media platform, you will use the official City of Alamogordo social media accounts, you will submit that to a staff member, and they will get it posted on whichever platform it is. This isn't taking away from any of the Commissioners ability to use their personal Facebook accounts. What you are seeing in this is that you will not conduct City business, and that doesn't mean that you can't take a post that we have up, for example, the City of Alamogordo put out that is sign-up time for the Summer activities at the REC Center; you can repost or post all day long about that, it is just conducting official City business, that you are saying you won't do on your accounts. What this does for the City is, if we have all the official communications from the various Commissioners, the Mayor, and the Mayor Pro-Tem, and we get those records requests, we can quickly pull off the information that is being requested. The other that it does is give us somewhat of a buffer if there are complaints, lawsuits, etcetera; for a number of Commissioners we have had those over the years. Through the Municipal League, the City of Alamogordo, ultimately the citizens have paid for those settlement agreements in the past. This does not restrict you all from doing Facebook, Twitter, etcetera, it is really saying that in your official capacity, you will only use our recognized, City-created, government accounts.

Commissioner Rardin said in the ordinance, down there at the bottom, it says violation of this ordinance is subject to steps outlined in the Alamogordo Code of Conduct for elected and appointed officials. Since that doesn't exist yet, and is only up for discussion tonight, do we want to change that in there, up to such time as that actually exists.

City Attorney Smith said she would agree actually, that section we might need to revisit, or take out for now, and then add it once we do have that Code of Conduct outlined. When we get to the Code of Conduct section, you will see that it does talk about social media and stuff like that. She said as the City Manager explained, this is really supposed to try to limit our liability when it comes to these suits. She said when she looked at the case law concerning this, the big thing was city business, are you conducting city business on your personal page. If you are conducting city business on your personal page, then it can be IPRA'd. So we are basically putting this, so that we are saying, if you wish to conduct City business on Facebook, do it through our approved accounts, that way we are not having to get your private accounts.

Mayor Payne said what would we put there, if we are not going to include that. Commissioner Rardin said just strike that for now, and add it back in amended later, since that document doesn't exist yet. Mayor Payne said she did not have a problem with that but was a little curious. We are going to look at this Code of Conduct next, and what if we decide not to move forward with it, what would be an example of something you put there. Commissioner Rardin said State Law or Governmental Conduct

Act. Mayor Payne said violation of this ordinance, because there has to be a consequence for violating it, right. City Attorney Smith said we could try to reference the State Statutes. Commissioner Rardin said not to kick the can down the road, but depending on what Item 13 is, you are going to bring that back possibly at the next meeting, could we possibly table this one until that meeting, and then that way we don't have to bring it back and publish it again twice. Not that he didn't want to pass it, he was all for it. City Attorney Smith said if you want to consider the Code of Conduct first, you can table it if you choose. Commissioner Rardin said just do it all in the same meeting one week, because that other one is just a discussion only. Mayor Payne said it is not an action item, right. Commissioner Rardin said he just did not want to have to pass this, then turn around six weeks from now and bring it back. City Manager Cesar said you can table this item to the next meeting, dependent on the discussion on the next item, it is staff's intention after the discussion is to bring the Code of Conduct in ordinance format for first publication at the next meeting. Commissioner Rardin said wouldn't it make sense to just do it all, all in one.

Commissioner Melton said before we move on, he did have one clarifying question. He said you know Brian, we had a discussion about this, but the line between City business and personal business, that is really for Number 5 here, that is when you interact with a constituent, correct. That is when you identify as a Commissioner, and they ask for something and you reply back. City Attorney Smith said exactly, kind of like what you just said. The case law basically explains City business as, say on your private site, a citizen comes and says we need to fix this pothole. If you then reply oh yes, I will get that fixed, then that is conducting City business. She said her suggestion is to refer any such thing to the official channels. If you have a general comment referring them, like this is my personal page, please refer any City business to the proper channels.

Commissioner Rardin said so we are just going to table this until the next meeting, depending on the outcome of Item 13. City Manager Cesar said you will have to make a motion.

Commissioner Rardin moved to table the item.

Commissioner Burnett seconded the motion.

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

13. Discuss possible new ordinance on the Code of Conduct for Elected and Appointed Officials. (Brian Cesar, City Manager).

Citizens made the following comments.

Ronda Merrick said she is grateful that you have took on a Code of Conduct policy. She said she only hopes that it does not become the joke it was last time that we tried. She said she does believe in the putting the past behind us, and moving forward. She said she only hopes this time, if you are going to have the Code of Conduct for the Commissioners, you follow the policies. She said her wish for the City is to be a City who straightens the crown of each other without telling them it was crooked.

Richard Merrick said a couple of you were here on this dais when we took the City Code of Conduct away. He said he believe that Mayor Payne was here and serving, and he believed that Commissioner Rardin was too. He said he first wanted to commend City Manager Cesar and the City Attorney's Office for putting together a well thought-out ordinance. He said he took time to read it, and it is much better than what we had before. As we know in the past, the Code of Conduct really had no teeth, as the Commission was judging their peers, and hence the reason the Code of Conduct was removed, because citizens did not feel they were being taken seriously. So having an Ethics Panel outside of the influence of City Hall is an absolutely beautiful and wonderful idea. He said it takes it away from you guys to have judge each other, and it puts it in an independent panel that is going to look at the

facts, and there is no outside influence. He said he would like to see one change made in the code concerning the Ethics Panel. Right now, what is written, it is a three member panel, and he would urge you to consider to change it to consist of a Chair, and one citizen from each District for a total of seven members. Let's get the citizens and your constituents involved in this Panel. We can accomplish this in a similar manner as we already use our Boards and Committees, you know, people that are interested in being on the panel would submit some kind of application, and we would look at it the same way we look at our Boards, and each one of the panels members and the Chair, would serve for one year. At the end of the year, review the selections, and if there is other people that may want to be on the Panel, we put them in, we take those out. Maybe there is people that don't want to do it anymore. Hopefully we never have to convene an Ethics Panel, but that would in the perfect world. He said he thinks by bringing somebody from each District, just like you guys represent the City, the Ethics Panel is going to represent the entire City if something was to happen with a Commissioner. He said he thinks that would open the transparency and understanding of what goes on. Other than that, most of it is really the rules and regulations that the Commission is supposed to follow are the same as they were before, but the thing that changed was that Ethics Panel. The Chairperson should be somebody with some kind of law background to help the common citizen to be able to understand where and what we are deciding on.

Kathy Ramsey said she is here to really celebrate this Code, she is really impressed. She said she had the opportunity over her career to work on a lot of policy in regards to ethics, and this is very well-written. There is nothing that is more important to her in government than ethics and integrity. She said she thinks this where you build public trust, that is where you build people's willingness to work together, and on the other side of it, unethical behavior, or misconduct, or any dishonesty in leadership will really destroy trust. She said that one of things she really likes about this policy, this Code, is that it also speaks without regulation, but it speaks to the appearance of unethical behavior. She said she thinks that can be just as damaging to a government as actual. She said she likes that this heightens everybody's awareness, that it is not only doing what is right, but paying attention to how what you are doing is perceived by others. That is a really important thing. She said she really wants to ask for your support of this. She said she has looked over it very carefully, and she thinks it would be a huge contribution to the City, not only in effective governing, but she thinks it is very proactive, and it will keep you out of trouble, both individually and as a body, in terms of claims of unethical behavior. She said she also thinks that it really underscores that public is really about public interest, in that we come in with a nonpartisan place. She said she loves that it addresses conflicts of interest, transparency, and accountability. This kind of a code is very much in place in most municipalities, this is not new to the world. She said she does not have the history of the town as to where you have been with codes before, she said she really feels strongly that this is a good one. She said she likes there is a process of response to violations, and she likes the notion of an Ethics Panel, and the connection to the judiciary system that is named here, but she said she thinks bottom line, is that when you create a culture of ethics within an organization, it is a process. It doesn't happen overnight necessarily, but you have to have a foundation, and this code seems like a really good place to have a foundation. You can always adjust it as you learn from it. She said she knew that you will deal with it as an ordinance, but it also needs to become a part of orientation for new people, and she said she thinks good ethics programs often incorporate continuing education, perhaps once a year where you are reminded about ethical issues and could bring in expertise, because these are hard issues sometimes, and you can kind of fall into them without any intent, but you can create a lot of havoc. She said she thinks this really could protect the City.

Commissioner Melton said his understanding is that a good portion of this is already covered by State Statute Laws, and the portions that are not covered, just the few that he has read, they are vague. Vague in a way that citizens can misinterpret it, mold it, shape it, and make accusations, just looking at page 88 of our packet, the Nonpartisanship Clause. Decisions shall be made objectively without

party or partisanship considerations, and without facts that are not directly or properly related to the matter requiring action. He said there are two things wrong with that in his view, one, you can't enforce it unless the Commissioner straight out says they are voting this way, because of partisan politics, and two, it will open up the City staff to spend more time fielding complaints from people who think oh, a decision to increase the pay of police is a partisan issue, and they are breaking this. Just two clauses down that are public trust, 3-C, elected or appointed officials shall not provide to the public any information that they reasonably know to be untrue, inaccurate, or misleading. He said again, he did not know how you can enforce that, no one is going to admit that what they think they said is misleading, but just with the partisan nature of the world we live in today, it is just going to open all of us up to complaints that we were being misleading, when all we were doing is stating the facts. In short, he said he thinks we do have a good foundation of ethics here in the City, and the State statute and the Municipal League, they do provide training and guidelines. He said he is not really seeing the point of this.

Mayor Payne said there is a governmental code of conduct at the State level, and it has been her experience, and she thinks the City Manager can probably attest to this, that it is not acted upon. She said she wasn't sure if it was really used. Commissioner Rardin said it is, he knows it is. Mayor Payne said you were kind of made an example out of. Commissioner Rardin said it was abused. Mayor Payne said more recently, she said we have had a couple of employees that there were some complaints filed against, and nothing was ever done on that. She said she has certainly never seen it used; they have created an Ethics Commission, and she thinks that at the State level, if she remembers correctly, she said they were kind of waiting on this governmental code of conduct, until this Ethics Commission was created, to see how that would all tie in. She said she has not followed up since and does not know. She said she could take it very personally too, but obviously she has had a code of conduct filed against her. She said she thinks we are all adults, and we should act like adults, but it is a little uncomfortable when comments are made, and the City as a whole is lumped into it. How do we fix that; she said she does not know. Particularly when it comes to social media, she does not know how we fix that. It is unfortunate that we even have to have this conversation. She said she does not know how everybody else feels about it.

Commissioner Rardin asked for staff to print out a copy of it, and all of us, in the next two weeks, we just read through it, bring it back, and say yea or nay. A good portion of it is in the Governmental Conduct Act, which is State law, but that requires you to do something very illegal in order for that to come into play. Mayor Payne said it does. Commissioner Rardin said it does have 10-3, 10-4, those sections in there are the punishments and the remedies if you violate certain things, but this gives us the ability to try to remedy a problem before it becomes a bigger problem. The City can say, hey, look, we did what we could do, and then it kind of limits our liability a little bit.

Mayor Payne asked how was this written, obviously you must have looked at other cities, or compiled it from others. City Manager Cesar said the Assistant City Manager did the heavy lifting, and this was pulled from a number of communities around New Mexico, larger communities, language obviously tailored a little more towards Alamogordo. Different municipalities have a different structure for their government than we do. What is included in the last item, and this item, now changed a little bit because you all are elected or appointed officials. Our employee manual obviously doesn't apply to elected officials. So if you are asking specifically what portions came from what community, he said he is not going to be able to answer that. Mayor Payne said no, obviously you had to take examples from other places, right. City Manager Cesar said primarily from Rio Rancho, that is in speaking with the New Mexico Municipal League, their attorneys are the ones that do represent the City of Alamogordo in these types of situations, they recommended looking close at Rio Rancho and other communities also, but Rio Rancho as a very good starting point for us. Mayor Payne said her point is that there are several other municipalities that have a code of conduct. City Manager Cesar said most

municipalities. Mayor Payne said so this is not something that would be unique to Alamogordo, this is something that sounds to her like something that is actually fairly standard among many municipalities. She said she thinks the problem with the one that we had was it was truly used as a weapon against Commissioners that individuals may have been upset with. It put the Commission as a whole in an uncomfortable position, because nobody wants to have to judge their peers like that; we all have to work together. She said she thinks the difference with this is that it takes it out of the hands of the Commission and puts it in the hands of a third party. She said what she likes about it is the Chair would be somebody in the legal field, and hopefully with that, we would get non-biased representation. She said the reason she is comfortable with it is because this is pretty standard for most municipalities. If we are all doing what we are supposed to, then it shouldn't be a problem. She said she gets the whole, no matter what you do somebody will be mad at you. She said she would like to think if you found an outside attorney or something to Chair this Commission, they would uphold their canon of ethics and do the right thing for the right reasons. She said she did not know how everybody else feels about it. She said this was recommended by the Municipal League.

Commissioner Rardin said to City Manager Caesar that under the City Ethics Panel, it does say that the City Manager will appoint the chair. He said he thought when we discussed it, the City Attorney would be appointing the Chair, is that correct. City Manager Cesar said it is, however, he is the only one that answers to City Commission, and he would hate to put a target on any staff member at this point. Commissioner Rardin said you see the concern there though, and this is due to past experience with poor City Managers; there is room to utilize it for retaliation. City Manager Cesar said that is why it was brought to you all as a discussion item at this point. A person had to be put in there, there are any number of ways that it could be done.

City Attorney Smith said we have met a lot about this. It would not be appropriate for her to appoint a Chair, because essentially when the complaints come in, she is going to look at it like any case she does from the Municipal Court; does it have merit, does it not, what do we need to do with it. Then she actually presents that case before the Panel, and so if she is then appointing the Chair, that is an ethical conundrum that it would be better for her to not get into.

Commissioner Rardin said that is where he has a little bit of an issue with it. Like the Mayor has stated, it is awkward when you have to judge your peers, and that is the way the old one was set up. He said he sees room for abuse as well.

City Manager Cesar said it was a member of the public brought it up earlier, that we could solicit from the legal field here in Alamogordo; people that would like to Chair such a Committee, and it could be an item that comes before Commission, and the majority of the Commission, prior to having any ethics complaints, this person would sit as Chair for a period that you all determine, then that Chair would form the Panel as needed, if there were complaints that rose to that level. Commissioner Rardin said it would be a preset Committee, one that is already appointed. City Manager Cesar said a preset Chair. The Chair could form the Committee; the Chair is selected by a majority of the Commission. Commissioner Rardin asked how Rio Rancho is doing that portion of it, is this in their ordinance as well. City Manager Cesar said that in Rio Rancho, the Commission actually selects the chair. There is a term in Rio Rancho of possibly up to three years. Commissioner Rardin asked if we could get answers for those questions, and assuming everyone else wants to bring it back at the next meeting, we can have that information; could you also see the larger communities so we can know exactly who has one and who does not, like Las Cruces, Clovis, and Artesia.

City Attorney Smith said she looked at Rio Rancho. In Rio Rancho, the Commission actually does the Panel, they get all the members of the Panel, then the Ethics Panel selects one person to be the Chair. We thought it would be easier and better for us to just have one Chair, preferably a member of the

12th Judicial Bar, that is our attorney bar here. An attorney or former judge, someone like that, could be the Chair, and then have the Panel around them. Mayor Payne said she is most comfortable with that, somebody from the 12th Judicial Bar.

Commissioner Rardin said we have two weeks to figure out how we want to set that up. City Manager Cesar said we could change that language to reflect certain discussions that just happened, and we would then bring this back at the next meeting in or normal ordinance format. We could clean it up and have an ordinance number, etcetera.

Mayor Payne said just so she is clear, what are we deciding to do here. We are going to bring it back for discussion again in two weeks. Commissioner Rardin said a discussion or possible action, because tonight is just a discussion only. Mayor Payne said in two weeks, we are going to put it as a possible action as well. City Manager Cesar said that would be what we are recommending from a staff level, and we will change the order so that this will be the first ordinance that you would consider for first publication, the code of conduct. Then the second would be social media.

Commissioner Rardin said when you guys email this out, include Rio Rancho's actual ordinance too, so we can read through that. City Attorney Smith said she has a cheat-sheet back in her office that she pulled and copy/pasted, so she will get that send to all of you. Mayor Payne said it is your assertion that, not all, but most municipalities have some type of kind of code of conduct, is that correct. City Attorney Smith said yes. Commissioner Rardin said he would just like to know which communities do, and which don't; he is assuming they do. Mayor Payne said if it is easier just to tell us who does not, that would be okay. Commissioner Rardin said that is probably going to be the smaller communities. Rio Rancho is considerably larger than we are.

Commissioner McDonald said we are just looking at the code of conduct only in State of New Mexico and the municipalities here, nobody else. Mayor Payne said we are looking at municipalities within the State, yes. City Manager Cesar said that was right.

Commissioner Melton said while we have an opportunity to look through this in detail, we should take that opportunity and look at anything that is vague, look at anything that could be applied, and we don't need to vote on it in the next meeting, we can take the two weeks, come back, and share our feedback.

Commissioner Rardin said if we decide at the next meeting that we don't feel comfortable with it, or we need more discussion, we just table it until the following meeting, or however long it takes. Mayor Payne said she agrees with that, she just doesn't want to kick the can down the road. Commissioner Rardin said we kick the can two weeks, and we can take action, or we can table it. Mayor Payne said as long as it is not two years, she is good. If we are going to do nothing, we should just say we are going to do nothing. Commissioner Rardin said a lot of this is already in play with the Governmental Conduct Act, the only thing this does is gives us a little bit that we can do here. Mayor Payne said she doesn't mind doing some research herself, but if there is a way to find out, she would like to find out how many times the Governmental Conduct Act has been actually enforced or acted upon. Commissioner Rardin said our former Secretary of State. City Manager Cesar said you are talking about if that was by the State correct, not by the individual municipality. Mayor Payne said no, by the State, because she personally doesn't believe that they do anything. Commissioner Rardin said it would surprise you; the way it works is you have to send a complaint to the Secretary of State's Office, and then they do an ethics deal, and look at it, and then disclose whether it is or isn't. Then they forward it to either the DA's office, or to the AG's office. Mayor Payne said do you think that would be easy to find out. Commissioner Rardin said it should be, you can probably get on the Secretary of State's website and look it up.

No action required.

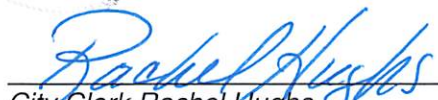
Commissioner Rardin moved to adjourn at 8:11 p.m.

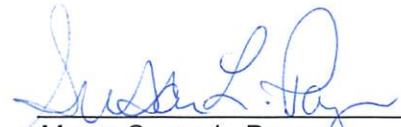
Commissioner McDonald seconded the motion.

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

ADJOURNMENT




City Clerk Rachel Hughes


Mayor Susan L. Payne

(Prepared by Dylan Aleshire, Deputy City Clerk)

Approved at the Regular Meeting held on October 11, 2022.

**CITY OF ALAMOGORDO, NEW MEXICO
CITY COMMISSION REGULAR MEETING MINUTES
6:30 P.M., COMMISSION CHAMBERS
October 11, 2022**

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

**DUSTY WRIGHT, MAYOR PRO-TEM
KARL MELTON, COMMISSIONER
BRIAN CESAR, CITY MANAGER
ASHLEY SMITH, CITY ATTORNEY
RACHEL HUGHS, CITY CLERK**

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

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

APPROVAL OF AGENDA

Commissioner McDonald moved to approve the agenda.
Mayor Pro-Tem Wright seconded the motion.
Motion carried with a vote of 6-0-0.

PRESENTATIONS

1. Domestic Violence Awareness Month Proclamation. (*Susan L. Payne, Mayor*)

Mayor Payne proclaimed the month of October 2022 as "Domestic Violence Awareness Month" and urged all citizens to actively participate in the domestic violence awareness events sponsored by the Center of Protective Environment (COPE). She presented the proclamation to Veronica Gutierrez, the Executive Director of COPE, and Linda Carr, the Board President.

PUBLIC COMMENT

Michael Gallegos said had a concern with the Water Department. He said on August 28th, he was helping his wife shampoo the carpet. He went out to the front to wash the bowl out, and he noticed that right underneath the faucet it was wet there. He said they shut off the water. He dug a hole and found a pipe that was leaking at the time. He said he called his brother over, and they were repairing the leak. The next day on the 29th, he said he received a courtesy notice from the City that he was using excessive water, which he said he understood. He said what can't understand is his last billing; it goes to the 14th of each month, so this last bill was from 7/14 to 8/14, this was as the leak was continuing. Fifteen days later, he said he gets this from the City. It took the City fifteen days to notify him that he was using excessive water. He said they gave him this, which tells you what your water is being used, how much, and if you do have a leak, they will text you to let you know you are using too much water. He said what he can't figure out is why does the City have this. Why didn't they notify him on the 14th that he was having a leak, instead of waiting fifteen days. In other words, this leak was continuous leaking from the 14th until he got his notice. He said he used a total, in two months, of 115,724 gallons of water; that is a lot of water to go underneath the house. He said he is lucky the house didn't sink. He said his first bill was for \$435.03. So, he came down to the City Water Department, and he told him that he received this bill. He said they had him fill out a form, and he filled out the form; they said they would let him know within a week or two if the City could help him pay the

water bill. He said he has always been on tier one, when he went from tier one to tier two, why wasn't he notified, or two to three, or three to four, or four to five. He was never notified. He went from tier one to tier five without the City notifying him. They want us to use water on even days of watering, but yet, when he uses 115,000 gallons of water, they won't let him know. This month's bill was \$535. Between the two, he has used 115,000 gallons of water, and he has an over \$1000 water bill. He said he knows the City is helping him, but what he is more concerning about is why doesn't the City notify. We have a system out there that they can check everybody's water, because they give you a bill, so they know that your water is being used, they know what tier you are in, but yet, they never notified him. He asked them over there when he went to the Water Department, why didn't they notify him, why they took fifteen days. They said it was because of the service of the Water Department. So, he would just like that to be noted, if we could figure out some way of working with the Water Department so people can be notified, because a lot of people do have leaks.

Mayor Payne asked if City Manager Cesar or City Attorney Smith were aware of this or if this is the first they have heard of it. They shook their heads no. Mr. Gallegos said he already talked to Karl about it, he is a great commissioner, and he likes the guy, he is right there to help him out and he has done a lot to help him. Mayor Payne addressed staff and said but he didn't make either one of you aware, okay, maybe what we can do is check into that, and find out what happened. She said they are nodding their heads back there. She said she thinks that normally, if she is not mistaken, we should catch something like that right, with this new system. Mr. Gallegos said it is not just for his sake, but it is for the City's sake. Mayor Payne said she agreed with him.

City Manager Cesar said it depends on the leak. Without looking at the account he does not know if it was continuous use, or if was it a small leak. A leak doesn't normally start as a full-blown leak, it will start small pinholes that will get larger.

Mayor Payne said maybe what we can do is get his information so we can look into that, and then somebody can call him tomorrow. Mayor Payne asked Finance Director Huff to take his information.

CITY MANAGER'S REPORT

City Manager Cesar made the following remarks:

1. He said he is available for questions from the commission.

REMARKS AND INQUIRIES BY THE CITY COMMISSION

Commissioner Rardin made the following comments:

He said the patch on Cuba he asked about the last meeting, have we gotten any information on that yet. He said it is sinking there, he didn't know if we did it, or a contractor did it. City Manager Cesar said he did pass that on, but he didn't remember getting any information back, so he will find out tomorrow morning and send it out.

He said he heard some rumors around town about the F4 that we purchased from Holloman. Originally, we were going to put it at the corner of Indian Wells and White Sands, he said he was hearing it was going to be placed out on Highway 54 & 70 now. City Manager Cesar said there was never a definite site to place the F4. Originally, when Airport Manager Jim Talbert brought that forward to a totally different commission over four years ago when he acquired the F4, his original plan was to have it right next to Airborne Park. You had at least two, maybe three individuals that represented the Airborne Park that were not happy with the placement as it was the wrong era plane and not for people that parachuted during the war. It has been discussed, but there have never been any plans put together. Possibly at Indian Wells and White Sands, where the old gas station was, it could be placed there. A

group has come forward that wants to fundraise, and have it placed into the State right-of-way, that is in the corner of 54 & 70, by the old Walmart/Showtime Video; it is a very huge area, and they would like to have it placed there in a veteran's memorial type of park. He said they have approached the State, and they have agreed that if we supply plans for final approval, then yes, we could use that right-of-way; but we don't have any finalized plans for that location either, so it hasn't come back to commission for approval. We don't have a budget for the project, etcetera. Commissioner Rardin said that in his personal opinion, that right-of-way we are talking about, with as many water breaks we have there, would be a dumb place to put a park. City Manager Cesar said we had a discussion months back. Commissioner Rardin said about replacing that line. City Manager Cesar said yes that line is under design, but he is not sure where we are with that at this point. It is going to be phased as that line needs to be replaced all the way from roughly the Three Flowers Trailer Park area all the way around and down to Airport Road. Regardless if anything goes there or not, that line scheduled to be replaced once we have the engineering done and the funding in place; the waterline construction is not funded at this point because we don't know what that is going to cost. Commissioner Rardin said so we are a couple of years down the road then. City Manager Cesar said it is all planned. Commissioner Rardin said he heard when we originally obtained that airplane was that it was supposed to down here at Indian Wells and White Sands. City Manager Cesar said in the commission meeting, the only area that was really talked about was next to Airborne Park; some other locations were thrown out once there was objection to the site next to Airborne Park. Commissioner Rardin said we ought to research that and make sure.

Mayor Payne said she was thinking it was White Sands and 10th. Commissioner Rardin said the way he learned originally was that they said White Sands and 10th, but they also said White Sands and Indian Wells; we've got time, we've got a year or two to research it and make sure.

CONSENT AGENDA

2. Approve the minutes for the September 27, 2022, Regular meeting. *(Rachel Hughs, City Clerk)*

3. Consider, and act upon, the award of IFB 2022-09 Alameda Park Electrical Upgrades to Consolidated Electrical Distributors, inc. in the amount of \$149,550.30, including NMGR. *(Veronica Ortega, Community Services Director)*

Commissioner Rardin removed item 3 from the Consent Agenda

Commissioner Rardin moved to approve the Consent Agenda as amended.

Commissioner Burnett seconded the motion.

Motion carried with a vote of 6-0-0.

ITEMS REMOVED FROM CONSENT AGENDA

3. Consider, and act upon, the award of IFB 2022-09 Alameda Park Electrical Upgrades to Consolidated Electrical Distributors, inc. in the amount of \$149,550.30, including NMGR. *(Veronica Ortega, Community Services Director)*

Commissioner Rardin asked Community Services Director Ortega if this being awarded to C.E.D., Consolidated Electrical Distributors was a typo. She said she did not know. Commissioner Rardin said C.E.D. is an electrical supply store, they are not a contractor. Engineering Manager Johnson said this bid is strictly materials for the electrical materials for the electrical upgrades at Alameda Park. The

actual work will be done by the Facility Maintenance team. That is why C.E.D. is listed, as they had the lowest responsive bid for the materials.

Commissioner Rardin moved to approve.

Mayor Pro-Tem Wright seconded the motion.

Motion carried with a vote of 6-0-0.

NEW BUSINESS

4. Consider, and act upon, award of Public Works Bid No. 2022-004, CDBG Project No. 19-C-NR-I-01-G-18, to General Hydronics Concrete, LLC related to the Alamogordo ADA Compliant Sidewalk Improvements project in an amount not to exceed \$1,391,076.72, including NMGR. (Bob Johnson, Engineering Manager and Jason Casebolt, Project Manager)

Engineering Manager Johnson introduced Project Manager Casebolt, and said he joined the engineering team about six months ago as Project Manager. He said that Project Manager Casebolt will be the project manager for this project, it is one of several he has been assigned to. Engineering Manager Johnson said staff is recommending approval of the award. He said the work consists of construction of the new concrete sidewalks, curb and gutters, ADA complaint ramps, driveways, alley entrances, and asphalt patching. There will be limited demolition of the existing concrete flatwork, which is sidewalk. Some vegetation trimming, asphalt pavement required to complete construction. Limited utility adjustments will be required to include valve box adjustments, new concrete collars, water meter can adjustments, and manhole adjustments with concrete collars. Substantial traffic control will be required to maintain access to area residents and businesses, as well as guidance for the travelling public, both vehicular and pedestrian. He said we advertised the project on July 24th and 31st, we reopened bids on August 24th. The engineer's award recommendation and bid tabulation are attached. The requirements of any CDBG project are that the pre-bid conference be mandatory. We had approximately six bidders attend that mandatory conference, four of which were properly licensed. Two of those four submitted bids. We had one that makes sense, and one that does not. J29 out of Las Cruces submitted the bid that is about double what it should be, they are primarily a utility contractor, and they are licensed to do concrete work. They only bid one other project in the City of Alamogordo several years ago, and they were not a successful bidder then. We have no explanation as to why their costs are about double.

Mayor Payne asked what mobilization CIP is. Engineering Manager Johnson is said that mobilization CIP is constructed in place, it is just an acronym that we use. Mobilization is the cost where the contractor is going to mobilize all the equipment, their materials, and their manpower. It also usually includes their general requirements for bonding, profit overhead, things along those lines. It is typically spread out over the life of the project, and this project is nine months long. It will encompass a large area between 2nd and 8th, between New York and Florida.

Mayor Payne said she was just wondering because it is \$400,000 more than anybody else. Engineering Manager Johnson said this is a CDBG grant, the grant is \$500,000, and the City's match is \$50,000, and the rest is all City funds.

Mayor Pro-Tem Wright said that in full disclosure, he has no ties to General Hydronics Concrete as that is a sister company, but he will abstain from voting today.

Commissioner Rardin moved to approve.

Commissioner McDonald seconded the motion.

Motion carried with a vote of 5-0-1. Mayor Pro-Tem Wright abstained.

5. Consider, and act upon, approval of Amendment No. 1, CDBG Project No. 19-C-NR-I-01-G-18, to Smith Engineering Company, related to the engineering and design of the Alamogordo ADA Compliant Sidewalk Improvements project in an amount not to exceed \$85,871.66, including NMGR. (Bob Johnson, Engineering Manager and Jason Casebolt, Project Manager)

Engineering Manager Johnson said staff is recommending approval of the amendment to Smith Engineering's contract. They are the engineer of record for this project. CDBG required that we formally request qualification-based proposals to secure the services of an engineer. Smith Engineering won that award, however, the requirements of the CDBG prevented us from adding in construction phase services. The original contract was strictly for the design and estimate. This amendment incorporates the construction phase requirements that we have used on some of our larger projects, which will include site observations twice a month over the nine-month duration, reporting the in-place quantities, verifying those quantities, reviewing the payment applications, proving that materials submittals responding to any RFI's and field orders, and any change order request that might come up. They will assist with the substantial completion and projection closeout documentation. As part of this, which is a little unusual, we've incorporated the quality control material testing that will be sub-consulted to Wood Environmental. We have an active direct contract with wood, however, CDBG would not allow us to use that agreement. The next best step was to incorporate the testing under the engineer's contract. We really did not have any alternative in that matter. That is the total cost. Smith Engineering's part is firm fixed price, Wood Environmental's is time and materials only, so they only bill us for actual services rendered.

Mayor Payne said in full disclosure, she does not know this Rusty Payne and they are not related in any way.

Commissioner Paul moved to approve.

Commissioner McDonald seconded the motion.

Motion carried with a vote of 6-0-0.

6. Consider, and act upon, first publication of Ordinance 1661, amending Chapter 17 of the Alamogordo Code of Ordinances concerning Licenses and Miscellaneous Business Regulations. (Rachel Hughs, City Clerk) (Roll Call Vote Required)

This ordinance is to amend Chapter 17 titled Licenses and Miscellaneous Business Regulations. The major changes are as follows, the Chapter name to Business Regulations and Business Licenses, streamline the application process, timeframe of receiving business a registration or license from the city clerk, adding a per month late fee and inactivation of business for non-compliance of renewal, the appeal of denial shall go to the city manager, moving some licenses to registrations, removing some licenses altogether, removing some requirements for food vendors, removing garage and yard sales; it will be added to a different chapter, removing peddlers and solicitors, licenses are no longer issued, therefore it will be added to the traffic ordinance, most registrations and licenses will be on a 12-month renewal and not a calendar year renewal.

City Clerk Hughs said she would like to make one change to the ordinance being presented today, in Article 17.01-.035 titled Application Process – the 3rd sentence that states license, it needs to read registration.

Douglas Dalton signed up for public comment on this item. He said is the owner of a farm in Tularosa, and also the project manager and partner with S & H Life here in Alamogordo. He said there is a lot of language that was taken off. He said the reason why he thinks there is an issue with this is that we

are taking away the power of the City Commission, and we are giving it all to one person, and that has to review and revocation of licensing. In order to do that, to him, that should be a democracy. That should be voted upon a bunch of people in order dictate whether our licenses are revoked or renewed. Based of that, taking it unto one person causes conflict of interest. That person becomes a very powerful person in that position. He said that the other issue he has is everything is down to a \$35 business license. You guys have alcohol at \$250. He said he is not a multi-billion company making a lot of money. He said he sold his house, sold his truck, pulled out his retirement to start this, and you are labeling me at a \$500 business registration. You are considering me making more money than the alcohol companies. For you to start off at \$500 sets precedence for the future. He said he is going to be looking at \$1000 next year, \$5000 ten years from now, you can't label him, and segregate him, as part of being a cannabis entity, especially as a startup. We are just starting, and we are broke right now, and here is with another \$500 fee. He said he is already paying fees to the State, fees to multiple companies that have got in bed with the State to even be in operation. For one man to dictate his license and reputation is wrong. Classifying him as a \$500 license, above everybody, is wrong. We are not making a lot of money right now. As far as he is concerned, a lot of this language that was taken out creates a whole lot of issues. It is taking your commission votes out, now you guys are no longer able to vote on whether he maintains his license, whether it is for health, the welfare of the public, it is all dictated on one-person's opinion, and it should not be like that.

City Manager Cesar said to clarify what was brought up, first for the Cannabis License, that is under the Cannabis Ordinance, so that has been passed and it was passed quite several meetings ago back in around April. That is a license fee, that is not an annual business registration, it is an annual license just like there is an alcohol license. The business registration is \$35. As to the City Manager, it is not one person who decides whether or not a business is revoked. This has nothing to do with revocation of business registrations. The process, if this is passed, now would be that if you a potential business owner that wanted to open a business in Alamogordo, you would pick up a packet or pull it online. It has basically three steps. You need to have the Fire Department inspect the building, they will give you an approval or tell you what you need to do with the building. The Planning and Zoning Department will make sure the business is placed in the proper zone, because certain businesses can only be in certain zones. The third step is to turn in that, which is a one page document, and that goes to the City Clerk. They review it and make sure those approvals are in place, they place your business information into the system, and it is a \$35 fee. Within two business days, you have a business registration. If your building is non-compliant and you don't have the proper sprinkler system, or fire extinguishers, or exits, you are not going to make it to the City Clerk's area. If it is in the wrong zone, you are not going to make it to the City Clerk's area for a business registration. If you get past those two steps, and in the entire time he has worked with the City, and he checked with Rachel too and she has worked with the City for ten years, there has never been a business registration that was denied. If you actually read the ordinance, the City Clerk is the first to deny for the health, safety, and welfare of the community. The appeal process is to the City Manager, and in his thirty years, we haven't had that as an issue that he has ever seen go before Commission. If you all want it to go before Commission, that can be changed, that can be added in, and it can be an extended process to open the business. For renewals, that is an annual process, if nothing has changed with the business, it is a \$35 fee and you have your business registration once again.

Mayor Payne said since January, since she has taken office as Mayor, she has had multiple incidents where she has said this is ridiculous. We are not being business-friendly, we are just not. We are making it way more difficult than it needs to be, and it shouldn't be like that. It should be what Brian just explained. It should be a simple process. It shouldn't be take it to the Clerk and then it goes here, then it goes back to the Clerk, then it goes there, and then it goes back again to the Clerk, and it goes here. What she has asked for, and what we are seeing now, is, you should be able to go online. You should be able to figure out what it needs. She said she thinks the best example is food trucks. We

get a lot of food trucks that come up from El Paso or Las Cruces or other areas, and they come into the City. El Paso is probably the best example because it is Texas, and of course Texas requirements may be different than New Mexico. What we see is a lot of them coming up from Texas, and then not meeting our requirements. That in itself is different, but if they had a way, before they drove up from Texas, to say okay, I know I need to do X, Y, and Z, and this is what the Fire Department is going to look for, and this is what the City is going to look for, so that by the time it gets to the Clerk, she should be able to just sign off on it. She said to her, that makes more sense. She said she does understand what Mr. Dalton was saying, but now that you mentioned it, that \$500 is not a business registration, it is really a license for cannabis in our City, just like you would have an alcohol license. She said we obviously passed that back when we passed the Cannabis Ordinance. She was going to say exactly what City Manager Cesar said, she couldn't remember one time ever that we have not given somebody a business license. As long as you know, you can't be within so many feet of a school, that kind of thing.

City Manager Cesar said as to all the language, because there is quite a lot of language that is stricken, a lot of what we did, we the City, did in the past. If you have a barbershop, you have to have a State license. Any number of businesses, you have to have State licensing. We were being the police for the State, we needed to see your license. We duplicated a lot of the processes that is actually a State function. Mayor Payne said that didn't make sense. City Manager Cesar said there was no reason for us to repeat those steps, all we were doing was adding time and frustration when someone would put in for a new business in Alamogordo. Mayor Payne said her daughter is a cosmetologist, and she had to get her business license, and they wanted to see her cosmetology license, and she was like, why does the City care whether she has a cosmetology license as that is between her and the State. Those are the things were that kind of just holds things up, we shouldn't be policing those things. Our goal as the City is to make sure we grow business, not hinder business. Some people don't believe that, but it is true.

Commissioner Burnett said he had a question. It says that Marijuana, regulated by Chapter 34 per year, \$250, and \$500. City Clerk Hughs said that we have the retailers for Cannabis, our ordinance actually calls it Marijuana; the retail and the production is \$250 each, where the manufacturer is the \$500, and that is just because it takes a lot more for that license, where there is combustibles and that type of thing.

Mayor Payne said could we just explain why we arrived at those fees. They are not arbitrary, she said she knows there was a reason. City Manager Cesar said he did not remember the discussion; we had a limited amount of time. If you remember correctly, this was passed by the State, and municipalities and counties could not restrict or ban the production, sale, etcetera of cannabis products. Through the discussion of two commission meetings, we modeled the ordinance, and we had to make a few changes along the way, because the State was still giving guidance to all the municipalities and counties. We based what we presented for cannabis off of what we had at that time, for the liquor licenses. That is where the fees came from. He said he did not remember there being any comments from the public, but that was quite a few meetings ago. Mayor Payne said she did not remember that either. Commissioner Rardin said if you could look back at it and let us know, because he did not remember either. City Manager Cesar said for the fees, we based a lot of the ordinance and fee structure off of our existing liquor license portion of our ordinance, because there wasn't anything that came from the State in the way of guidance regarding legislation. The Municipal League did not have anything to provide us guidance, so that is what we presented to Commission, and that was ultimately what was passed. Commissioner Rardin said that was a whole separate ordinance anyway, but if we wanted to look at that, we could always bring that back. Mayor Payne said she does remember that they passed the law, and made it legal to sell cannabis, and we had a very short window of time to get it done. She said she was sure and some time they may bring it back and look at it again, but, we did

kind of go with what we had at the time, and because it was brand new, we had nothing. A lot of times when we do these things, we can look at other municipalities and see what they are doing, but we couldn't do that. It is basically new territory for everybody.

Commissioner Rardin said as far as the late fees go, it says \$25 per month. He said it used to be \$10, and he said he was historically late on his business registration, so he usually has to pay \$45, but it is \$25 per month instead of the \$10 late fee like it used to be. City Clerk Hughs said that is correct. Commissioner Rardin said that seems a little excessive for wanting us to be business friendly. City Clerk Hughs said right now, the ordinance as it stands, not the one we are presenting in front of you, the business registrations are due by January 31st. We start pushing out the renewal letters in November. When that renewal time comes, people are late. We are now into April and people still haven't paid. So we start making the phone calls, the emails, the letters, sending Code out, we are spending so much time trying to get one business to come and renew, that we finally start inactivating them in May, maybe even June. Then comes July and people come in and say they want to renew their business, but they have been inactivated. So now we are just charging them \$10, and we are constantly doing this work for months. So that is why we are capping at the three months, right after that, we are just going to inactivate your business. We are still going to try to send Code out, knock on those commercial buildings. Commissioner Rardin said he thinks \$25 a month is a little excessive, the entire license and registration is only \$35, if you are one day late, we are going to charge you \$25 over and above the \$35, so your license just went to \$60. City Clerk Hughs said the way the ordinance right now, which she believes is poorly written, is that your expiration date is December 31st. However, we let you continue to do business, and your renewal is in January 31st, so in a sense, the City has been allowing 31 days for you to continue doing business into the new year. Commissioner Rardin said from the business standpoint, us smaller guys that do a lot of different hats, January is a very busy month for us. You have got end of the year stuff, you have got other things, a little \$10 fee or registration for a piece of paper from the City allowing him to do business, that is one of those things that kind of just slips your mind, because you have many other things that you have to worry about, that you have to get done for you to stay in business. City Manager Cesar said the renewal for a business registration, it is no longer going to be in the month of January. It is going to be one year from the date that you applied for a business registration. If you did it last week, October 8th, you will not renew in January. You are going to renew the following October; you will get the notices prior to that. We could take out the late payment altogether and treat it like a water account; after 30 days or 60 days we inactivate your business registration, and if you want to continue doing business, you just go through the process now that is user friendly. You can pay your \$35 three months later. Commissioner Rardin said are you going to look back from 2003, when he first started his business. City Manager Cesar said we really didn't talk about this, but right now, our entire software system is being updated to include the City Clerk's area. With the system we are under right now, that is why everyone has January for business registration, that is when we have to do it. With the new system that is going in place, the company that is doing the new software and importing all the old data like business registrations will either go back to when you first registered your business, or they are going to spread that out and assign new dates. For anyone that has a current business registration, where traditionally you would have to renew in January, we are actually going to be suspending that. Any business that needs for reporting purposes, letters will go out to every business, but any business that needs to have a temporary registration, maybe reporting it, we will issue, at no charge, a temporary registration to take you through to whatever your new date is going to be, and then that is when you will do your annual renewal. He said he could not tell Commissioner Rardin right now what his date would be. City Manager Cesar said that if you did your original paperwork in 2003 and it was in October, if the company is not able to easily pull out that information, then they are going to take and spread those somewhat evenly across the calendar year. It is not part of the business registration at this point, but we have the tie-in with the annual inspection with Fire Services, they do the annual fire inspections for the buildings and whatnot, that will also tie with that. If you normally have Fire Services come by to

inspect your business, that will coincide with your renewal date. Commissioner Rardin said it sounds pretty confusing on ya'lls end.

Mayor Payne said what it comes down to is, instead of being swamped at City Hall with everybody renewing in January, it will now be spread out. She said she thinks it will make a lot more sense, and things will get processed quicker. Commissioner Rardin asked how many business registrations do we have currently. City Clerk Hughs said we currently have about 1500. Mayor Payne said if you have to process 1500, on top of your other jobs, that is quite a bit. Commissioner Rardin said he just thinks that it will get cumbersome and overwhelming. Mayor Payne addressed Commissioner Rardin and said like you said, you can't remember to renew it because you have all these other things going on. Commissioner Rardin said that January is a busy month. Mayor Payne said maybe if we spread it out on an anniversary date, maybe that will make it easier for everybody.

Commissioner Rardin said his second question is why does the City even have to have a business registration for us, for the businesses. He said that if was to go down to El Paso, just across the State in Texas, he does not have to have a contractor's license, he can just get his ID numbers and go to work. Here in New Mexico, you have to have a license to do it, and then he has to come in and apply for a registration to the City to be in business. Why do we even need a business registration, is there a State law that requires us to have that. He said he kind of see it for Fire, doing inspections and stuff like that so we know where those businesses are, but that would be the only that he would even see needing registrations. City Manager said that is the only way that you are going to be able to regulate the various zones, but other than that, we would have absolutely no idea where, for example, Bryan's Smoke Shop is, and is it in the correct zone. He said does not know of a State law, and that is more Rachel's area. Commissioner Rardin said it was just a question, is it something we have to have. Mayor Payne said maybe certain businesses for sure. City Rardin said certain businesses yes, but he said he guessed if we do it for one, we need to do it for all. He said those are just some of the questions he had on it. He said he thinks the \$25 per month is very excessive. Commissioner Rardin said it if was due January 31st, and you slip in on the 1st of February and pay your bills, your registration just went from \$35 to \$60 dollars.

Commissioner Paul said he agreed and thinks that \$25 is pretty steep. Commissioner Rardin said it is \$25 per month. Commissioner Paul said there needs to be something charged so that people make sure they are getting on that, but you know, \$15 sounds more reasonable to him than \$25. Commissioner Rardin said and give them a three month, you know, hey, if you are not in here by say April 1st to get your registration, then it is cancelled, or something along those lines. Mayor Payne said she agrees with Commissioner Rardin. Commissioner Rardin said you know \$35, if it was a \$500 license, then \$25 a month would be okay, but on a \$35 registration. Mayor Payne said she thinks that the purpose of a penalty, or charging the citizens for something like that, is number one it is an incentive to renew on time, but, it is also because it is more work on the City. She said if it is late, she gets that it would be a little more work on the Clerk's Office, but if we are spreading those out over twelve months, it is not quite as much work. If it is late, there should be something, and she said she was thinking it should be \$5 a month herself, but \$25 a month seems excessive when the whole business registration itself is only \$35.

Commissioner Rardin said how about we do, like you stated, the \$10 late fee, and then, after say April 1st. City Manager Cesar said you can't do April 1st. Commissioner Rardin said why not. City Manager Cesar said it because it is by anniversary date, so not everyone is going to be April 1st. Commissioner Rardin said how about after say, three months of non-renewal, then it is double the fee or something as an incentive to get them to register. City Manager Cesar said he would prefer if you did not make it overly complicated. If everyone is happy with \$10, then it is \$10 a month for three months. You guys get to make the decision. After three months it is inactivated. Commissioner Rardin said how about a

one-time \$10 late fee, and then after the three months it is null and void, it is inactivated. City Manager Cesar said you guys make the decision; it is however how you want to word it. Commissioner Rardin said he will be one to admit that he pays \$45 for his business registration almost every year, because he is always a day or two late. He said Rachel calls him and says hey come pay your business registration. Mayor Payne told City Clerk Hughs she can't believe you call people, you are way too nice.

Commissioner Rardin said we should just strike the \$25 and leave it at \$10. Mayor Pro-Tem Wright said he was good with that. Commissioner Burnett said he would agree with that. Commissioner Paul said he thinks \$10 is fair. Commissioner McDonald said well they make more than \$10 an hour, so they should at least get more than \$10. Commissioner Rardin said it doesn't go to them though. Commissioner McDonald said but it is their time. Commissioner Rardin said they are already compensated for their time though. Commissioner McDonald said that was her opinion. Commissioner Paul said he would be in favor of it being monthly for that period of time, simply because what Sharon said is that they, our staff, is we are paying them yes, but that is recouping some of that lost cost by them spending time doing that, versus doing something else. Commissioner Rardin said so \$10 per month, up to three months, then after that point it is inactivated. Commissioner Paul said at a certain point, businesses need to be responsible too. Commissioner Rardin said he was okay with that. Mayor Payne said that a surcharge will be assessed at \$10, right. Commissioner Burnett said per month. Commissioner Rardin said that Commissioner Paul had mentioned that \$10 per month. Mayor Payne said then a business will be inactivated after 3 months of nonrenewal. We are going to change that to \$10.

Commissioner Burnett said on the food vendor's license, do they have to follow the same business registration as far as the Planning and Zoning. City Clerk Hughs said that on the food trucks, if this ordinance is approved, then after adoption, there are only three licenses. That is going to be our food trucks, our cannabis or marijuana, and alcoholic beverages. She said that all three will also follow the same process as the business registrations. Commissioner Burnett said from other food truck vendors, how long is the process. City Clerk Hughs said that depends on when they can get their food truck to the Fire Department for inspection. City Manager Cesar said if the person is taking their food truck trailer, whatever the case may be, and Fire has inspected and said yes it passes and signs off on the form, then it is up to two business days at the City Clerk's area. Ideally the person would walk in, has the approval from Fire already, pay your fee and go. Commissioner Burnett said when he did his, that went from the City Clerk to the Fire Department, he was told they were going to call him, and it sat there for twelve days. City Manager said that is why we are trying to streamline the process. He said he is sorry but with food trucks, he forgot, but the document the food truck vendor people would need is where they have gone through the New Mexico Environment Department, which the City doesn't control. Mayor Payne said so it will all be done before it goes to the Clerk. Commissioner Burnett said that was fine. He said he thinks the process before was it went to the Clerk, you pay, then it goes back to the Clerk. City Manager Cesar says then it went out to Fire, and then it came back to the Clerk, and then out to the Police Department, came back, and yes. Commissioner Burnett said you are sitting there wondering where your license is at. Mayor Payne said now it will be up to the business owner to get that stuff done, then it goes to the Clerk. City Manager Cesar said if you had a food truck, food trailer, contact the Fire Department, the information for who you need to contact is on that one page form. You would call or go down there, they would say bring it on in and we can inspect it today, or we need you to come in on two days, or maybe the person applying is not ready for two weeks. Schedule the day and the time, you would go in and have inspected. If there is deficiencies, they would say what those are. If there aren't any deficiencies, they would sign off on it. You would get the license or whatever from the Environment Department, and bring your paperwork to City Hall, scan it, email it, whatever the case may be. No more than two business days later, here is your registration.

Commissioner Burnett said to piggyback on your comment, as far as people from El Paso coming, and they have to follow this same process, if he remembers right, he said he believes Alamogordo and Albuquerque are the only two cities in that State that require you to have a City license to operate. Commissioner Burnett said he can go to Cruces and just go in, there is no questions asked. He said he thinks that is where people get mixed up, as far as people from Cruces trying to come over here, or El Paso trying to come over here. Mayor Payne said she thinks we have gone back and forth about that too, but she would be concerned. She said there was a food truck that came up for the Music Festival, and had to be inspected, and she got a phone call and was like okay, can we do something to help this guy out, so Brian said well, I will send him back out and if he is within where everybody else is, we can give him a waiver, that kind of thing. Well they went out there and he had no fire suppression system. Commissioner Burnett said that is different. Mayor Payne said she didn't want a food truck coming in to Alamogordo and frying up churros, and not having a fire suppression system, because that is just dangerous for all of our citizens. She said if a kid is standing at this truck, waiting for food, and something goes wrong, and it is because we didn't inspect it, she still says the City is liable. If Las Cruces wants to take that chance, that is great, but for her, that scares her a little bit, because we could say well, it may or may not happen, but she didn't want to take that chance. What if it is her grandkid, or your kid, or something. She said she did think that if they are going to bring a food truck into our City and do business, she does think it should be inspected, and she thinks we should know about it. Ultimately, if something happens, where is first place you are going to go, back to the City, and why did the City let this happen. Commissioner Burnett said the State still inspects all that beforehand, even if you have a fryer, you still have to have the fire suppression. Mayor Payne said they do, but like that guy is from El Paso. Commissioner Burnett said that is a different story, but as far as Cruces guys coming here to operate here, they still have to have the State inspection done. Mayor Payne said just making sure they actually did have that. She said she knows that they have to, but did they, that is the question. She said she can see both sides of it, it is a tough one. She said she is with you where she is just like can we just let these people do business, this is getting crazy, but on other hand, there is sometimes when we really have to just make sure. We are seeing more and more of food truck vendors and that kind of thing, and she is super excited about that, but at the same time, she just wants to make sure we are covered as a City.

City Clerk Hughs said for clarification, on the late fee, you want it to stay at \$10, \$10 each month for three months, and then inactivate it, is that correct. Commissioner Rardin said correct; Mayor Payne said yes.

Commissioner Rardin moved to approve Ordinance 1661, with the late fee being amended to \$10 per month instead of \$25, the rest will remain the same.

Commissioner Wright seconded the motion.

Roll Call Vote was taken.

Motion carried with a vote of 6-0-0.

7. Consider, and act upon, first publication of Ordinance 1663, repealing Chapter 27 of the Alamogordo Code of Ordinances concerning Vehicles for Hire. (Rachel Hughs, City Clerk) (Roll Call Vote Required)

City Clerk Hughs said this ordinance is to repeal the entire chapter. If you look at Chapter 27, it is very small, because in the last three years a lot of it was cut out. This is for the same reason we are wanting to repeal, as Vehicle for Hire is regulated by the State. The licensing will be moved under business registrations.

City Manager Cesar explained this is no different than any other business in the City. In the earlier ordinance that was struck out, we had certain areas like vehicles for hire, that would have a lot of

steps, that we redid and relooked at everything the State looks at. So that is why this one is going away in its entirety.

Mayor Pro-Tem Wright moved to approve.

Commissioner Burnett seconded the motion.

Roll Call Vote was taken.

Motion carried with a vote of 6-0-0.

8. Consider, and act upon, the first publication of Ordinance 1662, amending chapter 2 of the Alamogordo Code of Ordinances, by adding 02-060 "Code of Conduct." (Brian Cesar, City Manager) (Roll Call Vote Required)

City Manager Cesar said was the item that was brought to you at the last meeting just for discussion. As we talked about in the last meeting, a code of conduct was recommended by the New Mexico Municipal League for Alamogordo. They recommended it for all the various municipalities they represent. This not only adds a layer of protection for the citizens of Alamogordo, but also protects you as individual commission members. This is the actual ordinance. Just like the last couple of ordinances we talked about where you all discussed and voted on, if there are any changes, as long as they are not substantial, those can be made tonight, and it can be passed for first publication. If they are substantial, then we would have to bring it back again for first publication.

Commissioner Rardin said in your one from last week, we have the restrictions on the governing body administration, of the personal system management section. He said he didn't see it in the one we have. Commissioner Rardin said it is on page nine of this one. Mayor Pro-Tem Dusty Wright said page 78 on the PDF. Commissioner Rardin said there it is. He said he kind of has a little bit of issue with that statement, section Q, it says, "The governing body shall not perform", and shall is a pretty strong word, "collectively or individually", so it sounds like it is kind of tying the Commission's hands. "The paragraph shall not apply to matters of policy", okay, so it has got a few things in there. City Manager Cesar said this is straight out of the Charter, not word for word, but if you read the Charter, and the Charter says basically the same thing. Commissioner Rardin said basically or does say the same thing. Commissioner Rardin said he didn't have the Charter here with him. City Manager Cesar said he doesn't have it in front of him either. Commissioner Rardin said the one he read right here, it doesn't say, he said he guessed it did say, "this paragraph shall not apply to matter of policy". He said most of us know not to overstep that bound; if we need to slap somebody around, we take you around back and slap you around, and say hey, get this under control. He said he thinks that kind of ties our hands right there, he said he did not know why that needs to be in there. Commissioner McDonald said you said slap. Commissioner Rardin said figure of speech. Commissioner Rardin said he had not read the Charter in a while, so if that is in there, okay. City Manager Cesar said City Attorney Smith is pulling it up and it will take just a second, because he does not have a computer in front of him. City Manager Cesar read out of the Charter, "City Manager shall be appointed solely on the basis of his or her qualifications for an indefinite term. His or her selection shall not be limited by reason of former residence. His or her salary shall be fixed by the Commission. The appointment or removal of City Manager shall require the affirmative votes of no fewer than four Commissioners, or three Commissioners and the Mayor. City Manager is the Chief Executive Officer of the City here. He or she shall have a seat but no vote at every meeting of the Commission. The City Manager shall enforce and carry out all ordinances, rules, and regulations adopted the Commission, and shall employ or discharge employees of the City, shall prepare and submit an annual budget to the Commission, shall make recommendations to the Commission concerning the welfare of the City, or his or her designated agent shall be the person for the purpose of civil process." City Manager Cesar said again, if you want it struck, strike it. Commissioner Rardin said that is the only section, the rest of it is kind of cut and dry. Essentially this code of conduct is a slap on the wrist for us, unless it is something major. He said it is

hard to police us up here, because we are all equal. In the past when we had one, that was the issue he had with it before, was that we had no authority to reprimand one of our own. City Manager Cesar said that what this is designed for, and what it would be used for, is if something happened and it was substantiated. This gives, as you know, a number of you have been Commissioners long enough now, things escalate and build until there is eventually a lawsuit. This is designed to correct those actions. We have a code of conduct for City personnel. There is a code of conduct for your daughter in school. Most places have a code of conduct that has to be followed. For the City employees, for our code of conduct, violation of it results in discipline up to and including termination. Commissioner Rardin said we can't do that. City Manager Cesar said the citizens can recall, but no, this doesn't give the power to the Board to do anything like that. This is designed more to correct actions, if they can be corrected. If not, then when and if something rises to the level a lawsuit and we have the Municipal League attorneys defending the City of Alamogordo and its citizens against this lawsuit, they are able to show that yes, the City took every step they could to correct the actions of one or more Commissioners. He said he knew this a concern that was raised because the old code of conduct that was in place is nothing like what you have in front of you today. That was designed for a specific purpose, and we don't need to get into ancient history unless you want to. The old code of conduct was used on a few occasions to pick on certain Commissioners. Commissioner Rardin said that is exactly right. City Manager Cesar said that in this code of conduct, if someone from the outside is using it and now has targeted you, for whatever reason they are upset with Commissioner Rardin and they are going to continue to file a code of conduct violation for everything they can think of, this Panel that is formed, not that they can punish a member, you know fine someone from the outside, but they can come back, and in the public hearing and report to Commission and say this has now risen to the level of harassment. There has been so many complaints that are unsubstantiated, and as such, we are not considering anything else from this person. You as a Commissioner could then take that, if you so choose and hire your own attorney, and go after that person or persons that are harassing you. City Manager Cesar said there is a little protection both ways, but primarily this is designed to protect the City of Alamogordo and the citizens. Not that there is anything that we are waiting for, and you pass this, and pass it for the second reading, and five days later, now we have a stack waiting for you. There is no secret agenda.

Mayor Payne said that our form of government is commission manager. We have a City Manager for a reason, and he is our only employee. She said she had to read it three times to make sure she understood it right. Commissioner Rardin said that originally, he had just seen the governing body to approve and or budget, he had forgotten that the rest of that was in there, the matter and policies. Mayor Payne said it makes sense, our City Manager runs day to day operations, and we are the government oversight. Commissioner Rardin said we are the representatives of the people, if a constituent is having a problem with a member of staff, we still need the ability to come in and say this needs to be taken care of. This staff member is belligerent with the citizens. He said he just did not want to limit us. Mayor Payne said she thinks that the key, that is what we should do, we should go to the City Manager and he should handle it. Commissioner Rardin said the majority of us do, but if it already states something to this very similar to this in our Charter, it is already there. Mayor Payne said it would be inappropriate for us to go straight to an employee. Commissioner Rardin said if it is in the Charter, he didn't see why it needs to be in there, it is already written. That is the only one he had any issue with. We've got the penalties as stiff as they can be, as far as a violation of it, public censor or up to a \$500 fine. That is all we can do, we can't go any more than that. Mayor Payne said it would have to be pretty serious for that. Commissioner Rardin said if you get anything above that, then the Governmental Conduct Act takes over, and it kind of goes from there anyway.

Commissioner McDonald moved to approve.
Commissioner Burnett seconded the motion.
Roll Call Vote was taken.

Motion carried with a vote of 6-0-0.

9. Consider, and act upon, first publication of Ordinance 1659, amending chapter 2 of the Alamogordo Code of Ordinances, by adding 02-050 "City Commission Use of Social Media".
(Brian Cesar, City Manager) (Roll Call Vote Required)

City Manager Cesar said that this is the ordinance that did come at the last meeting, it was tabled because it tied to a code of conduct. So, we said we would bring it back at this meeting. You passed the other one for first publication.

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

Commissioner Rardin moved to adjourn at 7:57 p.m.
Commissioner Burnett seconded the motion.
Motion carried with a vote of 6-0-0.

ADJOURNMENT



Mayor Susan L. Payne

ATTEST:



City Clerk Rachel Hughs

(Prepared by Dylan Aleshire, Deputy City Clerk)
Approved at the Regular Meeting held on October 25, 2022.

**CITY OF ALAMOGORDO, NEW MEXICO
CITY COMMISSION REGULAR MEETING MINUTES
6:30 P.M., COMMISSION CHAMBERS
November 1, 2022**

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

**DUSTY WRIGHT, MAYOR PRO-TEM
KARL MELTON, COMMISSIONER
BRIAN CESAR, CITY MANAGER
ASHLEY SMITH, CITY ATTORNEY
RACHEL HUGHS, CITY CLERK**

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

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

APPROVAL OF AGENDA

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

PRESENTATIONS

1. Extra Mile Day Proclamation. (Susan L. Payne, Mayor)

Mayor Payne proclaimed November 1, 2022, as Extra Mile Day in recognition of people that go the extra mile to include the non-profits in our city.

PUBLIC COMMENT

None.

CITY MANAGER'S REPORT

City Manager Cesar made the following remarks:
None.

REMARKS AND INQUIRIES BY THE CITY COMMISSION

Commissioner Melton made the following comments:

He asked City Manager Cesar if there was an update on police retention. It was an issue we talked about a few weeks ago. We mentioned possibly utilizing marijuana taxation for that. City Manager Cesar said that had been sent out to the entire Commission, and he asked Police Chief Denton to approach the podium and explain it.

Police Chief Denton said the marijuana money was supplemented with some funds from the City Manager. He said he was able to come up with a proposal for City Manager Cesar, and they came up with an agreement. His guys have already received their first retention portion. They are going to do that every quarter, so the last pay period for the City was their first paycheck. Mayor Payne said we have some new police officers. Chief Denton said we will have a bunch in here for the next Commission

meeting; it is already on the Agenda to have them sworn in. Mayor Payne said that was exciting and thought what we were doing was working.

Commissioner Melton said so to confirm; there are no next steps. We have pretty much tackled it all. City Manager Cesar said yes, it is already in effect for the officers. It is a sliding scale based on years of service. It is subject to approval every fiscal year, assuming that the Commission, through the budgetary process, approves the amount we will request every year. As the Chief explained, a large portion of it is the Gross Receipts Tax that we receive from the sale of cannabis, but it is supplemented by General Fund money. On an annual basis, whoever is the Chief will be presenting a plan to whoever is the City Manager. We foresee that this will continue past our time in the City. It does not have to be used strictly as it is being used this year and it can change as times and needs do.

Commissioner Paul made the following comments:

He said he had the pleasure of being a judge for the Zoo Boo Costume Contest, and he just wanted to thank the City staff that put that event on. It was amazing; what they do to accommodate four thousand families, kids, everyone through there, and all the businesses that locally donate to make that happen. It had been years since he had gone to it, but it was a cool event.

Mayor Payne made the following comments:

She said this weekend is the Veteran's Day Parade. If you get a chance, go out and support our veterans. They brought Gus Macker back, which is pretty exciting, and it starts at 7 o'clock. Dudley School is having a work day on Saturday. The Day of Hope will be an outreach on Saturday to the homeless or those on the verge of homelessness. There will be a lot of different organizations out there providing resources and information. They will be offering free legal services, and they will have a veterinarian out there. Love, Inc. will be giving out blankets and food bags. Kitty City will have pet food. The public schools will be out there. It will be at Mountain View Church from ten to two.

CONSENT AGENDA

2. Consider, and act upon, the adoption and final publication of Ordinance 1659, amending Chapter 2 of the Alamogordo Code of Ordinances, by adding 02-050 "City Commission Use of Social Media". (Brian Cesar, City Manager) (Roll Call Vote Required)
3. Consider, and act upon, the adoption and final publication of Ordinance 1661, amending Chapter 17 of the Alamogordo Code of Ordinances concerning Licenses and Miscellaneous Business Regulations. (Rachel Hughs, City Clerk) (Roll Call Vote Required)
4. Consider, and act upon, the adoption and final publication of Ordinance 1662, amending Chapter 2 of the Alamogordo Code of Ordinances, by adding 02-060 "Code of Conduct." (Brian Cesar, City Manager) (Roll Call Vote Required)
5. Consider, and act upon, the adoption and final publication of Ordinance 1663, repealing Chapter 27 of the Alamogordo Code of Ordinances concerning Vehicles for Hire. (Rachel Hughs, City Clerk) (Roll Call Vote Required)
6. Consider, and act upon, approval for Alamogordo Fire Department to accept a \$25,000 stipend award from the New Mexico Department of Homeland Security. (Richard Adler, Chief, Alamogordo Fire Department)

7. Consider, and act upon, approval of Resolution 2022-45 authorizing the submission of a grant application for the purpose of rebuilding the circulatory roads at the Bonito Lake Recreational Area. (Debbie Osborne, Grant Coordinator) (Roll Call Vote Required)

8. Consider, and act upon, acceptance of a grant agreement from the New Mexico Economic Development Department in the amount of \$99,000 to repave a section of the walking path on Indian Wells Rd. (Veronica Ortega, Community Services Director)

City Clerk Hughs removed Item 3 from the Consent Agenda. Commissioner Rardin removed Item 4 from the Consent Agenda.

Commissioner McDonald moved to approve the Consent Agenda as amended.

Commissioner Burnett seconded the motion.

Roll Call Vote was taken.

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

ITEMS REMOVED FROM CONSENT AGENDA

3. Consider, and act upon, the adoption and final publication of Ordinance 1661, amending Chapter 17 of the Alamogordo Code of Ordinances concerning Licenses and Miscellaneous Business Regulations. (Rachel Hughs, City Clerk) (Roll Call Vote Required)

City Clerk Hughs said the reason she pulled the ordinance was because per State Statute, licenses that are being denied or revoked must come before the Commission. If after the information comes to the City Manager, which we had added that language, of the potential denial or revocation of a license, then if the City Manager agrees that it is not in the interest of the public's welfare or safety, or if a violation of an ordinance has occurred, a hearing will be set forth for the applicant or business owner to come before the Commission. They can present in front of the Commission. This only applies to the licenses, not the business registrations. Therefore, she said she will have to bring back the Alcoholic Beverage Dispenser's chapter passed at the last Commission meeting because it will have the exact same wording.

Commissioner Rardin moved to approve as amended.

Mayor Pro-Tem Wright seconded the motion.

Roll Call Vote was taken.

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

4. Consider, and act upon, the adoption and final publication of Ordinance 1662, amending Chapter 2 of the Alamogordo Code of Ordinances, by adding 02-060 "Code of Conduct." (Brian Cesar, City Manager) (Roll Call Vote Required)

Commissioner Rardin said that in Section Q, the word "collectively" needs to be removed or further defined. It is not so much for this Commission and upper management we have now, it is for future Commissions. He said that we now understand how it all works, but he has been there when we have not had decent management or when the Commission had to step in behind the scenes and recommend or urge something that needs to be done. Commissioner Melton said he agreed and thought this would tie their hands, as no one can predict what is going to be happening in the future.

Mayor Payne said she sees what he is saying, except that it does say, "delegated to the City Manager, including administration of the personnel system". We do not have any oversight of personnel other

than the City Manager. That is not going to change with a new City Manager. Our form of government is not set up that way.

Commissioner Rardin said he has been here when they did not have a City Manager. He has been here where the Commission kind of had to run things behind the scenes, because we didn't have anybody here to do it. He said he is just putting it out there.

City Manager Cesar said this just applies to the City Manager. He said he is fine with whatever change you all want to make. Just remember that this is also in the Charter, and you have a Charter Review Committee coming up. Commissioner Rardin said we looked at it, and the City Charter does not specifically say we cannot, just that we will delegate it to you. City Manager Cesar said right, and this is saying that, individually or collectively, the Commission is not going to go to whoever is the City Manager and say, "The Chief of Police, you need to fire him." It does not prevent one or all of you from saying "Hey, we have some serious concerns". Mayor Payne said that has also been done in the past. City Manager Cesar said change it as you see fit.

Commissioner Rardin said either remove "collectively" or further define it. He said that he has been here through some bad City Managers, and one of them happened to be an attorney, he would have taken that and probably run with it. He would have manipulated every little aspect of how this was written. The Charter is a little more broad than this statement is, there is a little more room for interpretation. Mayor Payne said she gets what you are saying, but she did not think it was going to happen in the next three years. Commissioner Rardin said he is going to be the first one that says I told you so.

Commissioner McDonald said that since Commissioner Rardin wanted to add meaning to the word "collectively", can't we get an example in there and refer back to that instead of changing it completely. Commissioner Rardin said we are either just removing the word "collectively", or putting a definition further defining it. Commissioner Melton said he felt that if we try to define it, it is going to violate the Open Meetings Act. If we say we need four Commissioners or something, we are just asking for trouble, unless this takes place in a Commission meeting. Commissioner McDonald said that Commissioner Rardin said examples, can't we refer to an example. Commissioner Rardin said there are numerous examples, but City Manager Cesar was here and he remembers some of those. City Manager Cesar said when you are saying "collectively", and again you can take out the word, define the word, or leave the word in; as you do it "collectively", then you are either doing it in an open meeting, or you are doing it in an Executive Session. That is the only way you can do that. You can't get together as a group, come visit the City Manager, and say hey we really want you to take care of that Richie problem.

Mayor Payne said to Commission Rardin you do not like the word "collectively", but, "the governing body shall not perform, collectively or individually, general executive management functions in the administration of City government." Commissioner Rardin said he had been here at times when we had to do that. Mayor Payne asked "collectively". Commissioner Rardin said they were behind the scenes running it because we did not have any upper level staff. Mayor Payne said if we do that behind the scenes "collectively", are we not violating the Open Meetings Act. Commissioner Rardin said to a point, basically we would have the City Manager or whoever we had in the position at the time, he said he thought it was the City Attorney at the time that was running things. City Manager Cesar said this applies, as it does in the Charter, to the City Manager. Not if you fired me and put Richie in my place, he would not be the City Manager, but he could be the Acting City Manager, until such time as he becomes the City Manager. Mayor Payne said to Commission Rardin you are saying we did not have a City Manager or Assistant City Manager, are you saying we did not have any of that. Commissioner Rardin said we had an attorney here. City Manager Cesar asked if Commissioner Rardin was talking

about Becky Ehler. Commissioner Rardin said no, it was in the Suzie era. Mayor Payne said that had to be Stephen Thies. Commissioner Rardin said that Stephen was around, but he believed that Stephen was running things for a short period of time. City Manager Cesar said he was not the one that was Acting, we had Matt McNeil who was the Acting. Commissioner Rardin said so it would have been Matt. City Manager Cesar said we had a Chief of Police who was Acting at one point, we had a contract City Manager. Mayor Payne said if it was Matt McNeil, he was an Assistant City Manager. Commissioner Rardin said so we had a Police Chief running things at one time. City Manager Cesar said which would take a greater level of oversight by the Commission. Commissioner Rardin said that is what he means by that, we were not really running anything, but the Commission as a whole was having to, as the City Manager stated, oversight, to make sure everything was going smoothly. Mayor Payne said that is not general executive management functions then. Commissioner Melton said that is a vague term, anyone can make the case. City Manager Cesar said that for you all to do it collectively, you would have to do it in an open meeting, or an Executive Session, and there is only certain things that can be discussed in an Executive Session. Mayor Payne said if we don't do it in an open meeting, then we are violating the Open Meetings Act, that is what it boils down to. There is no way that the Commission legally, collectively, perform general management functions behind the scenes. There is no way that can happen legally.

Commissioner Paul said can we just define exactly how that is going to read then. We are just going to be removing "collectively". Commissioner Melton said we have to get rid of the "or" as well. Mayor Payne said it would say, "shall not perform individually". That is all it would say. City Attorney Smith said that you could take out "collectively or individually", you could take out both of those, and then it would just be, "the governing body shall not perform general executive management functions". Mayor Payne said she liked that. Commissioner Melton said aren't we in the same place though, we are still limited. It doesn't change anything. Commissioner Rardin said we are limited by the Charter, but it is not as stringent as this. It says yeah we have to do this, but it doesn't say we can't do it either. Our Charter is very difficult to change. Mayor Payne said she is more uncomfortable with the idea that if we say "individually", then the assumption is collectively, we can perform general administrative management functions. She said she doesn't see us as being able to do that. Commissioner Melton said why don't we add a clause, if there is a shortage of senior level staff, something in that case. Mayor Payne said our City is in trouble if we are in that big of a shortage. Commissioner Rardin said he has been there before. Commissioner Melton asked Commissioner Rardin if that is what he was going at. Commissioner Rardin said he thinks it ties the Commission's hands in certain cases. We all know that we are not going to come in here behind the scenes and try to run the City, we can't do that. He said he just thinks that in certain cases. Mayor Payne said it is back to that same argument, we are not, but what if a future Commission does. Commissioner Rardin said a future Commissioner or City Manager. Mayor Payne said especially if they do not understand what their role is. Commissioner Rardin said at least this document can be changed in thirty days. In the Charter, it has to go to a vote of the people and it is very difficult to change.

City Manager Cesar asked Commissioner Rardin what was his motion now. Commissioner Rardin said his motion is still the same, where we will remove "collectively or individually". Mayor Payne said and just say "shall not perform executive management functions". Commissioner Rardin said yes. Mayor Payne asked City Clerk Hughs if she got all that, we are taking out "collectively or individually". We are striking it completely. Mayor Payne asked the Commission if that was right, and Commissioner Rardin said yes.

Commissioner Rardin moved to approve Item 4, Ordinance 1660, Section Q, to state "the governing body shall not perform general executive management functions".

Commissioner McDonald seconded the motion.

Roll Call Vote was taken.

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

Commissioner Rardin moved to adjourn at 7:02 p.m.

Mayor Pro-Tem Wright seconded the motion.

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

ADJOURNMENT



Mayor Susan L. Payne

ATTEST:




City Clerk Rachel Hughes

(Prepared by Dylan Aleshire, Deputy City Clerk)

Approved at the Regular Meeting held on November 15, 2022.

**CITY OF ALAMOGORDO, NEW MEXICO
CITY COMMISSION REGULAR MEETING MINUTES
7:00 P.M., COMMISSION CHAMBERS
NOVEMBER 3, 2014**

**SUSIE GALEA, MAYOR
JASON BALDWIN, COMMISSIONER
NADIA SIKES, COMMISSIONER
JENNY TURNBULL, COMMISSIONER
AL HERNANDEZ, COMMISSIONER**

**ROBERT RENTSCHLER, MAYOR PRO-TEM
DR. GEORGE STRAFACE, COMMISSIONER
JIM STAHLE, CITY MANAGER
STEPHEN THIES, CITY ATTORNEY
RENEE CANTIN, CITY CLERK**

CALL TO ORDER, ROLL CALL, INVOCATION & PLEDGE OF ALLEGIANCE

Mayor Galea called the meeting to order at 7:00 p.m. Roll Call was taken by the City Clerk. Clerk Cantin announced there was a quorum present. Invocation was given by Pastor Bill Heithold and the Pledge of Allegiance was led by Commissioner Turnbull.

PRESENTATIONS

1. **Presentation of a Proclamation naming November 3, 2014 as Color the World Orange Day for Complex Regional Pain Syndrome (CRPS), also know as Reflex Sympathetic Dystrophy (RSD).** (*Susie Galea, Mayor*)

The Mayor presented the proclamation to Windy Franks.

2. **Presentation related to an update on the expansion of operations at the Alamogordo White Sands Regional Airport.** (*Ron Hooper, President of Neptune Aviation*)

Mr. Lance Grace introduced Mr. Ron Hooper, President of Neptune Aviation. Mr. Grace gave some background on the Neptune planes. The air tankers were first brought here in 1970 or 1971 and the company was called Black Hills Aviation. It was later purchased and the name changed to Neptune Aviation.

Mr. Ron Hooper addressed the commission using a Power Point presentation (see Agenda Book). They continue to have flight training and plane maintenance throughout the year, and have USFS large air tanker contracts. They have three full time individuals and are working to have a total of six by working with the NM Job Training Incentive Program with preference to Alamogordo/New Mexico residents. The company plans to work with the school systems to establish an apprenticeship program in order to train airline mechanics. They are going to assemble 27 bicycles in December for distribution and Mr. Hooper asked for help from the City to give these to those who need them.

City Manager Stahle asked Mr. Hooper to get the information to him concerning the work to be done at their hangers so that he could help spread the word on bidding.

Mayor Pro-Tem Rentschler thanked him for coming to Alamogordo and questioned him about contracts with the USFS, as well as aircraft statistics.

Commissioner Straface suggested the school system and the Chamber of Commerce might be able to help with the bicycle distribution.

Lance Grace pointed out some members of the Airport Board in the audience, Jeff Rabon and Eric Worshing. He noted Manny Gonzales and Dave Pierce, the airport manager in Ruidoso, were also on the board but were unable to attend tonight. Mr. Grace announced the ground breaking for the runway would be at the airport on the afternoon of December 10th.

APPROVAL OF AGENDA

Mayor Pro Tem Rentschler moved to approve the agenda. Commissioner Baldwin seconded the motion. Motion carried by a vote of 7-0-0.

PUBLIC COMMENT

None.

CONSENT AGENDA (Roll Call Vote Required for Item No. 6)

3. **Approve Minutes of the October 28, 2014 Regular Meeting of the Alamogordo City Commission.** *(Renee Cantin, City Clerk)*
4. **Approve statement related to the Executive Session of October 28, 2014.** *(Renee Cantin, City Clerk)*
5. **Accept the Investment Report for the quarter ending September 30, 2014, in accordance with the City of Alamogordo Investment Ordinance.** *(LeeAnn Nichols, Finance Director)*
6. **Approve Resolution 2014-60 approving the DFA Quarterly Report for the period ending September 30, 2014. [Roll call vote required]** *(LeeAnn Nichols, Finance Director)*
7. **Approve the Award of Public Works Bid No. 2014-014 Airport Runway 3 Extension Project (Alternate 2) to Mesa Verde Enterprises, Inc. in an amount not to exceed \$1,817,585.81 (excluding NMGR).** *(Matt McNeile, Assistant City Manager)*

Mayor Pro Tem Rentschler requested to have Item #7 removed from the Consent Agenda.

Commissioner Straface moved to approve 3, 4, 5, 6. Commissioner Hernandez seconded the motion. Roll call vote was taken by the Clerk. Motion carried by a vote of 7-0-0.

ITEMS REMOVED FROM CONSENT AGENDA

7. **Approve the Award of Public Works Bid No. 2014-014 Airport Runway 3 Extension Project (Alternate 2) to Mesa Verde Enterprises, Inc. in an amount not to exceed \$1,817,585.81 (excluding NMGR).** *(Matt McNeile, Assistant City Manager)*

Mayor Pro Tem Rentschler asked Assistant City Manager McNeile when he expected this project to be completed. Mr. Jeff Rabon with Mesa Verde Enterprises, the contractor for this project told the commission they hoped to be completed by winter of 2015.

Mayor Pro-Tem Rentschler asked when the rest would be put out for bid and Assistant City Manager McNeile told him the design was there and we are waiting for FAA funds. The funding breaks down to 90% federal, 5% state and 5% City.

Mayor Pro Tem Rentschler moved to approve the Award of Public Works Bid No. 2014-014 Airport Runway 3 Extension Project (Alternate 2) to Mesa Verde Enterprises, Inc. in an amount not to exceed \$1,817,585.81 (excluding NMGR). Commissioner Hernandez seconded the motion. Motion carried by a vote of 7-0-0.

UNFINISHED BUSINESS

8. **Discuss, consider, and act upon, the Values & Covenants for the City Commission.** *(Commission)*

Commissioner Baldwin explained he had submitted the notes he took at the last meeting to the Clerk in order to get this on tonight's meeting. He had highlighted the wording that needed further discussion.

He had some further options after working on the notes this week and Mayor Galea had given him some things she would like to see added. He read the list from the Mayor:

- 1) Communication can be simply defined as send/received and feedback.
- 2) When preparing for meetings, deliberating all the facts carefully is needed; consensus, cohesion and communication amongst the commission
- 3) [He paraphrased] Make sure we share substantial information amongst the whole commission while we are individually attending meetings with inter-governmental groups, citizens, boards and committees and anything we attend. Make sure we pass along our notes that pertain to the observations and outcomes of those meetings.

Commissioner Baldwin felt the first two items had been covered previously and asked the others where they were already listed. Mayor Galea felt it would fall under Committed to, #1 and #2. She thought it was important to give substantial feedback to anything pertaining to city business, and she didn't feel those who attended community events shared the feedback, generally. Those who attend Boards and Committees who receive funding to travel were sharing the information they gleaned from those meetings.

Commissioner Baldwin asked if she was saying that if we are appointed to a Board and attend on behalf of the city, we should be taking some notes for the commission. Mayor Galea said those notes could be shared at the end of a commission meeting during Comments from Commissioners. Commissioner Turnbull liked that idea. Commissioner Hernandez said that when he goes to SERPO and other meetings, it would be more work for staff because the agenda would need to be copied for the commissioners.

Commissioner Baldwin suggested Informing other commissioners as to meetings attended. After discussion it was decided Keeping commissioners informed of pertinent information from meetings attended. Commissioner Straface felt they had to be cautious since when they share information it probably needs to be one way because of the concept of Rolling Quorum. Mayor Galea agreed, and we should respond in an email only if it is sent directly to us.

Commissioner Baldwin asked if the last one, Substantial information amongst the whole commission while we are individually attending meetings with inter-governmental agencies, would be included in the previous comments, and the mayor said yes.

Commissioner Straface asked about the second section of Elected Officials Recognize, second line – if the last three words make sense. Commissioner Baldwin said he had highlighted that earlier and had in the meantime changed it to read: The covenants binding and enforceable by the commission and the citizens of Alamogordo. Commissioner Straface agreed with this.

Mayor Pro-Tem Rentschler asked how this would be enforceable. It is something we promise, but how would it be enforceable. Mayor Galea said if we are not going to self-police ourselves on the commission, it could be added to the body of the Code of Conduct as a standard of measure. Mayor Pro-Tem Rentschler felt it was already there. Commissioner Baldwin felt this was something we would bring up amongst ourselves at meetings, unless brought up by others outside the City. The idea was to talk about it openly at meetings since that is where the accountability is. If we are not on the same page, then it probably needs to say in there how we will enforce this.

Commissioner Baldwin pointed out the Values and Beliefs, the last one and asked for help with the wording. He wondered about changing it to Be Knowledgeable and Informed; that would cover due-diligence. As stated there, the due-diligence part was rather vague. Mayor Galea agreed we should be knowledgeable and informed prior to the meeting so we could ask questions. Commissioner Baldwin said we could make a separate one in reference to due-diligence if we liked. Mayor Pro-Tem Rentschler agreed. Commissioner Baldwin asked if everyone agreed to remove the due-diligence part; Mayor Galea said it would be removed and replaced with be knowledgeable and be informed. Everyone agreed.

Commissioner Baldwin moved to We the Elected Officials Recognize. After input he changed the second one to say, The covenants are binding and enforceable by the commission and the citizens of Alamogordo. Mayor Pro-Tem Rentschler felt it should say they are binding(period). Commissioner Baldwin said the first one says Our roles as elected officials was vague. He changed it to Our job description and duties as elected officials. The commissioners agreed.

Commissioner Baldwin then noted the last portion saying, Not to surprise fellow commissioners of city manager. He reworded it, Be open and up front about intent and information to avoid surprises for fellow commissioners and the city manager. Some agreed. Mayor Pro-Tem Rentschler said there have been times he considered information and then came up with ideas that would surprise even him; could we not express our selves at that time because it might surprise somebody. Mayor Galea gave specific examples and Mayor Pro-Tem Rentschler said those things were not a surprise to anyone but her. Mayor Galea said it was a surprise to the Clerk and the entire city. Mayor Pro-Tem Rentschler said it was not. Commissioner Hernandez cited another thing that had been said and Mayor Galea said it never happened.

Commissioner Baldwin said we all use our personal experiences on this commission to help us get through what has happened in the past and move forward. He said he could take out surprises; it could be misinterpreted. Mayor Pro-Tem Rentschler said it is very subjective. Mayor Galea said to offer common courtesy of planned and intended information to share and display.

Commissioner Baldwin then read what he had, Be open and upfront about intent and information to avoid surprises for fellow commissioners and the city manager. Commissioner Straface suggested inserting after open and before intent, say as a general practice we would not surprise one another. Sometimes something will hit us that we haven't thought of before and would like to offer now.

Commissioner Baldwin moved to the very last one, We the elected officials are committed to, and he read those listed under this title, Listening for understanding with respect, be prepared/be involved; working together with positive intent, Commissioner Sikes thought positive intent was redundant. Commissioner Straface said assume positive intent. Commissioner Sikes didn't think we should have to mention positive intent because it was understood. She didn't think anyone here would come to a meeting with negative intent. Commissioner Straface said I assume comments would be offered with positive intent. Commissioner Sikes thought that as elected officials, part of our integrity is to approach each commission meeting with positive intent; anyone with a negative intent did not belong here. Commissioner Straface said he has seen evidence where people have not taken a comment as positive. Commissioner Hernandez agreed with positive intent. He jumped to the last part Not to criticize city staff or city manager. Sometimes comments can seem negative but are actually positive; as long as it is done without trying to take somebody down.

Commissioner Baldwin went to, We are open to constructive criticism. He changed to, We are committed to being open to opposing positions and to constructive criticism.

Moving to page two, Promise to Citizens and Promise to City Manager. He came up with Commission's promise to citizens: 1) We will execute our oath of office with strict adherence to all applicable laws, and the commissions values and beliefs. Mayor Pro-Tem Rentschler said it should be execute our oath of office (period), adhere to Alamogordo's Mission Statement (period), and he thought we couldn't go anywhere else with that. It's already in the Commission's Values and Beliefs; it would be redundant. Mayor Galea asked why it would be redundant since it is a promise to the citizens. We are making a promise to the citizens that not only will we execute our oath of office and observe the mission statement, but we will also use this document to help guide us in that direction. It would be a standard of measure the citizens could hold us to.

Commissioner Baldwin liked the idea of the Oath of Office (period) and the Mission Statement (period) and the Commissions Values and Beliefs. Mayor Pro-Tem Rentschler said he could add that in now. Mayor Galea said to add in the Values and Beliefs. Commissioner Baldwin read under the Commissions Promise to Citizens: We will execute our oath of office (period) and Mayor Pro-Tem

Rentschler said, Adhere to our mission statement (period). Mayor Galea added, Adhere to the Commissions values and beliefs (period).

Commissioner Baldwin said under the Commissions promise to the city manager, the three bullets said Not to, and he didn't want to lead with an admonishment. He changed it, To operate with strict adherence to our values and beliefs, To work within the guidelines set forth by the city manager when working with staff. The last one he said was open to discussion because all the city managers he had worked with had different management styles as far as how they wanted the commission to communicate with the staff, and there needs to be some help from the city manager in order for us to make this promise. Mayor Galea thought all the city managers didn't want the commission to criticize staff, and Commissioner Baldwin said that is still in there. Mayor Pro-Tem Rentschler objected to that saying there are times, as elected officials, when we have gone with something for a while and are finally getting to where we want, and there are times we need to say you need to pay attention to what we trying to get done here. He would not consider that criticism, and there are times when we are spending public money, that we pay a lot of attention to what is happening. If there is something happening that needs to be resolved one way or the other, there are times when staff and we will not agree. He disagreed with the word criticize. He did not want to be adversarial, but we are the elected officials. Mayor Galea asked if we could make the promise, since we are a Council/Manager form of government, that any criticism we would have for staff would only be shared with the city manager? Why do we need to go straight to a director's office and criticize? Mayor Pro-Tem Rentschler said we wouldn't do that since that is one of the things the city manager said he didn't want done.

Commissioner Straface thought that was covered when we said any criticisms will be directed to the city manager. The words he would use are we would not criticize the city manager or staff publicly. Instead, we would take our concerns to the city manager if a project was dragging on; that way it is handled internally. Mayor Galea appreciated that as well, that no criticisms will be made publicly.

Commissioner Baldwin asked if there was a better word than criticism. Mayor Pro-Tem Rentschler agreed and said he would not be willing to sign off on it. Mayor Galea suggested derogatory comments. Commissioner Baldwin said earlier we used, being open to opposing positions and constructive criticism; that line could be used almost word for word in the city manager part. Mayor Pro-Tem Rentschler said it could. He said we've had this discussion before and he gave the example of the Rec. Center. There was specific criticism over that, but does that mean we can't have this discussion in public anymore. When we have a discussion there will be times when we need to be very direct, and you have to allow us to do that.

City Manager Stahle said there are times when we need a good cage rattling, but there are ways to do it that might be more appropriate. Clearly, the language may need to be adjusted as well, because as a group you may find you are frustrated about something and need to bring it out or express a concern. It is how you do it that is so critical. He said it is important that you direct these things at me and I take responsibility. I don't have a problem with a commissioner or the group pointing out areas of deficiency. He thought you ought to be able to bring areas of concern to his attention at a meeting like this; sometimes it is tough. Mayor Galea asked him if it was appropriate to state we can bring up areas of concern without belittling staff. Commissioner Straface thought we could talk about and be critical of services provided without identifying individuals. He didn't think it was appropriate to name a person; it was our obligation to bring concerns to the city manager's attention, privately.

Commissioner Hernandez said he thought we needed to reflect in this document that we are under the City Charter, because that is our law. Anything on here needs to reflect positively towards the Charter. He thought we had talked about the will of the commission; we buy into whatever the majority sets forth and don't let the citizenry manipulate us. The example he gave was when an item is on the agenda, it is fine for citizens to speak toward it, but we don't need to be calling people to encourage them to come and support us and get something passed. That is abusing your power. We advertise and notify about the meetings; people should only come if interested and we shouldn't encourage them to come in order to bully us. He said he was tired of being bullied. Mayor Pro-Tem Rentschler suggested it could be stated, Not to abuse power. Commissioner Baldwin said for the sake of time, have Commissioner

Hernandez paraphrase that and type it up, and then we'll decide where to put it. Get it to us and we'll put it in there.

Commissioner Baldwin repeated that the three major categories we have are: Our Values and Beliefs, We the Elected Officials Recognize, and We the Elected Officials are Committed to. Commissioner Hernandez thought his idea would go under We the Elected Officials Recognize, because it is representation. He gave the example of the Plaza Pub and so many people came and some threatened us; that is uncalled for. Commissioner Baldwin felt that was part of the process; he expected on any given day.....and Commissioner Hernandez agreed that if they come on their own it is fine, but for me to call and ask them to come and support me on an item so I can get it passed is wrong. Commissioner Baldwin said the instigation of it, and Commissioner Hernandez said absolutely. Mayor Pro-Tem Rentschler said it could be considered abuse of power to try and manipulate the outcome on an agenda item, correct? Commissioner Hernandez said it could be.

Commissioner Sikes thought that was part of the process, also. She gave the example of the Bee Ordinance. When in public and discussing it with others, she may have felt they should come and present their argument to the commission to offer even more substantial information than she could. Commissioner Hernandez agreed, but if you call them a lot in order to encourage them to come and support you, that is something else. Mayor Galea suggested we would be shutting out the minority voice by doing this. If this were put in place, she would also want it put in place that we not be involved in vote trading by offering a promise to give his/her vote or influence in favor or against any proposed official action and consideration, or upon condition any other city official will promise or assent to give their vote in favor or against any other proposed action. Commissioner Hernandez felt that was a given. Commissioner Baldwin said everything we are talking about here should be a given, but we are talking about it again because it is not. Commissioner Baldwin said we decided on being not overly cumbersome with the process; being right in the middle. Let's keep that in mind. He agreed with the Mayor and said we would talk about it later in regards to that.

Mayor Galea said she was reminded of another promise to the citizens in line with our oath of office and mission statement; a promise to democratic leadership. A simple statement would be, To honor and respect the principles and spirit of representative democracy, and set a positive example of good citizenship by observing the letter and spirit of the laws, policies and rules. She asked if anyone would object to adding, Democratic Leadership under Promise to Citizens. Commissioner Straface objected to the detail of it, but liked Democratic Leadership. Commissioner Baldwin asked where they would want this and they decided it would go under Elected Officials Recognize. Commissioner Straface said when we have a particular issue we are interested in, he understood we tell people to come and address the commission so we could hear their thoughts, but we have it covered in the covenants that we would not intentionally surprise people. I would email all of you and tell you I have invited so many people to come, this is the purpose for it, and this is what I hope we would get from it. Commissioner Hernandez said that was basically what he was looking for. Mayor Galea thought that fair and she would do the same thing. Commissioner Straface said it was important to let all know in order to share the intent, thus the other commissioners would not be blindsided.

Commissioner Baldwin asked if everyone was fine with the statement under We the elected officials recognize of Do not undermine the action of the board. Commissioner Hernandez thought that would cover it twice. If we needed to be specific about an action item on the agenda..... Mayor Pro-Tem Rentschler suggested Do not undermine the position of the board; if there is a 4-3 vote, we know what the position is. Mayor Galea said there would have to be action before there was a position, and Mayor Pro-Tem Rentschler agreed. He said the point is before there is action there is not a position, and when there is a 4-3 vote, the losing side does not need to be derogatory toward the winning side. When we agree on something, whatever the vote, we all buy into it. Commissioner Sikes said we buy into the decision. Commissioner Straface said that goes under Democratic Leadership; we recognize that before a vote we will present our positions and arguments, but we will honor and support the decision of the commission publicly. We simply have to say it was the decision of the commission and we exercise democratic leadership. Commissioner Baldwin agreed and suggested, We honor and support the decision of the commission.

Commissioner Sikes said she did not like the word surprise and thought blindside was a good alternative. Commissioner Turnbull suggested putting intentionally blindside, and Mayor Galea asked how you could prove intent. Commissioner Hernandez said you don't have to prove it; it is in yourself. Mayor Galea liked blindside, but the majority said they liked intentionally blindside. Mayor Galea asked Commissioner Baldwin to change it to As a general practice, we will not intentionally blindside one another. Commissioner Sikes asked if that was redundant. Commissioner Baldwin read, Be open and up front about intent and information to avoid a surprise to fellow commissioners and the city manager as a general practice be changed to Intentionally blindside (he did not read the complete finalized phrase).

Mayor Galea asked if this would be coming back to the November 18th meeting for final adoption. Commissioner Baldwin said it will be a living document for us and he would make the changes. He asked for input from Commissioner Hernandez about his wording, the input from Mayor Galea, and that we had talked about the enforceability of this. Do we want to address that now? Commissioner Hernandez said on the one he had it had already been addressed and he felt it had been covered ok. Mayor Galea said we could add it to the Code of Conduct so it is a standard of measure we could be held to. Commissioner Baldwin said we don't have that yet, and she agreed. Mayor Pro-Tem Rentschler said we could say this covenant is binding and enforceable by the Code of Conduct. Mayor Galea was concerned that if all these are not in the Code of Conduct then there would not be a standard of measure. Mayor Pro-Tem Rentschler said too much of this was too subjective to be in the Code of Conduct. This is something we are trying to get as an understanding of this body. Mayor Galea said it could be separate; she stated she had put on the agenda tonight to discuss a Code of Ethics. The reason she had done so is because all the Code of Conducts we are using as models to build ours have a Code of Ethics inside the Code of Conduct for a standard of measure. If this is separate, we'll keep it separate from the Code of Conduct. Commissioner Straface thought it needs to be separate and wasn't sure we should have the language that it is binding and enforceable. What we are talking about are personal commitments we make as leaders to each other and to the organization, and that we will follow those; it's like a handshake. Commissioner Baldwin asked if this should be scratched. Commissioner Straface told them we will recognize if one of us has violated these, and through our personal interactions will hold ourselves accountable to it; that is the ideal. Commissioner Baldwin said you said what is there, The covenants are binding and enforceable by the Commission. Do we need the wording in there or not? Commissioner Straface didn't think so. Mayor Galea said it was also enforceable by the citizens if they are aware of the document. Mayor Pro-Tem Rentschler thought it was a personal promise we make to each other. Commissioner Straface said personal integrity. Mayor Galea asked how to change, We the elected officials recognize: that the covenants are..... Commissioner Baldwin suggested a personal promise; Commissioner Straface said personal commitments made to each other.

The commissioners thanked Commissioner Baldwin for his work.

City Manager Stahle asked for a copy of what they put together so it would be available in advance of the November 18th meeting; all of them and the community could see it and think about it.

9. Consider, and act upon, the first publication of Ordinance No. 1478 related to a code of conduct for the City Commission. (Stephen Thies, City Attorney)

City Attorney Thies went over the changes: having staff make a determination whether or not a complaint had merit, and after making the determination it would go to the commission; develop some type of mechanism to keep complaints without merit from coming before the commission. He had created a committee of three, removing staff from the committee, who review initial complaints to determine whether they had merit. He explained this further saying it could be subject to the Open Meetings Act (OMA). Instead, he created a review committee consisting of three most senior/experienced commissioners, determined by their length of service on the commission. Any complaints would not be discussed with anyone else until such time they make a decision as to whether they found cause or not. It would take a super majority of the commission to over-rule that initial

finding. The commission would decide how to sanction and censure. The city attorney also made some definition changes and removed one of the actions that could be taken by the commission.

Mayor Galea asked about the review committee and wondered if we could create a five member review board made up of at-large, city-wide members the commission could agree upon. Each of those members would need to have legal ethics education experience certification. The initial complaint would come through the City Clerk's office and would be sent to the review board; if they find there is reason to continue the process it would go to the city attorney. He would inform the commission of that process. The five member review board would bring their recommendation of action to be taken to correct any wrong doing. City Attorney Thies told her if there was an independent review committee made up of appointed individuals, their actions would be subject to OMA. It had been suggested at a previous meeting that there be a preliminary peer review mechanism, and that is why he created this review committee.

Mayor Galea asked him if it could be based on reasoning skills; a reasoning skills aptitude test could be taken by all commissioners at no cost at Workforce Solutions. Or it could be a variety so the most senior commissioners could be those who teach other commissioners; it could be the most senior, the one in the middle and the newest commissioner as the three on the board.

Mayor Pro-Tem Rentschler said this Code of Conduct is of the commission, for the commission and by the commission. We all know what our conduct is and he didn't know that we would want to make it so difficult by involving an outside committee that has to take an aptitude test. He said he did not have to take an aptitude test when he ran for commissioner, and he didn't think that was required. He liked what the city attorney had come up with because the concern was the city attorney would have sole discretion; this takes it out of his hands. He thought the three people who had served the longest would be the ones you would want to consider this, and because they wouldn't have any communication with each other, you would get this potential violation and make a decision not involving anyone else. He felt it was very reasonable.

Commissioner Straface said his comment was based on 21 years as a superintendent of schools. Allegations about behavior can come at any time and when it involves public, it will not be confidential. It will be in the press that an allegation was made, even when people on the committee swear they won't share. One of the purposes of this is to take allegations of violations seriously and to protect the commissioner from unfair allegations. He felt what City Attorney Thies had come up with was reasonable, would give us what we want, and we can handle that individually as a group. Mayor Galea asked Commissioner Straface if it was handled internally, would it be best for the most senior members of the board to handle this, or better for a variety of members.

Commissioner Turnbull thought the two most senior and then the newest. Mayor Galea thought the two most senior could work with the least senior to make a good decision. Commissioner Straface thought it important to note that allegations will come because we are public leaders. We make our best decisions but not everyone will agree. There will be people come forward and say this was a violation, and we need to protect the sanctity of our positions and provide for a reasonable way to review those that is confidential. He was comfortable with what Commissioner Turnbull said.

Commissioner Hernandez suggested the city attorney and the most senior commissioner have a conversation when something comes up, and between the two of them they decide who will be on the committee. If there is a problem with one of these two, then go to the next. For example, if Mayor Pro-Tem Rentschler and he had a quarrel the meeting before, you wouldn't want to put Mayor Pro-Tem Rentschler on a committee that will be judging him; eliminate him and go to the next one. You could pick and choose if some had served the same amount of time; go alphabetically or whatever. That way if you knew there was a problem between two commissioners, you wouldn't pick one commissioner to judge the other.

Commissioner Sikes said she felt the same as Commissioner Hernandez. She asked City Attorney Thies if there was a mechanism where we don't have a standing committee; it changes for each

infraction. City Attorney Thies said he had thought of a rotating membership. Commissioner Sikes asked what if we took the longevity out and we simply stated two commissioners. City Attorney Thies asked how those three would be decided and Commissioner Sikes said put their names in a hat. She said the thing to remember is they are not working together. Mayor Pro-Tem Rentschler said that is exactly the point; we would have no reason to communicate at all. Commissioner Sikes said everyone would get a turn and it could be random. She didn't see the purpose of seniority versus non-seniority. Mayor Galea agreed.

Commissioner Turnbull suggested a disqualification clause; if a commissioner or mayor's impartiality can be reasonably questioned, included but not limited to instances where he/she has a personal bias or prejudice concerning those involved in the complaint, said commissioner shall be disqualified from participating. Mayor Pro-Tem Rentschler and Commissioner Sikes asked who would determine that. Commissioner Straface saw a value in seniority because of history, a long-term view of what has happened in the city; that should have bearing on us. At any one time at any one meeting when we take a position, it is highly likely we will not agree. We can rise above that personal issue and judge them fairly, professionally. He liked what the city attorney put in place.

Commissioner Baldwin said if we are operating in accordance to our values and beliefs then if a commissioner is chosen who has an issue, they should be able to remove themselves from the issue. Commissioner Straface, Mayor Pro-Tem Rentschler, and Commissioner Sikes agreed. Mayor Galea noted all the different examples stated tonight for the make up of the board and asked what they wanted.

Mayor Pro-Tem Rentschler asked City Attorney Thies that if he sent out those emails and someone came back and said I can't do this for whatever reason, would your next step be to go to the next most senior. City Attorney Thies said yes; he would go down the list based on seniority until he had three members capable of serving on the committee. Mayor Pro-Tem Rentschler liked that idea because those of us who have been on the commission for a number of years know a lot about the City Charter and what the rules should be, and how we would hold each other accountable. He liked the way the city attorney currently had written this. The truth is we shouldn't ever need to use this; the next truth is we may well need to use it.

Mayor Pro Tem Rentschler moved to approve the first publication of Ordinance No. 1478. Commissioner Hernandez seconded the motion.

Commissioner Straface wanted to add language providing for attorney client privilege, because if there are emails going back and forth between City Attorney Thies and three members, that becomes a public record without that privilege. City Attorney Thies told them that is why it is structured where it will be confidential. The communications would go between the attorney and the three committee members, so if someone made the request we could respond that it is protected by the attorney client relationship. When it comes before the full commission anyone could see all the documents filed with the city. He said he could add some provision to that affect, but this was his intent in drafting it in this way. Commissioner Straface said he was fine with that.

Commissioner Turnbull wanted to clarify the time for filing. We had said 90 days, but this still says 365 days. City Attorney Thies told her the 365 is if someone finds out something 300 days later they could file a complaint, but could not 366 days after it allegedly occurred. Would the 90 days be from the date the event occurred or the date the person making the complaint discovers the alleged violation has occurred? Memories fade over a year's time; unless you want a hard rule saying you must file a complaint within 90 days of when it is alleged to have occurred, you have to have an end date for when they could no longer file something. Commissioner Baldwin thought that is what they said and Mayor Galea agreed. Commissioner Straface supported the 90 days; longer than that drags it out longer. He used himself as an example; if someone filed a complaint on him 364 days from now, by the time all the processes were completed, he probably wouldn't be on the commission.

Commissioner Hernandez said he would explain it differently. If a campaign contribution of \$5,000 was not logged, and there was an item that came up for vote and that commissioner voted for that item knowing it was kind of a payback, but it wasn't found out for 120 days or 300 days, then you have the 90 days to file it within the 365 days. This would go through the Secretary of Stated anyway.

Mayor Galea asked City Attorney Thies about striking the paragraph of admonition, and she wondered where the direction came from to completely strike that paragraph. City Attorney Thies told her if you read through those, admonition and warning are very similar, so he had put an additional type of action the commission could take if warning covers it.

Mayor Galea said in the second Whereas in the document it says, to this end, the City Commission desires to adopt a Code of Conduct for its members to assure public confidence in the integrity of local government and its effective and fair operation. She asked how effective would a member of this commission be now and in the future if they fear retaliation based on a perception of acting within their office. Is it fair to the citizens if the power of the commissioner supersedes the people to request representation? Will the commissioners be apprehensive of retaliation because of emails? When she had reviewed other resolutions and ordinances she did not find any of them utilizing fines or other retaliation against a commissioner. One of the clauses she was concerned about with this proposed ordinance was under Complaints against Commissioner - Any person who believes a Commissioner in his/her official capacity has violated the Code of Conduct may file a sworn written complaint with the city attorney identifying... and for that reason she thought there should be a Code of Ethics in this body. She remarked there had been 23 Public Records Requests made between March 2014 to current with the key words 'commission, mayor, email, Susie'. The number of requests could double with this. There isn't any other city in our nation with this language in their Code of Conduct. She felt we would need extra staff to deal with the increased Public Records Requests. She wanted to know what Mayor Pro-Tem Rentschler hoped to accomplish by creating the most severe elected board punishment in the nation. What would be the benefit for all this?

Mayor Pro Tem Rentschler said the one word that goes to the center of that is accountability; we are holding each other accountable. This should not be used, but we have all seen elected officials that have violated the oath of trust they have with the public. Individuals thinking about running for office would see this and think about the personal consequences. If no one else in the nation is doing this, they should. Mayor Galea thought it would be double punishment for us and the Attorney General to punish an individual. Mayor Pro-Tem Rentschler said if the Attorney General or Secretary of State were to start something, we would simply let them continue. Mayor Galea said you mentioned that the Code of Conduct means we are accountable, and if there isn't a clear Code of Ethics in the body of the Code of Conduct, how will we measure what we are accountable for or to. Mayor Pro-Tem Rentschler said the Code of Conduct here and what is in the City Charter are sufficient for what we are trying to do at this point. He felt every commissioner here understood the direction we are headed. The idea is holding ourselves accountable to each other, because we understand what each other are doing. He called the question.

Commissioner Straface understood her point, but what made him comfortable with this language was the process involved; not one person doing anything but a body of commissioners, and the things you mention would be covered with that group. He stated he is supportive of this as written.

Commissioner Turnbull still wanted clarification of time for filing. City Attorney Thies said it was his understanding when he brought it back that they didn't want the hard 90 day rule from the alleged action. It was 90 days from either when the action occurred or when the person discovered it, that's why the 365. If you decide to have a hard 90 days, simply amend the ordinance by striking out the language that gives the other option of 90 days after it is discovered. Commissioner Turnbull said if everyone is against the 90 days, she thought a year was too long. What if we simply say six months, period. She felt 90 days was plenty of time, but if you like it could be six months from the date of the alleged act. Commissioner Straface said let's see where we are in the 90 days. Mayor Galea asked if we could go through the entire process within 90 days, if you are required to report within the first 30 days of the infraction.

Commissioner Sikes said part of the reason we are in this situation is that some things occurred that resulted in complaints that are out of our control with regard to agencies. Sometimes the amount of time it takes to resolve the situation within the agency looking at the problem takes longer than 30, 60 or 90 days. We are experiencing that right now. She would rather wait and leave it at a year. If we need to change it down the road, we can. In the meantime, we have situations that are out of our control because they are being looked at and resolved by agencies we have no control over; we need to allow longer time frames.

Commissioner Straface asked how that related to the Code of Conduct. Commissioner Sikes gave the example that in the future we could have complaints with outside agencies that result in answers that took the agency four, five or six months to get back to us. At that time, we as the three people looking at the complaint, have adequate time to do what we need to do. Commissioner Straface said they wouldn't be complaining against an individual, they would be complaining against the commission. Mayor Pro-Tem Rentschler said the Secretary of State has looked at an individual on a commission before, and that takes time.

Commissioner Turnbull said she thought this was concerning a citizen, not the Secretary of State; that's different and would be outside the scope of this. She is talking about an Alamogordo resident with a complaint against one of us; 90 days to make the initial complaint. Mayor Pro-Tem Rentschler said what if it is discovered on the 91st day? Commissioner Straface said it would be the same as if discovered on the 366th day. You have to draw a line. Commissioner Sikes felt the broader you make it the better off you are. If you put perimeters on it, you find yourself backed into a corner at some point.

Mayor Galea asked if there was a consensus on leaving it as is. Commissioner Straface thought we should table the motion and ask for a second motion asking if you support the 90 days or 365 days, vote on that second motion and then come back to the original motion. City Attorney Thies told them the appropriate process for making a change is to move to amend the motion on the floor and strike something so there would only be that a person has to file the complaint within 90 days. He suggested that on pg. 6, sub-paragraph 4 be moved to strike all the language appearing after or the 90th day. Then move to amend the 365 to provide, All complaints will be time barred after the lapse of 90 days from the date of the alleged incident. You would move to amend the ordinance that is currently before you. Commissioner Straface confirmed he meant to strike that last sentence. City Attorney Thies said you would strike the last phrase in the first sentence and change the 365 in the second sentence to 90 days.

Mayor Galea asked for clarification. City Attorney Thies said the motion would be in two parts; the first part is to strike the second phrase in the first sentence that appears after the word 'or', and the second portion of that amendment would be to change 365 in the second sentence to 90 days, if that is what you want to do.

Commissioner Turnbull moved to amend it to 'a complaint must be filed no longer than 90 days after the violation is alleged to have occurred', and change the 365 to 90 days. Commissioner Baldwin seconded the motion. Motion carried by a vote of 5-2-0. Commissioner Sikes, and Mayor Pro-Tem Rentschler voted nay.

Vote on the original motion to approve the first publication of Ordinance No. 1478. Motion carried by a vote of 6-1-0. Mayor Galea voted nay.

Mayor Galea noted she voted nay because of the language restricting board members from being able to represent their elected public.

NEW BUSINESS

- 10. Review, discuss, and consider the preparation of a Code of Ethics for the City Commission. (Susie Galea, Mayor)**

Mayor Galea noted she thought a Code of Ethics should be included in the body as it was in every Code of Conduct across the nation, but since it had been decided not to do this we would move on to Item #11.

11. Consider, and act upon, approving a Shop local production of TV PSA with commission and Chamber of Commerce. (Susie Galea, Mayor)

Mayor Galea said the week of November 10th was somewhat open if the commission would agree to a Shop Local PSA. The PSA would not cost anything, but the commission would need to decide on a budget for the production of a 30 second advertisement.

Commissioner Straface moved to approve with an expenditure of no more than \$1,500. Mayor Pro Tem Rentschler seconded the motion.

Commissioner Baldwin asked Mayor Galea where the amount of \$1,500 came from. She said it was the amount given to her by a man who has done a number of productions for \$500. The United Way production had been done for \$1,000. Commissioner Baldwin said he would like to see a higher amount.

Commissioner Hernandez asked if Lodger's Tax could be used for this, and it was decided no since it is local. He felt we should make multiple ones so they wouldn't get old; three for \$1,500 each. Mayor Galea said the money would come from the General Fund.

Commissioner Straface amended his motion to no more than \$4,000 and to allow staff to negotiate for multiple commercials. Mayor Galea seconded the motion.

Commissioner Sikes asked who would benefit from this and the mayor told her the city would. Mr. Mike Espiritu, President and CEO of the Chamber came forward and explained they really want the money to stay here in town. They will use a lot of social media, and a PSA will help with this. Commissioner Sikes asked if the commission would work with the Chamber and he affirmed.

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

12. Consider, and act upon, approving a community Christmas tree in coordination between community services and the US Forest Service. (Susie Galea, Mayor)

Mayor Galea noted the cost for this would be a \$25 permit. The Forest Service has agreed to cut the tree and bring it to the City, and then the cost would be labor for city staff to put it up in the Airborne Park. We have the decorations from last year and it would be a large community event to light the tree after the Christmas Lights Parade.

Commissioner Straface moved to approve. Commissioner Hernandez seconded the motion.

Commissioner Sikes commented it was very positive and a nice event last year and she thought we should start calling it the Annual Christmas Tree Event.

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

13. Consider for adoption the Extra Mile Day nominees. (Susie Galea, Mayor)

The mayor explained the event and named the nominees who would be announced at the next commission meeting, if adopted by the commission.

Commissioner Hernandez moved to approve Connie & Jim Rogers and Ingo Hoeppner for the Extra Mile Day recipients. Commissioner Turnbull seconded the motion. Motion carried by a vote of 7-0-0.

PUBLIC COMMENT (Continued if needed)

None

CITY MANAGER'S REPORT**City Manager Stahle commented on the following:**

- 1) He mentioned the Radio Read Project and the concerns on health issues. He had sent a lot of material to all the commissioners concerning this and asked they look it over before we go any further.
- 2) He noted the first 100 Atari Games had been posted on EBay for bidding. The second way of distribution would be to loan units with the certificates of authenticity to museums. It is purposely done this way so that we do not violate any of the gift clauses.
- 3) Mr. Stahle complimented Fire Chief Ward for the award of the Class A apparatus fire equipment grant in the amount of \$100,000 with a 20% match. Anything over \$100,000, we will have to bear the cost. Fire Chief Ward said this was not a grant that can be saved over to the next year.
- 4) The city manager reported the Senior Center had some discomfort with having only canned vegetables and was exploring creating their own fresh vegetable garden to augment that situation.
- 5) He reminded everyone that tomorrow was Election Day.

REMARKS AND INQUIRIES BY THE CITY COMMISSION**Commissioner Straface commented on the following:**

- 1) He told the commission he would not be at the next meeting because he would be attending the memorial for his mother.

Mayor Galea commented on the following:

- 1) She noted the Groundbreaking for the Airport Runway would be on December 10th.
- 2) The mayor said on November 8th at 10 a.m. on 10th Street, the Veterans Day Parade would take place.
- 3) Also, on November 8th at 11 a.m. at the High School there would be a Technology and Education Fair. She hoped the City would present something next year concerning Desalination technology.
- 4) Today, the National Energy Foundation sponsored by PNM had distributed Energy Resource Kits for kids.
- 5) On November [sic October] 30th, the Coalition Against Domestic Violence had recognized heroes from across the State, and LOVE Inc. was one of those recognized.
- 6) The mayor said the NM Museum of Space History had set the date of October 3, 2015, for next year's International Hall of Fame Induction that will include six celebrities.
- 7) Mayor Galea thanked the staff for their work of decorating and hosting trick-or-treaters on November [sic October] 30th.
- 8) The mayor had attended the Transportation Committee meeting and Commissioner Sikes would report on that later.
- 9) On November 1st, she had attended a formal dining out of our local Infantry Guardsmen. They invited any commissioner to come any first Sunday afternoon of any month to meet the people here for Drill Weekend.

Commissioner Sikes commented on the following:

- 1) She said she was enthusiastic about attending the Transportation Committee meeting the Mayor had spoken of. The APS Athletic Director presented to them concerning Tiger Pride. The Chamber will be a partner in this.

EXECUTIVE SESSION (Roll Call Vote Required)

Adjourn into Closed Session in compliance with Section 10-15-1.H, NMSA 1978 (2010 Cumulative Supplement), to discuss:

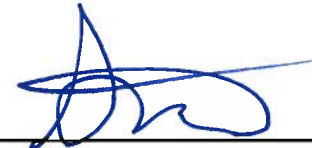
- **Threatened & Pending Litigation (Irby vs. City)**

Mayor Pro Tem Rentschler moved to approve to go into Executive Session at 9:35 p.m. to discuss Threatened and Pending Litigation (Irby vs. City). Commissioner Straface seconded the motion. Roll call vote was taken by the Clerk. Motion carried by a vote of 7-0-0.

ADJOURNMENT


ATTEST


City Clerk Renee L. Cantin



Mayor Susie Galea

(Prepared by Nancy Jacobs, Deputy Clerk)

Approved at the Regular Meeting held on November 18, 2014.

**CITY OF ALAMOGORDO, NEW MEXICO
CITY COMMISSION REGULAR MEETING MINUTES
7:00 P.M., COMMISSION CHAMBERS
DECEMBER 16, 2014**

**SUSIE GALEA, MAYOR
JASON BALDWIN, COMMISSIONER
NADIA SIKES, COMMISSIONER
JENNY TURNBULL, COMMISSIONER
AL HERNANDEZ, COMMISSIONER**

**ROBERT RENTSCHLER, MAYOR PRO-TEM
DR. GEORGE STRAFACE, COMMISSIONER
JIM STAHL, CITY MANAGER
STEPHEN THIES, CITY ATTORNEY
RENEE CANTIN, CITY CLERK**

CALL TO ORDER, ROLL CALL, INVOCATION & PLEDGE OF ALLEGIANCE

Mayor Galea called the meeting to order at 7:00 p.m. Roll call was taken by the Clerk. Pastor David Crispin offered the invocation, followed by the Pledge of Allegiance led by Commissioner Straface.

APPROVAL OF AGENDA

Commissioner Straface moved to approve the agenda. Commissioner Hernandez seconded the motion. Motion carried with a vote of 7-0-0.

PUBLIC COMMENT

A. Harv Hamilton commented on the following:

Mr. Hamilton spoke concerning a commentary printed on December 5, 2014 concerning ethics. He didn't agree with the author of the article, and didn't think it was ethical using bond money for purposes other than for what the money was originally intended. He was surprised that a Code of Conduct was not established years ago.

B. Anthony Backy commented on the following:

Mr. Backy, Vice-president of the AFCSME Union, thanked the commissioners for the reception before tonight's meeting, and noted it had been a roller-coaster year for all and he was working hard with the members of his bargaining unit to try and strengthen relations between employees and their supervisors by opening the lines of communication. He hoped this coming year would be one where we can all work together to make the lives of City employees and citizens of Alamogordo better. He expressed the hope the commissioners would reach out to him and/or the AFCSME president, J.J. Lyons, with any questions. Mr. Backy thanked them for all they have done this year.

CONSENT AGENDA (Roll Call Vote Required for Item No. 4)

- 1. Approve Minutes of the December 2, 2014 Regular Meeting of the Alamogordo City Commission. (Renee Cantin, City Clerk)**
- 2. Approve statement related to the Executive Session of December 2, 2014. (Renee Cantin, City Clerk)**
- 3. Approve the Lodger's Tax Expenditures for Tourism & Travel. (Jan Wafful, CS Admin. Assistant)**
- 5. Approve the agreement related to the donation of Lot 4-A, Mesa Village, Unit 1, Replat for use in the construction of the family fun center. (Stephen Thies, City Attorney)**

6. **Approve the New Mexico Tourism Department (NMTD) Co-op Marketing Grant Agreement, Number 15-418-3002-1002 for tourism advertising in the amount of \$80,000.00.** (*Jan Wafful, CS Admin. Assistant*)

Item # 4 was removed from the consent calendar by Mayor Galea.

Commissioner Hernandez moved to approve items # 1, 2, 3, 5, & 6 of the consent calendar. Commissioner Straface seconded the motion. Motion carried with a vote of 7-0-0.

ITEMS REMOVED FROM CONSENT AGENDA

4. **Approve the final publication of Ordinance No. 1478 related to a code of conduct for the City Commission. [Roll call vote required]** (*Renee Cantin, City Clerk*)

Mayor Galea stated she would like to approve a Code of Conduct, but objected to the language of this one under Censure, which does not allow for due process prior to removing a commissioner's pay, travel privileges, and causing them to pay restitution. She did not feel it was constitutional. She said she is in favor of a Code of Conduct that includes a Code of Ethics.

Mayor Pro-Tem Rentschler said he was opposed to the 90 days for filing, and would rather see it be 180 days.

Mayor Galea said she approved of a Censure ordinance, but asked to remove the language under Censure in this ordinance.

Mayor Pro-Tem Rentschler moved to change in item B(d)(4) to change the time for filing from 90 days to 180 days.

Mayor Galea asked about the past discussion on filing.

Commissioner Hernandez said we discussed we may not find out something happened within that time limit.

Commissioner Sikes seconded the motion.

Commissioner Straface stated he was comfortable with 90 days; if it is lengthened it will become more difficult since facts get distorted.

Motion failed by a vote of 3-4-0. Commissioner Baldwin, Mayor Galea, Commissioner Straface, and Commissioner Turnbull voted nay.

Commissioner Hernandez moved to approve the final publication of Ordinance No. 1478 related to a code of conduct for the City Commission. Mayor Pro-Tem Rentschler seconded the motion. Roll call vote was taken by the Clerk. Motion carried with a vote of 6-1-0. Mayor Galea voted nay because of the language on the censorship section.

UNFINISHED BUSINESS

7. **Discuss, and act upon, Change Order No. 3, RFQ No. 2013-05 to CDM Smith, Inc. related to the engineering and design services for the 1MGD Interim Desalination Plant project, in an amount not to exceed \$111,622.40, including tax and possible alternate locations.** (*Brian Cesar, Public Works Director*)

Public Works Director Cesar addressed the commission noting the commission had directed staff at the November 18, 2014 Commission meeting to go back and draft a letter to various state and federal

agencies; those letters were sent out on November 21, 2014, and are in their agenda reports. Another attachment is from the chief of the Groundwater Quality Bureau and the chief of the NMED Solid Waste Bureau. Attachment 3 contains a response from the cabinet secretary of the NMED, and Attachment 4 is from the District Manager of BLM. Attachment 5 is from Chief of Programs of the NM Finance Authority, and Attachment 6 is a map that describes the two locations that go with Attachment 7 showing the commission's request for a cost comparison between the La Velle Rd. site, the Sheffield property and the Stallberg property which is across the street from the Sheffield property.

City Manager Stahle said there were three things of grave concern to him: 1) time, 2) cost, and 3) threat to funding. What scares him the most about the responses is opening the Federal Environmental Impact Statement (EIS), and that makes him the most uncomfortable about changing sites.

Commissioner Hernandez asked City Manager Stahle what scared him about this. City Manager Stahle told him it was the unknown; possible delays and other concerns from the EIS as well as the cost of answering all those questions. The original EIS took 10 years and this one would be a modification to an existing EIS, but there is a process which makes him nervous.

Mayor Pro-Tem Rentschler asked Public Works Director Cesar how much of the old landfill was qualified under the EIS with the BLM. Public Works Director Cesar said he believed it was the existing site and didn't include where the effluent pond would be. City Manager Stahle said it was his understanding it was for the entire property that we own.

Mayor Pro-Tem Rentschler asked about the BLM information in the packet. He felt there were more people opposed to the landfill and we wouldn't have any trouble moving the site. If we moved it to the Sheffield property it would be a move of about six inches. Financial would be the biggest reason to concern us with this decision. He noted the cost of the Sheffield property was \$100,000 more than he had understood it to be. Public Works Director Cesar said this was from our most recent discussions with Mr. Sheffield and emails with family members.

The city manager explained these parcels of land. Mayor Pro-Tem Rentschler said his understanding was we wouldn't be buying three of those acres on the Sheffield property, and the city manager told him we need the 40 acres. Mr. Sheffield did not want to sell the three acres at the corner of First Street.

Mayor Galea asked why we were discussing the Sheffield property when the Stallberg property was cheaper, and why we were even talking about moving the site.

Commissioner Hernandez had an issue with the current site. Mayor Galea asked him what the issues were and he told her he had a concern with the fact there could be some unknowns on that, and that they could come back later concerning gases or anything like that which could cause problems. Also, the fact we need to over-engineer for the building site.

Commissioner Straface didn't have a problem leaving it where it was for three reasons (not in priority order): 1) We have spent a great deal of time studying this and have invested almost 10 years, 2) the EIS report addresses the issues of safety and it has been thoroughly done; opening up another EIS would extend the time and we wouldn't meet our timeline, 3) we run the risk of losing some funding, especially if it extends past it. For those three reasons, he was supportive of the proposed change order.

Mayor Pro-Tem Rentschler said he was in favor of this until they brought us the change order. It is almost one million dollars now, and he was concerned the price would grow by the time we start this. He didn't like that the change order was on the Consent Agenda originally. He, Commissioner Straface and Mayor Galea discussed the costs.

City Manager Stahle said the change order is \$111,000 and was originally on the Consent Agenda to handle the cost of the additional engineering; the other numbers are the consequence of building on that site because of the layers of trash found at the site. The total additional expense because we found trash at the site and are having to put the facility on that site so we can protect it from settlement is the \$914,603. The other columns speak to the other sites. Does it make sense to pay this amount at this site, or does it make sense to relocate?

Mayor Galea asked the city manager why the change order came before the commission since it was within the budget, and he replied this was only the engineering part and the total would be close to a million dollars on design, more than 10%. Public Works Director Cesar said the city manager had the authority to sign off on \$35,000 or 10% of the contract price, whichever is the lesser amount, and this was over that threshold. He thought this was something the commissioners needed to review and discuss.

Commissioner Straface asked City Manager Stahle how confident he was of the numbers in the left hand column of the sheet of Attachment 7. City Manager Stahle said he had a high level of confidence and would not expect to see significant changes in the numbers. Commissioner Straface asked about his confidence level for the other three columns, and the city manager said he was relatively confident since Staff had worked on these. Public Works Director Cesar confirmed the City had not done the geotechnical and other work on the other sites. Commissioner Straface felt we run the risk of not having funding if we delay. He was also concerned with the EIS.

Mayor Galea moved to approve the change order. Commissioner Straface seconded the motion.

Mayor Pro-Tem Rentschler didn't believe we needed the full 40 acres. He asked about the costs for pipelines, and Public Works Director Cesar explained. He also told Mayor Pro-Tem Rentschler that according to the engineers we needed 40 acres, not all for this phase of the project, but for the eventual complete build-out. City Manager Stahle pointed out Attachment 6 maps.

Mayor Galea said that in the future we will be the first to do deep well injection.

The city manager and Mayor Pro-Tem Rentschler continued to discuss the map, acreage and the drainage ponds.

Mayor Pro-Tem Rentschler said we are discussing this on two levels – financial and environmental. He stated he would not be comfortable putting this facility on a landfill.

Mayor Galea said the other sites could be unstable because there was a dairy there at one time. She felt the engineering designs addressed the precautions. Mayor Pro-Tem Rentschler noted we had a vent line break at the landfill on the other side of Dog Canyon. It cost \$80,000 to \$90,000 to correct this, and Public Works Director Cesar said it was more than that, and explained how a break can occur.

Mayor Pro-Tem Rentschler didn't want to make mistakes like previous commissions had done, and that it could be very expensive. He didn't want to see this put on a landfill and was concerned with the price for the other parcels of land. He did not think any citizens would object to moving this off a landfill.

Commissioner Hernandez pointed out Attachment 2, comment 7a, that talks about the deep foundation system. It says this type of foundation will minimize settlement. He mentioned how some areas of the City had settlement problems and felt we were asking for problems with this. He stated he would support whatever the majority of the commission felt best, but he could not support this item.

Mayor Galea asked Public Works Director Cesar about another extension with the Water Trust Board funding we have now. He explained we have missed the deadline for their next meeting. January would be the next opportunity for us to ask for an extension, but they would not consider taking action until we have done our due diligence, selected a site, acquired the right-of-ways, property, etc. If the

commission does wish to look at going to alternate sites, he recommended that we go through the geotechnical work, site assessment, etc., before purchasing any property. He estimated the time needed to do this. The last time he went before the Water Trust Board in order to change one word, changing 'potable' to 'raw', the process took just over one year.

Mayor Galea asked what would happen if we didn't give any direction tonight and we didn't have money to spend quarterly. Public Works Director Cesar said we would have to work with NMFA and would possibly be penalized.

Commissioner Straface asked how many extensions we had asked for. Public Works Director Cesar told him there had been four and a language change. Mayor Pro-Tem Rentschler asked if any had been denied and was told no.

Mayor Galea was in favor of staying the course and building on the present site.

Motion failed with a vote of 3-4-0. Commissioner Sikes, Mayor Pro-Tem Rentschler, Commissioner Turnbull, and Commissioner Hernandez voted nay.

Mayor Pro-Tem Rentschler directed staff to look into whether we need 40 acres instead of the 37, make a counter offer on the Sheffield property, and then start with what they are most concerned about as far as a survey.

City Manager Stahle asked for clarification. He said he needed clear direction on which property they would be interested in acquiring, and then start the site assessment of the property. He would rather start the assessment before purchasing any property. Mayor Pro-Tem Rentschler agreed and to also look at what would be involved with surveying. Public Works Director Cesar told him what he would be most concerned with.

Commissioner Baldwin was uncomfortable giving Staff any direction at this point; we need more information. He stated that all we did was not approve a change order and we haven't said we aren't going to build on this site. We need more information before we can make further decisions.

City Manager Stahle said he would need clear questions so he can answer them. Number 1 is to reduce the size the best we can; Number 2 is the decision would be based on a clean, alternate site with the least amount of expense, and are you willing to spend different money to go after site assessment and begin negotiations on an alternative location.

Commissioner Hernandez questioned property location to the south of the current site presently owned by OCEDC. City Manager Stahle said that makes sense.

Commissioner Sikes asked if we can move forward and build this without the change order, and she was told no. She said we are talking about drinking water, and didn't care how long it took as long as we did it right. Mayor Galea asked if anyone wanted to make a motion to not use the proposed site.

City Manager Stahle was concerned about giving direction right now to buy land. This is usually discussed in private negotiations. He felt an Executive Session was in order to give direction to Staff to negotiate an acquisition.

Mayor Galea asked why a private property owner would have the taxpayers pay for an EIS, and he explained the buyer does that. She questioned the additional new engineering costs. She asked Public Works Director Cesar what the potential hazards would be to health and safety. He told her every project they do has NMED oversight.

Mayor Pro-Tem Rentschler said it is time to look at surveys, time to negotiate with the owner, there's a lot to be done. He didn't think the Governor would take back the state money because she wanted to see this project succeed. He said this project is going to happen, there is no turning back.

Commissioner Straface supported what the city manager said about having Staff get further information and then the commissioners discuss it at the next meeting in January. He asked about the next item on the agenda and whether what we are doing here would jeopardize that. City Manager Stahle said we have not received the \$4 million; this agreement would have set that in motion, and he could not predict the consequence of that.

City Attorney Thies said you are obligated to spend it in three years and if not, it would automatically go back. To extend the time frame, it would have to be included as part of some future legislation.

Commissioner Straface said that in conversations he has had with our senators and representatives, they said the capital dollars will be limited this coming year. There is a possibility they will reassess what they've done. City Attorney Thies explained how NMDFA has done this in the past and it could possibly happen again. Commissioner Hernandez agreed and said we should wait until January.

Mayor Galea asked the city manager to look into this with Staff in the next four weeks and bring it back to the next regular meeting in Executive Session.

NEW BUSINESS

8. **Consider, and act upon, Resolution No. 2014-56 approving a Grant Agreement between the City of Alamogordo and the New Mexico Environment Department for Special Appropriation Project No.14-1726-STB in the amount of \$4,000,000 to plan, design, and construct the Alamogordo Desalination System Project. [Roll call vote required] (*Ruben Segura, Grants Coordinator*)**

Commissioner Straface moved to table Resolution No. 2014-56 approving a Grant Agreement between the City of Alamogordo and the New Mexico Environment Department for Special Appropriation Project No.14-1726-STB in the amount of \$4,000,000 to plan, design, and construct the Alamogordo Desalination System Project. Commissioner Baldwin seconded the motion.

Mayor Pro-Tem Rentschler asked if this was tied to what the NMED sees as the EIS.

City Attorney Thies said the language in the grant agreement is the same that was included in the legislation that appropriated this money. It is not specifically tied to any particular location. It is money given to us to build that type of facility in Otero County. City Manager Stahle said we should move forward with this item.

Commissioner Straface withdrew his motion to table the item.

Grants Coordinator Segura told the commission about the scope of the \$4 million to plan, design and construct Phase 1 of a brackish water supply well, storage tank, booster station, and evaporation ponds. There is a term of four years under the agreement.

Mayor Pro-Tem Rentschler moved to approve Resolution No. 2014-56 approving a Grant Agreement between the City of Alamogordo and the New Mexico Environment Department for Special Appropriation Project No.14-1726-STB in the amount of \$4,000,000 to plan, design, and construct the Alamogordo Desalination System Project. Commissioner Hernandez seconded the motion. Roll call vote was taken by the Clerk. Motion carried with a vote of 7-0-0.

9. **Presentation, consider, and act upon, the first publication of Ordinance No. 1480 approving a Local Economic Development Act Project for secured financial assistance proposed by Neptune Aviation Services, Inc. (*Stephen Thies, City Attorney*)**

Mr. Mike Espiritu, President and CEO of OCEDC, presented a Power Point (in the Agenda Book) on Neptune Aviation Services, Inc.

Mayor Pro-Tem Rentschler asked about some of the costs and City Attorney Thies said the commission will be awarding this contract at the first meeting in January 2015.

Mayor Pro-Tem Rentschler moved to approve the first publication of Ordinance No. 1480 approving a Local Economic Development Act Project for secured financial assistance proposed by Neptune Aviation Services, Inc. Commissioner Hernandez seconded the motion.

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

- 10. Consider, and act upon, Resolution No. 2014-64 supporting the New Mexico Municipal League's position related to the Local Gross Receipts Taxes on Food related to the Hold Harmless amendment. [Roll call vote required] (Susie Galea, Mayor)**

Mayor Galea and Mayor Pro-Tem Rentschler explained the resolution.

Commissioner Straface questioned supporting this before we know how the Legislature is going to act.

Commissioner Sikes asked what the time limit was on passing a tax if we need to, and felt we still have ample time to act. The pros and cons were discussed by the commissioners

Mayor Pro-Tem Rentschler moved to approve Resolution No. 2014-64 supporting the New Mexico Municipal League's position related to the Local Gross Receipts Taxes on Food related to the Hold Harmless amendment. Mayor Galea seconded the motion. Roll call vote was taken by the Clerk. Motion carried with a vote of 4-3-0. Commissioner Baldwin, Commissioner Sikes, and Commissioner Hernandez voted nay.

- 11. Consider, and act upon, a request to release a utility lien filed in 2006 for the property located at 2306 Cherry Lane. (Stephen Thies, City Attorney)**

City Attorney Thies explained the lien and that we had four years to act on this lien. That time has expired and we do not have the ability to foreclose on that lien. The Staff recommends release of the lien.

Mayor Pro-Tem Rentschler moved to approve a request to release a utility lien filed in 2006 for the property located at 2306 Cherry Lane. Commissioner Turnbull seconded the motion. Motion carried with a vote of 6-0-0. Commissioner Hernandez was not present for the vote.

- 12. Discussion, and possible action, on request by Paul Comino related to tenants water bills. (LeeAnn Nichols, Finance Director)**

Customer Service Manager Ortega addressed the commission and explained Mr. Comino had 17 rental homes that have delinquent accounts. He explained the situation and that City Staff have not been successful in collecting these delinquent amounts.

Mr. Paul Comino addressed the commission and explained state policies and statutes pertaining to unpaid water bills. He felt the service should have been cut off when the bill got so high, and he said he was not aware of the bills. He discussed his concerns as to how the accounts are handled.

Mayor Galea clarified that he was asking for charges to be waived for the four properties over \$500. Mr. Comino felt that if he had been aware of these charges, he could have done something about them in order to get the bills paid. He was not asking the whole billing be waived, just that some common sense be used. It was a couple of years before he was aware of some of these bills.

Mayor Pro-Tem Rentschler asked Customer Service Manager Ortega to explain the billing process. Mr. Ortega noted he and the Finance Director are working on establishing policy and procedures that will insure a more timely collection process.

Mr. Comino said this has been a two year process and no one had told him those two bills were because of leaks. He understands State statutes, but he hadn't received any explanations for the extremely high water bills.

Commissioner Straface felt if we have not followed our policies then we need to correct that. Customer Service Manager Ortega said we are looking to tighten up those policies. The new billing system will be very helpful in addressing these issues.

Commissioner Hernandez asked about lease agreements and Customer Service Manager Ortega explained the current policy and that he hoped to change it.

Mayor Galea told Mr. Comino the city manager would evaluate any bills over \$100 and get back to him. Otherwise, the City Commission will not waive the others at this time.

13. Appointments to Boards & Committees. (Susie Galea, Mayor)

Mayor Galea announced the Boards and Committees with current vacancies and made no appointments at this time. She would like to consider other nominations for Planning and Zoning that were not on tonight's list.

PUBLIC COMMENT

A. Mr. Mike Espiritu commented on the following:

Mr. Espiritu noted that tomorrow at 8:30 a.m. at First National Bank is the Pre-Legislative Round Table with three of our local legislators. He noted there would be an After Session Round table after the Legislative Session concludes next year.

CITY MANAGER'S REPORT

- 1) City Manager Stahle handed out information on the Bubble at the swimming pool located at the Recreation Center that gave a timeline of construction projects and when the pool would again be operational.
- 2) He wished everyone Happy Hanukkah and Merry Christmas.

REMARKS AND INQUIRIES BY THE CITY COMMISSION

Commissioner Straface commented on the following:

- 1) He commended Megan Wade for decorating the City Hall Christmas Tree.

Commissioner Hernandez commented on the following:

- 1) Commissioner Hernandez commended Fire Chief Ward for taking care of a call Commissioner Hernandez made about homeless people who moved into an alley way in the city and had been living there for quite a while. Chief Ward took care of the issue and kept him informed. He encouraged citizens to let someone know when they have a complaint.
- 2) He wished everyone a Merry Christmas.

Mayor Pro-Tem Rentschler commented on the following:

- 1) Mayor Pro-Tem Rentschler said he had complaints about the ball field lights; basketball courts and Hoosier Field lights have just been left on. City Manager Stahle responded sometimes leagues pay to leave the lights on and then for what ever reason they don't show up. There are

systems that can be installed that allow remote access, they are expensive but we can look at them during budget season. Mayor Pro-Tem Rentschler asked when they are turned off and City Manager Stahle told him there is a schedule. Assistant City Manager McNeile said he would look into this and fix any automatic timers that might be out of order.

- 2) He addressed the work process on Washington/Indian Wells/Pecan, and wondered if 60 days was too long to shut the area down. He realized Public Works is very busy and noted the work they were doing at this section looked great.
- 3) He wished everyone a Merry Christmas.

Mayor Galea commented on the following:

- 1) Mayor Galea said the Christmas Tree Lighting Ceremony was a great success and she thanked the USFS for bringing us the tree and City Staff for putting it up and stringing the lights.
- 2) The Mayor related the Staff Christmas Party was well attended and a great event. She felt the Staff themselves worked too hard preparing for and cleaning up afterwards.
- 3) The Half Marathon for the Lady of the Mountain Run was a great event. A lot of our staff was there, along with many other volunteers.
- 4) Mayor Galea spoke about the proposed PNM Rate increase.
- 5) She noted the Groundbreaking for the Airport Runway Extension was very well attended and she thanked those of the commission who were there.
- 6) Ms. Galea thanked Commissioner Baldwin for putting together the Values & Covenants pamphlet.
- 7) She wished everyone a Merry Christmas & Happy Holidays.

EXECUTIVE SESSION

- **Sale, Acquisition, or Disposal of Real Property (Housing Authority)**

Mayor Pro-Tem Rentschler moved to recess into Executive Session to discuss sale, acquisition, or disposal of Real Property (Housing Authority) at 9:36 p.m. Commissioner Hernandez seconded the motion. Roll call vote was taken. Motion carried with a vote of 7-0-0.

RECONVENE INTO OPEN SESSION

Mayor Galea reconvened the meeting at 10:12 p.m.

14. Consider, and act upon, the first publication of Ordinance No. 1481 authorizing the sale of certain city owned property located at 700 Ridgecrest Avenue in the amount of \$34,000 to Mr. Ted McCutcheon. *(Maggie Paluch, Housing Authority Manager)*

Mayor Pro-Tem Rentschler moved to not approve the sale of this property at this time. Commissioner Straface seconded the motion. Motion carried with a vote of 7-0-0.

15. Consider, and act upon, the first publication of Ordinance No. 1482 authorizing the sale of certain city owned property located at 815 Arapaho Avenue in the amount of \$10,000.00 to Mr. Carlos Munoz. *(Maggie Paluch, Housing Authority Manager)*

Mayor Pro-Tem Rentschler moved to approve the sale based upon two conditions: 1) the condition of the residence is not something the city is willing to put the money into in order to bring it up to code, 2) it be demolished or brought to code within one year. Commissioner Straface seconded the motion. Motion carried with a vote of 7-0-0.

16. Consider, and act upon, the first publication of Ordinance No. 1483 authorizing the sale of certain city owned property located at 1212 Puerto Rico Avenue in the amount of \$36,000.00 to Ms. Alicia Lloyd *(Maggie Paluch, Housing Authority Manager)*

Mayor Pro-Tem Rentschler moved to not approve the sale of this property. Commissioner Turnbull seconded the motion. Motion carried with a vote of 7-0-0.

- 17. Consider, and act upon, the first publication of Ordinance No. 1484 authorizing the sale of certain city owned property located at 1315 Puerto Rico Avenue in the amount of \$20,000.00 to Mr. Doc Burton. (Maggie Paluch, Housing Authority Manager)**

Mayor Pro-Tem Rentschler moved to not approve the sale of this property. Commissioner Turnbull seconded the motion. Motion carried with a vote of 7-0-0.

- 18. Consider, and act upon, the first publication of Ordinance No. 1485 authorizing the sale of certain city owned property located at 1319 Ohio Avenue in the amount of \$20,000.00 to Mr. Gerald Stallberg. (Maggie Paluch, Housing Authority Manager)**

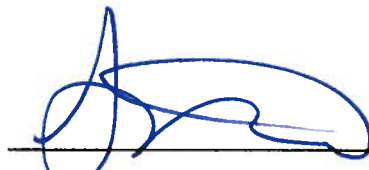
Mayor Pro-Tem Rentschler moved to not approve the sale of this property. Commissioner Turnbull seconded the motion. Motion carried with a vote of 7-0-0.

- 19. Consider, and act upon, the first publication of Ordinance No. 1486 authorizing the sale of certain city owned property located at 1706 Alaska Avenue in the amount of \$20,000.00 to Ms. Marilyn Kite. (Maggie Paluch, Housing Authority Manager)**

Mayor Pro-Tem Rentschler moved to approve the first publication of Ordinance No. 1486 authorizing the sale of certain city owned property located at 1706 Alaska Avenue in the amount of \$20,000.00 to Ms. Marilyn Kite, due to the dilapidated condition of this property and the lack of the City's ability to properly maintain the property. Commissioner Straface seconded the motion. Motion carried with a vote of 7-0-0.

ADJOURNMENT

Commissioner Hernandez moved to adjourn at 10:18 p.m. Commissioner Straface seconded the motion. Motion carried with a vote of 7-0-0.



Mayor Susie Galea

ATTEST:


City Clerk Renee L. Cantin

(Prepared by Nancy Jacobs, Deputy Clerk)

Approved at the Regular Meeting held on January 13, 2015.

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 8/12/2025

Report Date: 08/05/2025

Report No: 13.

Submitted By: Beau Dylan Aleshire

Subject: Appointments to Boards and Committees. (*Susan L. Payne, Mayor*)

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation: Staff recommends one appointment to the Senior Volunteer Programs Advisory Council.

Background:

Alamogordo Public Library Board

- Two current vacancies for county-appointed representatives. County-appointed representatives must live in Otero County, but not within Alamogordo city limits. These County-appointed representatives must be appointed by the Chairman of the County Board of Commissioners. The County had nothing new to report as of July 14, 2025, but they stated they would readvertise the vacancies.

Airport Zoning Board

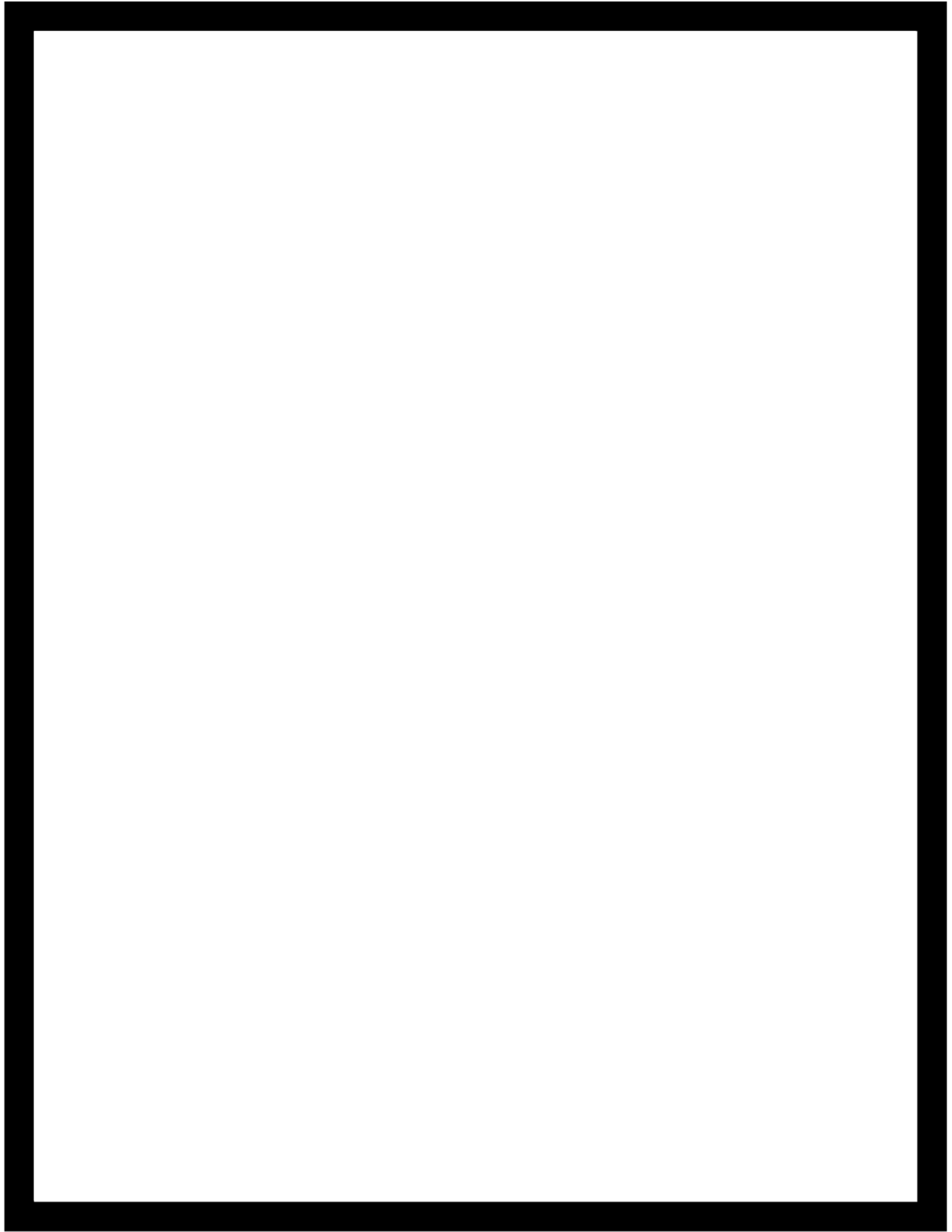
- One current vacancy for an applicant that lives within City limits.

Parks and Recreation Board

- One upcoming vacancy for an Alamogordo Public School representative as of August 16, 2025. These representatives must be appointed by the APS Board of Education. APS has been notified of the upcoming vacancy.

Senior Volunteer Programs Advisory Council

- Three current vacancies for applicants that live within City limits. One application by Stephen Butler was received. If appointed, this would be his seventh term on the Council.





City of
ALAMOGORDO

RECEIVED

JUL 16 2025

CITY CLERK

**Application To Serve On A
City Board/Committee**

Name: Stephen Butler
Phone: (575) 495-3587
Email Address: elizaestrada66@icloud.com
Physical Address: 1105 Madison
Is the above address within City limits? Yes ☒ No ☐
Mailing Address: same as above
Present Employer: Retired Job Title: _____

Board/Committee you wish to serve on:

First choice: Senior Volunteer Program 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: _____

8yr
Athletic Sports
teaching

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

interested

Please return completed application to:

City Clerk's Office
1376 E. Ninth Street
Alamogordo, NM 88310
PHONE: (575) 439-4100
FAX: (575) 439-4396
EMAIL: daleshire@ci.alamogordo.nm.us

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 8/12/2025

Report Date:

Report No: 14.

Submitted By:

Subject: Recess into Executive Closed Session in compliance with 10-15-1(H)(8) NMSA (as amended) to discuss: Real Property: 1100 Michigan, Alamogordo, New Mexico and Parcel R023917 (Legal Description: S: 16 T: 16 R: 10 TR IN SE1/4) and 10-15-1(H)(2)NMSA (as amended) to discuss: Limited Personnel Matters (City Manager). **(Roll Call Vote Required)**

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation:

Background:

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 8/12/2025

Report Date: 08/05/2025

Report No: 15.

Submitted By:

Subject: Motion to reconvene into open session.

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation:

Background:

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 8/12/2025

Report Date: 08/05/2025

Report No: 16.

Submitted By:

Subject: Take action, if any, as a result of the Executive Closed Session concerning Real Property: 1100 Michigan, Alamogordo, New Mexico and Parcel R023917 (Legal Description: S: 16 T: 16 R: 10 TR IN SE1/4).

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation:

Background:

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 8/12/2025

Report Date: 08/05/2025

Report No: 17.

Submitted By:

Subject: Take action, if any, as a result of the Executive Session concerning Limited Personnel Matters (City Manager).

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation:

Background: