



Alamogordo City Commission

NOTICE OF MEETING

Regular Meeting Agenda

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

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

Maggie Paluch Acting City Manager
Lauren Truitt City Attorney
Rachel Hughs City Clerk

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

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

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

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

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

CALL TO ORDER & ROLL CALL

Announce the presence of a Quorum.

INVOCATION & PLEDGE OF ALLEGIANCE

APPROVAL OF AGENDA

PRESENTATIONS

1. Discussion and possible action on presentation of Air Force Career Skills Program. (CSP Program Manager, Kimberly Lawhorn)

PUBLIC COMMENT

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

CITY MANAGER'S REPORT

REMARKS AND INQUIRIES BY THE CITY COMMISSION

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

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

2. Approve the minutes for the November 1, 2016 and November 15, 2016 Regular meetings. *(Rachel Hughs, City Clerk)*
3. Approve the statements related to the Executive Session held on November 15, 2016. *(Rachel Hughs, City Clerk)*
4. Approve the City Commission Regular Meeting Schedule for Calendar Year 2017. *(Rachel Hughs, City Clerk)*
5. Consider, and act upon, approval of a Pipeline Encroachment Agreement with Union Pacific Railroad related to the Reclaimed Water Line Looping project. *(Nancy Beshaler, Project Manager)*
6. Approve Resolution No. 2016-43 establishing rates for residential solid waste collection and related services effective January 1, 2017. *(Mark Threadgill)*
7. Consider, and act upon, final publication for Ordinance No. 1531 Amending certain sections and adding new sections to Chapter 29 regulating special events. *(Lauren Truitt, City Attorney)* **(Roll call required)**
8. Consider and act upon final publication of Ordinance 1530, a request for a map amendment to the official zoning map of the City of Alamogordo to rezone the property located at 1806 9th Street from-C1 – Neighborhood Business to R3 – Two Family Dwelling. *(Stella Rael, Planning and Zoning Administrator)* **Roll Call Required**
9. Consider and act upon final publication for Ordinance No. 1532 Creating a new section in the Code of Ordinances pertaining to the White Sands Beautification. *(Lauren Truitt, City Attorney)* **(Roll Call Required)**
10. Consider, and act upon a Release of Lien for property located at 1112 Airport Ave. *(Lauren Truitt, City Attorney)*
11. Consider, and act upon, a request to release a utility line filed in 2008 for the property located at 404 Zia Avenue. *(Lauren Truitt, City Attorney)*

ITEMS REMOVED FROM CONSENT AGENDA

WORK SESSION

12. Discussion concerning utility base rates. *(Mark Theadgill, Customer Service Manager)*

ADJOURNMENT

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 12/06/2016

Report Date: 11/16/2016

Report No: 1.

Submitted By: Rachel Hughs

Subject: Discussion and possible action on presentation of Air Force Career Skills Program. (CSP Program Manager, Kimberly Lawhorn)

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation:

Background:

The Job Training, Employment Skills Training, Apprenticeships and Internships (JTEST-AI) Program under the Department of Defense (DoD) SkillBridge initiative prepares Airmen to transition from military to civilian employment. SkillBridge career skills programs are vocational and technical training programs that focus on the practical application of learned skills and can lead to employment in a specific career or technical trade.



City of Alamogordo City Commission Meeting

AGENDA REQUEST FORM

Date: _____

Date of Meeting: _____

Name: _____

Address: _____

_____ ZIP _____

Phone Number: _____

E-Mail Address: _____

Item requested will be for: (Please check one)

☐ Information only ☐ Action Item ☒ Discussion/Action

☐ Public Hearing ☐ Report ☐ Other: _____

Brief description of topic to be discussed:

Please attach one original of any documents pertaining to the topic -

We do not allow handouts at the meeting

Signature: _____

Please return to: Rachel Hughs, City Clerk
City of Alamogordo
1376 E. 9th Street
Alamogordo, NM 88310

Phone: (575) 439-4205

Fax: (575) 439-4396

E-mail: rhughs@ci.alamogordo.nm.us

INSTRUCTIONS FOR AGENDA REQUEST FORMS

The Alamogordo City Commission meets on the second and fourth Tuesdays of each month at 7:00 p.m. in the City Commission Chambers in City Hall. All meetings are open to the public. Public comment is allowed on most scheduled agenda items at the time each item is scheduled on the agenda. An agenda of City Commission Meetings will be posted at City Hall and on the City website <http://ci.alamogordo.nm.us> at least three days before each scheduled meeting, and the yearly schedule of meetings for the City Commission may be found on the City website.

Members of the public desiring to present matters to the Commission on the public agenda must submit a request in writing to the office of the City Clerk by Wednesday at twelve noon, two weeks prior to the City Commission meeting. This can be done in person, regular mail, fax or e-mail. The request forms are located in the City Clerk's office and on the City website <http://ci.alamogordo.nm.us/coa/cityclerk/agendasandnotices.htm>. The City Clerk will confirm with the individual that the request was received and notify them of the date when their request will be scheduled on the City Commission agenda.

Unscheduled Communications

No action will be taken relative to items on the Public Comment Section other than referral for information.

Other Agenda Information

- Requests to appear will be placed on a "first-come, first-served" basis.
- The Mayor may set a time limit on comments.
- Members of the public desiring to present matters to the City Commission on the agenda must submit a request in writing to the office of the City Clerk prior to Wednesday at twelve noon two weeks prior to the City Commission meeting. The request should state the name of the individual(s) desiring to be heard and the matter to be presented.
- This request must be submitted with any documents you plan to present to the Commission. Please submit only one copy, which is one sided and with no staples. We will scan the document for the Agenda Book.
- Item requests may be referred to appropriate staff for mediation prior to being placed on the agenda.
- Matters pertaining to personnel, litigation and violations of laws and ordinances are excluded from the agenda.
- Decorum is mandatory.



[Home](#) Job Training, Employment Skills Training, Apprenticeships and Internships Program

Job Training, Employment Skills Training, Apprenticeships and Internships Program

Applicable to: Military

The Job Training, Employment Skills Training, Apprenticeships and Internships (JTEST-AI) Program under the Department of Defense (DoD) SkillBridge initiative prepares Airmen to transition from military to civilian employment. SkillBridge career skills programs are vocational and technical training programs that focus on the practical application of learned skills and can lead to employment in a specific career or technical trade.

JTEST-AI Program General Eligibility Requirements

An Airman must complete at least 180 continuous days on active duty and is expected to be discharged or released from active duty within 180 days of starting JTEST-AI

Participation by an Airman is self-initiated and approved by the first field grade commander authorized to impose non-judicial punishment in the Airman's chain of command

The approval authority may terminate an Airman's participation in JTEST-AI based on mission requirements. Upon notification that participation is terminated, an Airman must immediately withdraw from the program and report to their unit of assignment

Four Types of JTEST-AI Career Skills Programs

Apprenticeships - Generally a combination of on-the-job training (OJT) and related instruction that may be sponsored jointly by an employer and union groups, individual employers or employer association

Internships - A type of work experience for entry-level job-seekers. Internships may be completed in federal, state or local government, or in the private sector and may consist of OJT and work experience

On-the-Job Training - Job skills learned at a place of work while performing the actual job

Job Shadowing - A type of OJT work experience that is normally performed in one day, where individuals learn about a job by observing the day-to-day activities of someone in the current workforce

SkillBridge in Action

A number of companies and training providers have already set up or are setting up SkillBridge training programs. The programs established by these companies are helping service members from all branches to transition to civilian careers. A training provider must offer enrollment at no or minimal cost to the Airmen. JTEST-AI must offer a high probability of post-service employment with the provider or another employer.

Point of Contact

To obtain more information about JTEST-AI career skills training opportunities contact your local base education office, by logging into the [Air Force Virtual Education Center](#), or by visiting the [DoD SkillBridge website](#).



Career Skills Program

Holloman AFB

Oversight for Program - Education Office

CSP Program Manager – ***Kimberly Lawhorn*** – 572-3971



Airman Requirements

- Department of Defense Instruction 1322.29, Job Training, Education Skills Training, Apprenticeships and Internships (JTEST-AI)
 - Transitioning Airmen within 180 days of separation
 - Participation is self –initiated and approved by the commander
 - JTEST-AI must offer a high probability of post-service employment with the provider or any employer and offer enrollment at no cost or minimal cost to the Service member.
 - Member will demonstrate understanding of employment prospects
 - Able to document 51% + probability of employment for planned the geographic location to which the member will relocate upon Date of Separation.
 - Airman must forward completed application to education office 30 days prior to program start date.
-



Airman Requirements (Cont'd)

- Airman must sign Memorandum of Participation
- Airman can only participate in one program
 - There is no limit for job shadowing
- Automated process via AFVEC
 - Submit CSP Application thru AFVEC
 - Applications are approved by Ed office before the Unit CC
 - Sources of Training and Information
 - <http://connect.dodskillbridge.com/> catalogs programs
 - College Internships, practicums and student teaching

Air Force Virtual Education Center

AFVEC Career Skills Program Information Support/Help LAWHORN, KIMBERLY

HOLLOMAN Education Center

U.S. AIR FORCE

Mailing Address:
Bldg 224
Suite 226
Holloman AFB, NM 88330-8038

Contact Information:
DSN: 572-3971
COM: 575-572-3971
DSN Fax: 572-3019
COM Fax: 575-572-3019

Needs Assessment Survey:
Your education center is currently offering a needs assessment survey. Please **take the survey** if you have not already.

More Info

My Education Record Status

Financial Caps

- Current FY TA Remaining: \$4,500.00
- Lifetime AF COOL Funding Remaining: \$4,500.00

Lifetime Credits Remaining

- Undergraduate: 72.33 SH
- Graduate: 42 SH

GPA

- Undergraduate: 3.43
- Graduate: N/A

Your education record has the following issue(s) that need to be addressed:

Need to be addressed:

- You have not provided information on your supervisor.
- You have funding request document(s) that require a signature! Click [HERE](#) for funding requests that need to be signed.

View My Education Record

In the Spotlight

My Education Record

- Personal Data
- Education Goals
- Enrollments
- Other Funded Enrollments
- Scheduled Tests
- Online Test Requests
- Test Scores
- CSP Applications
- Reimbursements
- Reimbursement Transactions
- CCAF Actions
- Annual TA Benefits Training
- Supervisor

Self Service

- Start a Funding Request
- *CCAF Student Services



Company/ Business Requirements

- Programs that are training, pre-apprenticeship, or apprenticeship should meet at least one of the following four criteria:
 - Approved by the U.S. Department of Veterans Affairs
 - Accredited by an agency recognized by the U.S. Department of Education
 - Certified program accredited by the American National Standards Institute (ANSI)
 - Be a registered apprenticeship program or a pre-apprenticeship training program offered by an industry-related organization meeting the standards for registered apprenticeship. These standards are administered by the U.S. Department of Labor's Office of Apprenticeship
-



Responsibilities

- E&TS Chief Responsibilities
 - Manages/executes program
 - Publishes program information
 - Reports program metrics to MAJCOM
 - Screens and approves CSP providers
 - Establishes MOU between installation and CSP providers
 - Unit/Squadron Commander Responsibilities
 - Approves Airman's program participation for a single program
 - Appoints a designated unit representative to manage, track and report CSP participation
 - Airman Responsibilities
 - Airman may apply through self-nomination thru AFVEC
-



Types of CSPs

- CSPs are vocational and technical training programs that focus on the practical application of learned skills, and can lead to employment in a specific career or technical trade
 - 4 Types of CSPs are:
 - Apprenticeships
 - Internships
 - On-the-Job Training
 - Job Shadowing
 - Note: AF COOL is available for Credentialing
-



Apprenticeships

- Apprenticeships – are generally a combination of OJT and related instruction that may be sponsored jointly by an employer and union groups, individual employers, or employer association
- Apprenticeships must be registered with one of the following organizations:
 - The U.S. Department of Veterans Affairs (VA) approved as an “Education and Job Training Program.” See U.S. Department of Veterans Affairs “Search for Approved Education and Job Training Programs” web site – <http://www.nasaa-vetseducation.com/>



Apprenticeships (Cont'd)

- The American National Standards Institute (ANSI) accredited as a certificate program. See ANSI's "Directory of Accredited Certificate Issuers, Applicants, and Suspended Issuers" web site – <http://tinyurl.com/ln4r9jv> , or
- Recognized as accredited by an accrediting agency listed with the U.S. Department of Education. See U.S. Department of Education's "Database of Accredited Programs and Institutions"
- The U.S. Department of Labor (DOL) and/or a State Apprenticeship Agency in the state in which it operates – See U.S. DOL's "List of State Apprenticeships Websites" – <http://www.doleta.gov/oa/stateagencies.cfm>



Internships

- Internships – a type of work experience for entry level job-seekers. Internships may be completed in federal, state, or local government, or private sector.
- Airmen are eligible for only one internship during their transition period
- Examples of internships:

Legal intern	Communications intern	Engineering intern	Natural Resources intern
Finance/accounting intern	Veterinary intern	Computer Science intern	Mining intern
Manufacturing intern	Journalism intern	Radiological intern	Hotel services intern
Forestry intern	Nuclear energy intern	Business administration intern	Culinary intern



On-the-Job Training

- OJT – job skills learned at a place of work while performing the actual job
 - OJT programs – must meet certain criteria (e.g., approved by the Veterans' Administration , or recognized by an accrediting agency)
 - OJT training programs may also be accredited by the Council on Occupational Education (COE)
-



Job Shadowing

Job Shadowing – is a type of OJT work experience that is normally performed in one day, where individuals learn about a job by observing the day-to-day activities of someone in the current workforce.

Types of Job shadowing may include

Restaurant employees – cooks, bartenders	Medical profession jobs – physical therapy occupational therapy, radiologists
Manufacturing jobs – machine operators, tool & die makers	Skilled trades jobs – carpenters, painters, electricians
Management jobs – supervisor, entrepreneur, business owner	Education jobs – instructor, teacher aid, or counselor
Radio or television jobs – journalist, broadcaster, technician	Law enforcement jobs – police officer, dispatcher, and detective



Sample forms

Application for CSP Participation

Application for Career Skills Program Participation

PLEASE NOTE: Complete all parts of the application. If your application is incomplete, your request to participate in a Career Skills Program may not be processed and approved.

Participant's Name: _____
Last First MI

Rank/Pay Grade: _____

Organization/Office Symbol: _____

Type of CSP (check one): ☐ Apprenticeship ☐ Internship ☐ Job Shadow ☐ OJT

Start Date: _____ End Date: _____ Number of Days of Training: _____
YYYY/MM/DD YYYY/MM/DD

Name of CSP Provider: _____

CSP Provider Address: _____
Street City State Zip

CSP Provider POC: _____

Phone Number: _____ Email Address: _____

Name/Rank of Unit Training Manager: _____
(Print Clearly)

Unit Training Manager Signature: _____ Date: _____
YYYY/MM/DD

(ADD) Figure A16.2. MEMORANDUM OF CAREER SKILLS PROGRAM PARTICIPATION



Sample Forms (Cont'd)

Memo for Participation

Memorandum of Career Skills Program Participation Between Transitioning Airman and Unit Commander		
Airman: I understand that my election of this option allows me to participate in a Career Skills Program in accordance with the terms of the CSP provider. I must maintain satisfactory progress and attendance throughout my period of enrollment and uphold all military standards and accountability requirements while enrolled. I understand that my participation in this program may be terminated at any time for unit mission requirements or disciplinary reasons. I understand I am not eligible to receive from the CSP provider wages, training stipends, or any other form of financial compensation for the time I spend participating in the program. I also understand that I am strongly encouraged to consider all job offers associated with my successful completion of this program. Further, I understand that I will release my contact information and allow Air Force representatives to contact me after expiration of term of service/retirement concerning my employment associated with completion of this program.		
Airman Print and Sign _____	Date: _____	YYYY/MM/DD
Airman's Permanent Civilian Email: _____		
Current Phone Number: _____ (area code and 7-digit number)		
Start Date: _____	End Date: _____	Number of Days of Training: _____
YYYY/MM/DD	YYYY/MM/DD	
Date of Separation/Retirement: _____ Separation/Retirement Order No. _____		
YYYY/MM/DD		
Commander: Airman is within 180 days from separation/retirement and approved to participate in this apprenticeship/internship program, given mission requirements as determined by me. I understand that the Airman is required to uphold military standards and that I will maintain accountability of this Airman while he/she participates in this program. I will determine participation in unit formations, physical readiness training, and other unit requirements, as appropriate, while ensuring this Airman's full participation in this training program. Finally, I understand that I may terminate the Airman's participation at any time for unit mission requirements or disciplinary reasons.		
Commander's Signature _____	Date: _____	YYYY/MM/DD



Sample Forms (Cont'd)

CSP Data Metrics Elements

JTEST-AI DATA METRICS ELEMENTS

Program Name: Program Location: Program Dates:

Metrics	Number	Percentage*
Number of Service member applicants in JTEST-AI		
Number and percentage of Service members accepted (enrolled) for attendance in JTEST-AI		
Number and percentage of Service members completing JTEST-AI		
Number and percentage of Service members receiving job offers after completion of JTEST-AI		
Number and percentage of Service members receiving JTEST-AI job offers in their local community		
Number and percentage of Service members receiving JTEST-AI job offers outside their local community		
Number and percentage of Service members that were required to pay application or registration fees		

*Percentages are based on total number of eligible participants at that installation or unit.



Resources

- <http://connect.dodskillbridge.com/> catalogs programs
 - https://army.deps.mil/army/cmds/imcom_G3/cop/SitePages/SFL/2.aspx
 - DP2SST – MAJCOM Voluntary Education Managers
 - AF/A1DLT – Ms. Nanette Howard
 - AF Program Manager
-



Holloman Education Office

Kimberly Lawhorn

Career Skills Program (CSP) Manager

575-572-3971

49fss.fsme@us.af.mil

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 12/06/2016

Report Date: 12/1/2016

Report No: 2.

Submitted By: Rachel Hughs

Subject: Approve the minutes for the November 1, 2016 and November 15, 2016 Regular meetings. *(Rachel Hughs, City Clerk)*

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation: Approve the Minutes.

Background: This is required by the Open Meetings Act.

**CITY OF ALAMOGORDO, NEW MEXICO
CITY COMMISSION REGULAR MEETING MINUTES
6:30 P.M., COMMISSION CHAMBERS
November 1, 2016**

**RICHARD BOSS, MAYOR
JASON BALDWIN, COMMISSIONER
NADIA SIKES, COMMISSIONER
JENNY TURNBULL, COMMISSIONER
SUSAN PAYNE, COMMISSIONER**

**AL HERNANDEZ, MAYOR PRO-TEM
ERICA MARTIN, COMMISSIONER
MAGGIE PALUCH, ACTING CITY MANAGER
LAUREN TRUITT, CITY ATTORNEY
RACHEL HUGHS, CITY CLERK**

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

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

APPROVAL OF AGENDA

**Mayor Pro-Tem Hernandez moved to approve the agenda.
Commissioner Martin seconded the motion.
Motion carried with a vote of 6-0-0.**

PUBLIC COMMENT

Lawrence Guidry commented on the following:

Lincoln Otero County Veterans Leadership Chairman, Mr. Guidry requested having three Purple Heart parking spaces in the City of Alamogordo. Acting City Manager Paluch assured him the City received his letter and they were working on it.

Eugene Downer commented on the following:

Mr. Downer spoke on a dead tree at the airport and paving the road to the airport. He thought it would be a good idea for department managers to do more funding for small grants.

CITY MANAGER'S REPORT

Acting City Manager Maggie Paluch made the following remarks:

1. She announced the next Family Fun Center meeting would be November 15, 2016 and at that time they would have 95 percent complete design. The ground breaking will be December 15, 2016 at 10 a.m. on site.
2. She said the Union Pacific tree planting grant was 50 percent complete of which 28 trees have been planted. They will be using the remainder of the grant on picnic tables at Alameda Park.
3. She stated the project of the zoo perimeter fencing was \$100,000 and it was all local funded.
4. She announced the bid opening for the First and Florida project was November 29, 2016 with the start date in the beginning of 2017. The project will be a nine month construction phase.
5. She said CDBG at COPE Center was 65 percent completed and will be complete December 2016.
6. She announced the Christmas Craft show was on Saturday, November 12, 2016 from 1 p.m. to 4 p.m. and Sunday from 12 p.m. to 4 p.m. She encouraged citizens to donate to Toys for Tots.
7. She said as of October 24, 2016, Lauren Truitt was the new City Attorney.

REMARKS AND INQUIRIES BY THE CITY COMMISSION

Commissioner Sikes made the following comments:

She thanked city staff who participated in the City Halloween contest.

CONSENT AGENDA

1. Approve the minutes for the September 27, 2016 Regular meeting. *(Rachel Hughs, City Clerk)*
2. Approve the statements related to the Executive Session held on September 27, 2016. *(Rachel Hughs, City Clerk)*
3. Consider, and act upon, award IFB No. 201609 to multiple vendors, in the amount not to exceed \$173,883.78 related to Miscellaneous Foods, Dairy Products & Items for the Alamogordo Senior Center Nutrition Program. *(Veronica Ortega, Community Services Director)*

Commissioner Turnbull asked to remove Item # 4 from the Consent Calendar.

Mayor Pro-Tem Hernandez moved to approve items of the consent calendar.

Commissioner Martin seconded the motion.

Motion carried with a vote of 6-0-0.

ITEMS REMOVED FROM CONSENT AGENDA

4. Consider and act upon, final adoption of Ordinance No. 1529 amending Chapter 24 of the *Code of Ordinances* to include Off Highway Motor Vehicles. *(Roll Call Required)*

Commissioner Turnbull wanted clarification on if 18 years old and over did not have to have a helmet. City Attorney Truitt answered the Game and Fish rules state that you need a helmet and eye protection if you were under 18.

Mayor Pro-Tem Hernandez moved to approve.

Commissioner Martin seconded the motion.

Roll call vote was taken.

Motion carried with a vote of 4-2-0.

Commissioner Martin and Commissioner Payne voted nay.

NEW BUSINESS

5. Hold a public hearing, and act upon a request for a map amendment to the official zoning map of the City of Alamogordo to rezone the property located at 1806 9th Street from C1- Neighborhood Business to R3 – Two Family Dwelling. *(Stella Rael, Planning and Zoning Administrator)*

Planning and Zoning Administrator Rael spoke on the map amendment and gave some history on the property. She said the owners were requesting to change the zoning to R3 - Two Family Dwelling and she recommended Commission approves it.

Mayor Pro-Temp Hernandez asked Planning and Zoning Administrator Rael for clarification if a Two Family Dwelling included apartments, she said yes. Commissioner Payne asked if someone was living there now, Planning and Zoning Administrator Rael answered yes there was.

Mayor Pro-Tem Hernandez moved to approve.

Commissioner Turnbull seconded the motion.

Roll call vote was taken.

Motion carried with a vote of 6-0-0.

6. Hold a public hearing, and act upon a variance to reduce the property rear setback from having a depth of not less than thirty (30) feet or twenty (20) percent of the depth of the entire lot, whichever amount is smaller, to five (5') feet. (Stella Rael; Planning and Zoning Administrator)

Planning and Zoning Administrator Rael said the reason the New Hope Baptist Church located on 800 Ninth Street was asking for a variance was because they wanted to add to their fellowship hall. She stated the Planning and Zoning Board recommended the variance.

Mayor Boss asked her if she approves of this variance, she said yes. Mayor Pro-Tem Hernandez asked if they had a parking plan. She said they had plenty for parking.

Mayor Pro-Tem Hernandez moved to approve.

Turnbull seconded the motion.

Motion carried with a vote of 6-0-0.

7. Consider, and act upon, the sale of equipment purchased for the Street Maintenance Department. (Brian Cesar, Public Works Director)

Public Works Director Cesar spoke on a paint stripper purchased in 2012 at a cost of \$58,565. He stated the piece of equipment had never been used by the street department. He had an appraised value of \$30,000 to \$35,000 for the paint stripper and requested to sell it.

Commissioner Payne asked Public Works Director Cesar why it had never been used. He said one of the previous city managers requested to purchase it but could not give more detail on it because he was not involved in the purchase. He said the interested party wanted to buy it from the city for \$30,000. Mayor Boss asked if the city will ever use the equipment. He answered he does not believe they ever will.

Mayor Pro-Tem stated they had two ways of selling the paint stripper, either selling it or auctioning it. He thought they would not get as much money for it if the auctioned it. He asked Public Works Director Cesar if the city would ever go back to paint stripping, he said no.

Commissioner Turnbull moved to approve.

Commissioner Martin seconded the motion.

Motion carried with a vote of 6-0-0.

8. Consider, and act upon, the sale of equipment purchased for the Street Maintenance Department. (Brian Cesar, Public Works Director)

Public Works Director Cesar said in 2008 a crack sealant machine with a pavement cutter and router was purchased for \$43,437. He said they were only used for 79 hours over the last eight years. The appraised value was \$22,336 and they received two notices of interest to purchase it.

Mayor Pro-Tem Hernandez moved to approve.

Commissioner Turnbull seconded the motion.

Motion carried with a vote of 6-0-0.

9. Consider, and act upon, Change Order No. 2, RFQ 201405, to Bohannon Huston, Inc. related to the engineering and design services for the Bonito Lake Restoration project, in an amount not to exceed \$168,514.75, including tax. (Brian Cesar, Public Works Director)

Public Works Director Cesar spoke on draining Bonito Lake and stated it was a FEMA project. He said one of the task orders was an assessment of the intake tower. He said the engineer had originally proposed a temporary dam in order to remove debris from the lake.

Mayor Pro-Tem Hernandez asked Public Works Director Cesar when they were getting their lake back, he answered two to two and a half years.

**Mayor Pro-Tem Hernandez moved to approve.
Commissioner Sikes seconded the motion.
Motion carried with a vote of 6-0-0.**

EXECUTIVE SESSION (Roll Call Vote Required)

10. Recess into Executive Session in compliance with Section 10151(H), NMSA 1978 (as amended), to discuss: limited personnel matters and pending litigation. (Roll Call Vote required)

**Mayor Pro-Tem Hernandez moved to recess into Executive Session to discuss limited personnel matters and pending litigations at 7:08 p.m.
Commissioner Turnbull seconded the motion.
Roll call vote was taken.
Motion carried with a vote of 6-0-0.**

RECONVENE INTO OPEN SESSION

11. Action, if any, related to Limited Personnel Matters.

**Reconvened at 8:14 p.m.
Motion to go back into Open Session.**

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

Statement by the Mayor: The Governing Body of the City of Alamogordo, New Mexico, hereby states that a Closed Executive Session was held and the matters discussed in the closed meeting were limited only to **Limited Personnel Matters and Pending Litigation.**

City Commission proposed to consider and act upon an increase in Acting City Manager Paluch annual salary. Her current base salary was \$88,400 and her new annual base salary will be \$100,000. Acting City Manager annual pay increase for Maggie Paluch is currently \$15,000 and will remain \$15,000 until a city manager is hired. Effective date of the base salary pay increase was November 7, 2016.

**Commissioner Turnbull moved to approve.
Mayor Pro-Tem Hernandez seconded the motion.
Motion carried with a vote of 6-0-0.**

ADJOURNMENT

Mayor Pro-Tem Hernandez moved to adjourn the meeting at 8:16 p.m.

Commissioner Sikes seconded the motion.

Roll call vote was taken.

Motion carried with a vote of 6-0-0.

Mayor Richard Boss

ATTEST:

Deputy City Clerk Rachel Hughs

(Prepared by Rachel Hughs, City Clerk)

Approved at the Regular Meeting held on December 6, 2016.

**CITY OF ALAMOGORDO, NEW MEXICO
CITY COMMISSION REGULAR MEETING MINUTES
6:30 P.M., COMMISSION CHAMBERS
November 15, 2016**

**RICHARD BOSS, MAYOR
JASON BALDWIN, COMMISSIONER
NADIA SIKES, COMMISSIONER
JENNY TURNBULL, COMMISSIONER
SUSAN PAYNE, COMMISSIONER**

**AL HERNANDEZ, MAYOR PRO-TEM
ERICA MARTIN, COMMISSIONER
MAGGIE PALUCH, ACTING CITY MANAGER
LAUREN TRUITT, CITY ATTORNEY
RACHEL HUGHS, CITY CLERK**

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

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

APPROVAL OF AGENDA

Mark Threadgill, Customer Service Manager withdrew Item 9.

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

PRESENTATIONS

1. Discussion and possible action on presentation of Air Force Career Skills Program. (CSP Program Manager, Kimberly Lawhorn)

CSP Program Manager, Kimberly Lawhorn could not make it to the Commission meeting.

2. Proposed 80 unit apartment community will be located in the Kempner Subdivision between 7th and 5th Streets and N. Florida and Alaska Avenues in Alamogordo, NM. (Bethel Development)

Acting City Manager Paluch briefly updated why we are hearing from Bethel Development this evening. This property was originally earmarked with quality of life funds approximately \$400,000 for a proposed park. Property is currently owned by the hospital. The City does have first right of refusal on this property. She wanted to discuss the possibility of a local contribution from the Housing Authority budget, from funds remaining from the homeowner program which we no longer run; there is currently \$600,000 in this fund.

Scott Laufenberg spoke on behalf of Bethel Development. He gave a brief background on Bethel Development, which has been in the affordable multi-family business for over 20 years; has developed 29 affordable multi-family or apartment communities; headquartered in Dublin, Ohio; developed eight communities in New Mexico, in cities such as; Silver City, Las Cruces, Gallup, Farmington, and Santa Fe.

Bethel Development is proposing to build a family property with 80 apartment units; 20 – two bedroom two bath units and 60 – three bedroom two bath units. These communities would include high quality playground equipment, sports courts, swimming pools, common area and a community building. This development would be financed using housing tax credits allocated by New Mexico Housing Finance Agency. By using these tax credits, rents are restricted to households earning 60% or less than area

median income. He discussed the process to receive an allocation of the housing tax credit. Each application is scored. Whenever there is a local contribution, the entity will receive points. Acting City Manager Paluch pointed out there are only two other developments, in the City of Alamogordo, that offer subsidized rent, other than the Housing Authority. This proposal would be the next step before market rent.

Housing Authority Manager Huff stated the Housing Authority limit is 80% of area median income, whereas, Bethel development is requiring 60%. This development would help fill in the gap between the Housing Authority and market rent. Mr. Laufenberg added that each of their communities accept Housing Section Eight vouchers. He also stated that the State conducts a study which identifies areas which are in high to medium need for affordable housing. For years, Alamogordo has not been considered as a tier one or a tier two market. Tier one is in most need for affordable housing, and tier two is one step below that. This year Alamogordo was added as a tier one market.

Mayor Boss asked if there is a one percent contribution, by a governmental entity, in order to qualify. Mr. Laufenberg answered that this is not correct. He explained that this is just a scoring category, for every one percent contributed, one point would be scored.

Commissioner Payne asked about the utility allowance. Mr. Laufenberg explained that they would pay water and sewer, and the tenant would pay the other utilities. Commissioner Payne asked if tenants would be required to do a credit check. Mr. Laufenberg answered yes. They also do criminal background checks, as well. Commissioner Payne asked if a negative credit score would disqualify the tenant. Mr. Laufenberg answered, not necessarily. Their property management company handles this.

Acting City Manager Paluch stated they were looking for feedback from the Commission, to see if the Commission thought this would be good use of this property. The City does have first right of refusal for this property. Mr. Laufenberg explained that Bethel Development contacted the hospital and offered them this plan, in which the hospital accepted subject to, that the City no longer wanted to pursue the park development. They are looking for guidance from the City as to what they want to do next. Mayor Boss asked Acting City Manager Paluch that the City had originally considered making this property ball parks. She answered yes, however, due to where our effluent water system stands and also the number of our current park staff, she does not believe that we can assume another park facility at this point.

Mayor Pro Tem-Hernandez wanted to make clear that the first right of refusal was a gentleman's agreement. He asked Mr. Laufenberg what was their time frame for acquiring the property. Mr. Laufenberg answered that they needed to make the application by February 15, 2017 for the housing tax credits. They would not know if they received the credits until probably May or June. Then they would look to acquire the property by the end of next year. Commissioner Payne asked if they knew what the occupancy rate for the other two developments in Alamogordo. Housing Authority Manager Huff thought that they were at full capacity, but stated that these developments do not report any occupancy rates to the Housing Authority.

Commissioner Sikes asked Housing Authority Manager Huff what changed that moved Alamogordo to Tier 1 or Tier 2. Housing Authority Manager Huff accredited to completing the study correctly. She also stated that there has always been a gap in the affordable housing market.

PUBLIC COMMENT

Arthur Williams commented on the following:

Mr. Williams requested the property lien on Airport Rd be waived. He said he had sold the house and the new owners were not able to make the payments so he took the property back on September 2015. Mr. Williams stated he was unaware the water department had put a lien on the property for not paying water bills. He said the judgment was against the previous owners and thought he should not be responsible.

Lauren Truitt, City Attorney stated Mr. Williams request was Item 14 of the Agenda for that night's meeting. Mayor Boss let Mr. Williams know he could speak on this request on Item 14.

Sharon Driever commented on the following:

Ms. Driever was concerned about the vacated property in the City. Acting City Manager Paluch assured Ms. Driever that she would look into her concerns.

Eugene Downer commented on the following:

Mr. Downer agreed with Ms. Driever regarding vacated property. He was also concerned about the dead trees at the Willie Estrada Civic Center, and the number of gopher holes at Alameda Park.

Paul Sanchez commented on the following:

Mr. Sanchez invited the Commission to Toys for Tots on behalf of Wally Anderson.

CITY MANAGER'S REPORT

Acting City Manager Maggie Paluch made the following remarks:

1. She spoke about the Family Fun Center, and invited everyone to the groundbreaking to be held on-site on December 15, 2016 at 10:00 a.m.
2. She announced that GWC is completing the asbestos abatement at the old Bowling alley, and demolishing the remaining parts of the building. Demolition should be complete by the end of this week.
3. She announced that base rates for water service for vacant homes will be discussed at the regular meeting on December 6, 2016. Statistics and revenue impact will be discussed, and would expect for public comment to be extended on that evening.
4. She announced that the City of Alamogordo has a new downloadable app, free of charge.
5. She announced that the Turkey Shoot at the Recreation Center would be on Saturday November 19, 2016 from 1:00 p.m. to 4:00 p.m.
6. She stated that for the first time ever, the City would be holding a Christmas Zoobilee at the Zoo on December 3, 2016 from 6:00 p.m. to 9:00 p.m., and is free to the public. We will be accepting donations in the form of Christmas presents for the Zoo animals and pets at our local shelter. Our Mayor will be lighting the Christmas tree at 6:00 p.m. If a gift is brought for toys for tots you will receive a free picture with Santa Claus.
7. She welcomed Bob Johnson as our new Engineering Manager.

REMARKS AND INQUIRIES BY THE CITY COMMISSION

Commissioner Sikes made the following comments:

She asked if the Zoo would put together a listing of what zoo animal toys are. A City employee from the zoo said you can bring anything affiliated with animals and they will give the items to the Animal Control Department.

Acting City Manager Maggie Paluch made the following comments:

She also wanted to welcome Eric Barraza as our new Deputy City Clerk.

Mayor Pro-Tem Hernandez made the following comments:

He stated that he received one complaint while attending the Craft Show, about the marquee sign. He asked that if we are not going to fix the marquee that we, at least, put up an old fashioned marquee there. Acting City Manager Paluch said the marquee sign that we own at the bank property across the street will be moved to the Civic Center, and she also affirmed that it is an old fashion marquee sign. She mentioned that we do have a contract in place to move the sign; we are just waiting on the contractor's schedule to make that move.

CONSENT AGENDA

3. Approve the minutes for the October 11, 2016 and October 25, 2016 Regular meetings. *(Rachel Hughs, City Clerk)*
 4. Approve the statements related to the Executive Session held on October 11, 2016. *(Rachel Hughs, City Clerk)*
 5. Consider, and act upon, an agreement for Release and Relinquishment of Access Rights to First Street at 811 First Street and a License Agreement for Use of Real Property related to the Florida Avenue Realignment at First Street project. *(Nancy Beshaler, Project Manager and Lauren Truitt, City Attorney)*
 6. Consider, and act upon, a Purchase Agreement in Lieu of Condemnation at 115 South Florida Avenue related to the Florida Avenue Realignment at First Street project. *(Nancy Beshaler, Project Manager and Lauren Truitt, City Attorney)*
 7. Investment Report for the quarter ending September 30, 2016, in accordance with the City of Alamogordo Investment Ordinance. *(Julianne Hall, Acting Finance Director)*
 8. DFA Quarterly Report for the period ending September 30, 2016. *(Julianne Hall, Acting Finance Director)*
 9. Consider and act upon Resolution No. 201643 establishing rates for residential solid waste collection and related services effective January 1, 2017. *(Mark Threadgill, Customer Service Manager)* (Roll Call Required) **(WITHDRAWN)**
 10. Consider, and act upon, award of Public Works Bid No. 2016013 to C.D. General Contractors, Inc. related to the Reroof Animal Control Building project in an amount not to exceed \$31,659.12, including tax. *(Bob Johnson, Engineering Manager)*
 11. IFB No. 201612 Brominating Tablets *(Veronica Ortega, Community Services Director)*
 12. Consider, and act upon, approval of an application for a grant from the Department of Homeland Security/Assistance to Firefighter's Grant Program (AFG) related to the purchase/replacement of a Class A Apparatus, Communications Equipment, Personal Protective Equipment (SCBA's) and Firefighting Equipment in the total amount of \$760,100 with a required 10% match of \$69,099.00. *(Mikel Ward, Fire Chief)*
 13. Consider, and act upon, Resolution No. 201644 accepting the 2017 New Mexico Fire Protection Grant from the New Mexico Public Regulatory Commission – State Fire Marshal's Division in the amount of \$125,000, including a local match of \$25,000. *(Mikel Ward, Fire Chief)* (Roll Call Required)
- Mayor Pro Tem-Hernandez moved to approve items 3, 4, 5, 6, 7, 8, 10, 11, 12 & 13 of the consent calendar.
- Commissioner Sikes seconded the motion.
- Roll call was taken for items No. 13.
- Motion carried with a vote of 7-0-0.

NEW BUSINESS

14. Consider, and act upon, a request to release a utility lien filed in 2003 for the property located at 1453 Post Avenue. *(Lauren Truitt, City Attorney)*

City Attorney Lauren Truitt stated that this lien was placed in 2003, and there is a four year Statute of Limitations on those liens, so we can no longer foreclose on this lien. It is her recommendation to approve the release of this lien.

Commissioner Turnbull moved to approve.

Commissioner Martin seconded the motion.

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

Commissioner Baldwin asked City Attorney Truitt, if there is any way to identify all liens that are four years or older to release them all at once, instead of releasing them on an individual basis.

City Attorney Truitt answered, that there should be a way to identify these, and that she would look into it. She also stated that there is a way to refile these liens, so that we do not run into the Statute of Limitations on these liens.

15. Consider, and act upon, the award of Public Works Bid No. 2016012 to General Hydronics Utilities, LLC related to FY 2016 Street Maintenance Program (EN1608) in an amount not to exceed \$1,626,885.00, including NMGRT. (Edward Balderrama, Project Manager)

Project Manager Balderrama said this project was to improve the Collage streets. He stated there were two bids and C&E Industries had the lowest bid; however they do not carry the appropriate licenses for the necessary plat work. Therefore, it was their recommendation that the contract be awarded to General Hydronics.

Mayor Pro-Tem Hernandez moved to approve.

Commissioner Baldwin seconded the motion.

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

16. Consider, and act upon, approval of amendment 3 to the Engineering Professional Services Agreement to Bohannon-Huston related to the Reclaimed Water Line Looping Phase 2 project. (Nancy Beshaler, Project Manager)

Project Manager Beshaler said that this project is about 90% funded by NMED Grant. The provisions of this grant require the design engineer to do the construction administration on the project, so the amendment is for Bohannon-Huston to do the construction administration.

Mayor Pro-Tem Hernandez moved to approve.

Commissioner Baldwin seconded the motion.

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

17. Consider, and act upon, award of Public Works Bid No. 2016010 for \$292,798.36 (including NMGRT) to Preslar's Dirtworks LLC related to the FEMA 4197 Debris Removal project. (Nancy Beshaler, Project Manager)

Project Manager Beshaler explained this project was to remove debris from the rain events of 2014. She said that there were two bidders on this project; however the lowest bidder was much higher than the Grant amount, so she had to go back to FEMA and ask for additional funding for the difference. She just got that executed agreement back from FEMA, so now the project is fully funded and asking to award this project to Preslar's Dirtworks.

Mayor Pro-Tem Hernandez moved to approve.

Commissioner Baldwin seconded the motion.

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

18. Consider, and act upon, Ordinance No. 1531 amending certain sections and adding new sections to Chapter 29 regulating special events. (Lauren Truitt, City Attorney) (Roll call vote)

Attorney Canon Stevens said she tried to clarify the special events section. She discussed changes to Ordinance 1531, including removing the Farmer's Market from the special events section. She added skateboarding and skating was prohibited on the sidewalks of New York Ave, where people are walking in front of the shops. She also created a separate Farmer's Market section. She moved the Farmer's Market location from New York Ave. to the City parks. She also included a \$5.00 permit per vendor for the season. She stated the new special events section would require any event that may occur 12 times or less per year would have to go in front the City Manager and then apply for a permit from the City Clerk's Office. Any event that occurs more than 12 times per year would require the event holders to come before the Commission.

Commissioner Payne clarified if the fee was charged per event or per type of event. Attorney Stevens answered that it is per type of event.

Mayor Pro-Tem Hernandez clarified that the Farmer's Market \$5.00 fee was per vendor per year and not the whole Farmer's Market as a whole. Attorney Stevens said yes, it was \$5.00 per vendor but if they had no objection she would clarify it on the Ordinance that it would be \$5.00 for the Farmer's Market.

Acting City Manager Paluch pointed out that the fee does not include electricity, a vendor would have to pay for the electric pole and usage themselves.

Commissioner Payne was concerned about avoiding conflicts with any other non-profit organizations about the fee. City Manager Paluch stated that they are dedicating an ordinance just for the Farmer's Market, and separate it from all other events. City Manager Paluch also added that non-profit organizations are welcome to come before the Commission to ask for fees to be waived.

Commissioner Turnbull asked what the benefit of removing Section 5 under eligibility number 1 letter E, the granting of the special event permit will not be detrimental to the surrounding properties or in conflicts to any other codes. She asked if it was a problem before. Attorney Stevens answered that it was not a problem and explained that when granting a special event permit, it has to be checked and thought that she would take out the extra words to make it easier to understand.

Diana Caulkins, Manager of the Farmer's Market, was concerned about the \$5.00 fee per vendor per year. She was not sure how they will administer the vendors paying their fees to the City. She is also concerned about vendors having to pay for any additional fees. She pointed out that she does not know which vendors will be participating in their Farmer's Market until the day of. She is concerned that if vendors have to go pay for different fees, they will get discouraged and not want to participate in their Farmer's Market.

Commissioner Sikes asked Ms. Caulkins, what if we amended the new ordinance to rent the park directly to the Farmer's Market and the Farmer's market would deal with these types of issues. She was in favor of paying a flat fee for the Farmer's Market.

Attorney Stevens stated that she wanted to sit down and discuss this ordinance with Ms. Caulkins, to try and include any concerns the Farmer's Market may have. Ms. Caulkins was very pleased going back to the park, but would like to have something more concrete, as far as the location.

City Manager Paluch did not want to be very specific in writing this ordinance. She explained that if it were specific and something had to be changed, that it would require an amendment to the Ordinance and would require the Farmer's Market to appear in front of the Commission each time.

Commissioner Martin asked if this Ordinance would affect all Farmers' Markets. City Manager Paluch answered if any other Farmer's Market were to use a City park these stipulations would apply.

Mayor Pro-Tem Hernandez asked on their best day, what was the amount of vendors they've had. Ms. Caulkins answered about 20 and on their worst day were about 6. Mayor Pro-Tem Hernandez asked if Ms. Caulkins would anticipate any growth by moving the Farmer's Market back to the park. Ms. Caulkins did not know. Mayor Pro-Tem Hernandez proposed simplifying the fee. He stated he would pay the first Farmer's Market fee up to \$150.

Acting City Manager Paluch wanted to clarify that this ordinance does not affect Farmer's Markets conducted on private property. Ms. Caulkins expressed concerns about the gopher holes at the park and the risks involved with these holes.

Mayor Pro-Tem Hernandez moved to approve for first publication.

Commissioner Sikes seconded the motion.

Roll call vote was taken.

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

19. Consider and act upon Ordinance No. 1532 creating a new section in the Code of Ordinances Pertaining to the White Sands Beautification. (Lauren Truitt, City Attorney)

City Attorney Lauren Truitt spoke on the drafting of this ordinance, at the direction of the Commission.

Pamela Lee, Chairman of Planning and Zoning Commission, discussed their efforts to revitalizing our City. This ordinance establishes the White Sands Beautification initiative and creates the committee that will run this program.

Daren Williams said that this ordinance is attempting to translate some of the main points from the original committee, from 2013, into a more enduring and viable process. The main objective is to enlist the support and commitment from business owners on White Sands Boulevard.

Mayor Boss asked how much time City employees would contribute to this project. Mr. Williams answered that this ordinance would require the Chair to coordinate with the City Manager and the Planning and Zoning Commission; to figure out what staff supports would be needed.

Commissioner Turnbull moved to approve.

Commissioner Baldwin seconded the motion.

Roll call vote was taken.

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

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

Mayor Boss read the openings and reappointed Jeff Rabon to the Airport Advisory Board, Leroy Copeland to the Housing Authority Advisory Board, and Gloria Vaughn to the Public Library Board. No one was opposed.

Commissioner Baldwin asked the community to support the Shop Small process. Commissioner Sikes stated that on Monday at 7am, Cam and Trish Livingston with Small Business Development Corporation would be on the radio discussing the Shop Small Process.

EXECUTIVE SESSION (Roll Call Vote Required)

Mayor Pro-Tem moved to adjourn into Executive Session in compliance with Section 10151(H), NMSA 1978, to discuss Limited Personnel Matters (City Manager search) and Pending and Threatening Litigation at 8:15 p.m. (Roll Call Vote required)

Commissioner Turnbull seconded the motion.

Roll call vote was taken.

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

ADJOURNMENT

Mayor Richard Boss

ATTEST:

City Clerk Rachel Hughs

(Prepared by Eric Barraza, Deputy City Clerk)

Approved at the Regular Meeting held on December 6, 2016.

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 12/06/2016

Report Date: 11/16/2016

Report No: 3.

Submitted By: Rachel Hughs

Subject: Approve the statements related to the Executive Session held on November 15, 2016. *(Rachel Hughs, City Clerk)*

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation: Approve the following statements authorizing them to be included in the minutes of December 6, 2016: "The Governing Body of the City of Alamogordo, New Mexico, hereby states that on November 15, 2016, a Closed Executive Session was held and matters discussed in the closed meeting were limited only to: Limited Personnel Matters (City Manager search) and Pending Litigation."

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

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 12/06/2016

Report Date: 12/1/2016

Report No: 4.

Submitted By:

Subject: Approve the City Commission Regular Meeting Schedule for Calendar Year 2017. (*Rachel Hughs, City Clerk*)

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation: Approve the Schedule for Calendar Year 2017

Background: Every year the City Commission adopts its deadline and meeting schedule for the upcoming year. A notice of the meeting dates will be published in the Alamogordo Daily News on Sunday, December 11, 2016, and again on Sunday, June 11, 2017. The notice will also be posted on the City's web page and remain posted until after the last meeting in December of 2017.

NOTE: The meetings in January will be held on the second and fifth Tuesday and the meetings for the months of November and December will be held on the first and third Tuesdays, rather than the second and fourth Tuesdays. The NMML Annual conference will be held August 15th - August 18th, and will not be during a meeting week. There will no Municipal Elections in 2017 and the School Board Elections will not affect any City Commission meeting dates.

2017 City of Alamogordo Calendar

JANUARY						
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FEBRUARY						
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31						

Regular Comm Mtg

Holiday

Payday

P&Z Meetings

NMML Meetings

Municipal Elections

2017 Pay Periods					
1	12/19/16 - 01/01/17	10	04/24/17 - 05/07/17	19	08/28/17 - 09/10/17
2	01/02/17 - 01/15/17	11	05/08/17 - 05/21/17	20	09/11/17 - 09/24/17
3	01/16/17 - 01/29/17	12	05/22/17 - 06/04/17	21	09/25/17 - 10/08/17
4	01/30/17 - 02/12/17	13	06/05/17 - 06/18/17	22	10/09/17 - 10/22/17
5	02/13/17 - 02/26/17	14	06/19/17 - 07/02/17	23	10/23/17 - 11/05/17
6	02/27/17 - 03/12/17	15	07/03/17 - 07/16/17	24	11/06/17 - 11/19/17
7	03/13/17 - 03/26/17	16	07/17/17 - 07/30/17	25	11/20/17 - 12/03/17
8	03/27/17 - 04/09/17	17	07/31/17 - 08/13/17	26	12/04/17 - 12/17/17
9	04/10/17 - 04/23/17	18	08/14/17 - 08/27/17		

CITY OF ALAMOGORDO
CITY COMMISSION REGULAR MEETING SCHEDULE FOR 2017

The Governing Body (City Commission) of the City of Alamogordo, New Mexico will meet in regular session the second and fourth Tuesday of every month; however, in January the meetings will be held on the second and fifth Tuesday and the months of November and December, the meetings will be held the first and third weeks of the month unless otherwise specified. All meetings will begin at 6:30 p.m. and be held in the City Commission Chambers at City Hall located at 1376 E. Ninth Street, Alamogordo, NM.

Deadline date for placing items and attachments on the Agenda. (12:00 p.m.)	Date Agenda Packets available to the City Commission & public (5:00 p.m.)	Regular Meeting Date (7:00 p.m.)
January 3, 2017	January 6, 2017	January 10, 2017
January 24	January 27	**January 31, 2017
February 7	February 10	February 14, 2017
February 21	February 24	February 28, 2017
March 7	March 10	March 14, 2017
March 21	March 24	March 28, 2017
April 4	April 7	April 11, 2017
April 18	April 21	April 25, 2017
May 2	May 5	May 9, 2017
May 16	May 19	May 23, 2017
June 6	June 9	June 13, 2017
June 20	June 23	June 27, 2017
July 3 (Due to Holiday)	July 7	July 11, 2017
July 18	July 21	July 25, 2017
August 1	August 4	August 8, 2017
August 15	August 18	August 22, 2017
September 5	September 8	September 12, 2017
September 19	September 22	September 26, 2017
October 3	October 6	October 10, 2017
October 17	October 20	October 24, 2017
October 31	November 3	*November 7, 2017
November 14	November 17	*November 21, 2017
November 28	December 1	*December 5, 2017
December 12	December 15	*December 19, 2017

PASSED, APPROVED AND ADOPTED THIS 6th DAY OF DECEMBER, 2016.

*First and Third weeks of the Month

** Fifth week of the Month

Rachel Hughs, City Clerk

Richard Boss, Mayor

NOTICE OF PUBLIC MEETINGS

2017

In accordance with Section 10-15-1, NMSA 1978 (as amended), notice is hereby given that the Governing Body (City Commission) of the City of Alamogordo, New Mexico, will meet in regular session the second and fourth Tuesday of every month; however, in January the meetings will be held on the second and fifth Tuesday and during the months of November and December, the meetings will be held the first and third Tuesday of the month. The meetings will begin at 6:30 p.m. and will be held in the City Commission Chambers at City Hall located at 1376 E. Ninth Street, Alamogordo, New Mexico. Listed below are the Regular Meetings scheduled for 2017:

JAN. 10, 2017 (Second Tuesday in January)	JAN. 24, 2017 (Fifth Tuesday in January)
FEB. 14, 2017	FEB. 28, 2017
MAR. 14, 2017	MAR. 28, 2017
APR. 11, 2017	APR. 25, 2017
MAY 9, 2017	MAY 23, 2017
JUNE 13, 2017	JUNE 27, 2017
JULY 11, 2017	JULY 25, 2017
AUG. 8, 2017	AUG. 22, 2017
SEPT. 12, 2017	SEPT. 26, 2017
OCT. 10, 2017	OCT. 24, 2017
NOV. 7, 2017 (First Tuesday in November)	NOV. 21, 2017 (Third Tuesday in November)
DEC. 5, 2017 (First Tuesday in December)	DEC. 19, 2017 (Third Tuesday in December)

An Agenda for each meeting is available from the City Clerk's Office seventy-two (72) hours prior to the meeting date. *NOTE: The Alamogordo Commission Chambers is wheelchair accessible. Other special assistance for disabled attendees must be requested 48 hours in advance by contacting the City Clerk's Office at 575-439-4205.*

I hereby certify that this notice was posted on the bulletin board located in the east/west lobby of City Hall and in the glass case located outside City Hall, 1376 E. Ninth Street, Alamogordo, NM. The notice was posted on December 7, 2016 and will remain posted until after the last meeting in December, 2017. A notice of the meeting dates will be published in the Legal Section of the *Alamogordo Daily News* on Sunday, December 11, 2016 & June 11, 2017. The same notice will also be posted on the City's web page (<http://ci.alamogordo.nm.us>) in December of 2016 and will remain posted through the end of 2017.

Rachel Hughs, City Clerk

NOTICE IS HEREBY GIVEN THAT THE ALAMOGORDO CITY COMMISSION HAS ADOPTED ITS REGULAR MEETING SCHEDULE FOR 2017.

Notice is hereby given that the Governing Body (City Commission) of the City of Alamogordo, New Mexico, will meet in regular session the second and fourth Tuesday of every month; however, in January the meetings will be held on the second and fifth Tuesday and during the months of November and December, the meetings will be held the first and third Tuesday of the month, unless otherwise noted. The meetings will begin at 6:30 p.m. and be held in the City Commission Chambers at City Hall located at 1376 E. Ninth Street, Alamogordo, New Mexico. Listed below are the Regular Meetings scheduled for 2017:

Jan. 10, 2017 (Second Tuesday) & Jan. 31, 2017 (Fifth Tuesday)

Feb. 14, 2017 & Feb. 28, 2017

Mar. 14, 2017 & Mar. 28, 2017

Apr. 11, 2017 & Apr. 25, 2017

May 9, 2017 & May 23, 2017

June 13, 2017 & June 28, 2017

July 11, 2017 & July 25, 2017

Aug. 8, 2017 & Aug. 22, 2017

Sept. 12, 2017 & Sept. 26, 2017

Oct. 10, 2017 & Oct. 24, 2017

Nov. 7, 2017 (First Tuesday) & Nov. 21, 2017 (Third Tuesday)

Dec. 5, 2017 (First Tuesday) & Dec. 19, 2017 (Third Tuesday)

An agenda for each meeting is available from the City Clerk's Office seventy-two (72) hours prior to the meeting date. *The Alamogordo Commission Chambers is wheelchair accessible. Other special assistance for disabled attendees must be requested 48 hours in advance by contacting the City Clerk's Office at 575-439-4205.*

Approved by the City Commission on the 6th day of December, 2016.

By: Rachel Hughs, City Clerk

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 12/06/2016

Report Date: 11/16/2016

Report No: 5.

Submitted By: Nancy Beshaler

Subject: Consider, and act upon, approval of a Pipeline Encroachment Agreement with Union Pacific Railroad related to the Reclaimed Water Line Looping project. *(Nancy Beshaler, Project Manager)*

Fiscal Impact: \$40,055

Amount Budgeted: \$294,401.00

Fund: 081-9399-990.68-99 (EN1305)

Additional Fiscal Impact:

Recommendation: Approve the Agreement.

Background: The Reclaimed Water Line Looping Phase 2 project will consist of installing a line from 11th Street north to tie into the system in Alameda Park in the vicinity of 14th Street. This project will complete the looping of the reclaimed water line for the City.

The water line will be constructed within Union Pacific Railroad property. This is the agreement with UPRR that allows for installation of the water line on their property.

LONGITUDINAL PIPELINE AGREEMENT

Between Mile Posts 882.66 and 884.03 Carrizozo Subdivision
Location: Alamogordo, Otero County, New Mexico

THIS AGREEMENT (“Agreement”) is made and entered into as of November 09, 2016, (“Effective Date”) by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, (“Licensor”) and **CITY OF ALAMOGORDO**, to be addressed at 1376 East Ninth Street, Alamogordo, New Mexico 88310 (“Licensee”).

IT IS MUTUALLY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

Article 1. LICENSOR GRANTS RIGHT.

In consideration of the License Fee to be paid by the Licensee and in further consideration of the covenants and agreements herein contained to be by the Licensee kept, observed and performed, the Licensor hereby grants to the Licensee the right to construct and thereafter, during the term hereof, to maintain and operate

one underground 10 inch longitudinal pipeline for transporting and conveying reuse water only

(hereinafter the “Pipeline”) in the location shown and in conformity with the dimensions and specifications indicated on the print dated March 2, 2016 and marked **Exhibit “A”**, attached hereto and hereby made a part hereof. Under no circumstances shall Licensee modify the use of the Pipeline for a purpose other than transporting and conveying storm water, and the Pipeline shall not be used to convey any other substance, any fiber optic cable, or for any other use, whether such use is currently technologically possible, or whether such use may come into existence during the life of this Agreement.

Article 2. LICENSE FEE.

Upon execution of this Agreement, the Licensee shall pay to the Licensor a one-time License Fee of **Thirty Nine Thousand Dollars (\$39,000.00)**.

Article 3. ADMINISTRATIVE HANDLING CHARGE.

Upon execution and delivery of this Agreement, the Licensee shall pay to the Licensor an License Fee of **One Thousand Fifty Five DOLLARS (\$1,055.00)** for clerical, administrative and handling expense in connection with processing this Agreement.

Article 4. CONSTRUCTION, MAINTENANCE AND OPERATION.

The grant of right herein made to the Licensee is subject to each and all of the terms, provisions, conditions, limitations and covenants set forth herein and in **Exhibit B**, attached hereto and hereby made a part hereof.

Article 5. IF WORK IS TO BE PERFORMED BY CONTRACTOR.

If a contractor is hired by the Licensee to do any of the work performed on the Pipeline (including initial construction and subsequent relocation or maintenance and repair work), then the Licensee shall require its contractor to execute the Licensor's current form of Contractor's Right of Entry Agreement, attached hereto and hereby made a part hereof as **Exhibit E**. Licensee acknowledges receipt of a copy of the Contractor's Right of Entry Agreement and an understanding of its terms, provisions, and requirements, and will inform its contractor of the need to execute the agreement. Under no circumstances will Licensee's contractor be allowed onto Licensor's property without first executing the Contractor's Right of Entry Agreement and the contractor providing to the Licensor the insurance binders, certificates and endorsements described in the Contractor's Right of Entry Agreement.

Article 6. INSURANCE.

A. During the life of the License, Licensee shall fully comply with the insurance requirements described in **Exhibit C**.

B. Failure to maintain insurance as required shall entitle, but not require, Licensor to terminate this License immediately.

C. If the Licensee is subject to statute(s) limiting its insurance liability and/or limiting its ability to obtain insurance in compliance with **Exhibit C** of this lease, those statutes shall apply.

D. Licensee hereby acknowledges that it has reviewed the requirements of **Exhibit C**, including without limitation the requirement for Railroad Protective Liability Insurance during construction, maintenance, installation, repair or removal of the pipeline which is the subject of this Agreement.

Article 7. TERM.

This Agreement shall take effect as of the Effective Date first herein written and shall continue in full force and effect until terminated as herein provided.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first herein written.

UNION PACIFIC RAILROAD COMPANY

CITY OF ALAMOGORDO

By: _____
Renay J. Robison
Director – Real Estate

By: _____
Name Printed: _____
Title: _____

EXHIBIT B

Section 1. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED.

- A. The foregoing grant of right is subject and subordinate to the prior and continuing right and obligation of the Licensor to use and maintain its entire property including the right and power of the Licensor to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, signal, communication, fiber optics, or other wirelines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be freely done at any time or times by the Licensor without liability to the Licensee or to any other party for compensation or damages.
- B. The foregoing grant is also subject to all outstanding superior rights (including those in favor of licensees and lessees of the Licensor's property, and others) and the right of the Licensor to renew and extend the same, and is made without covenant of title or for quiet enjoyment.

Section 2. CONSTRUCTION, MAINTENANCE AND OPERATION.

- A. The Pipeline shall be designed, constructed, operated, maintained, repaired, renewed, modified and/or reconstructed by the Licensee in strict conformity with (i) Licensor's current standards and specifications ("UP Specifications"), except for variances approved in advance in writing by the Licensor's Assistant Vice President Engineering – Design, or his authorized representative; (ii) such other additional safety standards as the Licensor, in its sole discretion, elects to require, including, without limitation, American Railway Engineering and Maintenance-of-Way Association ("AREMA") standards and guidelines (collectively, "UP Additional Requirements"), and (iii) all applicable laws, rules and regulations ("Laws"). If there is any conflict between the requirements of any Law and the UP Specifications or the UP Additional Requirements, the most restrictive will apply.
- B. All work performed on property of the Licensor in connection with the design, construction, maintenance, repair, renewal, modification or reconstruction of the Pipeline shall be done to the satisfaction of the Licensor.
- C. Prior to the commencement of any work in connection with the design, construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Pipeline from Licensor's property, the Licensee shall submit to the Licensor plans setting out the method and manner of handling the work, including the shoring and cribbing, if any, required to protect the Licensor's operations, and shall not proceed with the work until such plans have been approved by the Licensor's Assistant Vice President Engineering Design, or his authorized representative, and then the work shall be done to the satisfaction of the Licensor's Assistant Vice President Engineering Design or his authorized representative. The Licensor shall have the right, if it so elects, to provide such support as it may deem necessary for the safety of its track or tracks during the time of construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Pipeline, and, in the event the Licensor provides such support, the Licensee shall pay to the Licensor, within fifteen (15) days after bills shall have been rendered therefore, all expenses incurred by the Licensor in connection therewith, which expenses shall include all assignable costs.

- D. The Licensee shall keep and maintain the soil over the Pipeline thoroughly compacted and the grade even with the adjacent surface of the ground.
- E. In the prosecution of any work covered by this Agreement, Licensee shall secure any and all necessary permits and shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work including, without limitation, all applicable Federal Railroad Administration regulations.

Section 3. NOTICE OF COMMENCEMENT OF WORK / LICENSOR REPRESENTATIVE / SUPERVISION / FLAGGING / SAFETY.

- A. If an emergency should arise requiring immediate attention, the Licensee shall provide as much notice as practicable to Licensor before commencing any work. In all other situations, the Licensee shall notify the Licensor at least ten (10) days (or such other time as the Licensor may allow) in advance of the commencement of any work upon property of the Licensor in connection with the construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Pipeline. All such work shall be prosecuted diligently to completion. The Licensee will coordinate its initial, and any subsequent work with the following employee of Licensor or his or her duly authorized representative (hereinafter "Licensor Representative" or "Railroad Representative"):

Jared E. Talbot
Mgr Track Mntce
810 Eddy St.
Alamogordo, NM 88310
Cell Phone: 402-830-5450
Email: jetalbot@up.com

Denny L. Adams
8300 Airport Rd., Building A
Santa Teresa, NM 88008
Phone # 575-502-3106
Cell # 915-319-9062
Email: dladams@up.com

- B. Licensee, at its own expense, shall adequately police and supervise all work to be performed. The responsibility of Licensee for safe conduct and adequate policing and supervision of work shall not be lessened or otherwise affected by Licensor's approval of plans and specifications involving the work, or by Licensor's collaboration in performance of any work, or by the presence at the work site of a Licensor Representative, or by compliance by Licensee with any requests or recommendations made by the Licensor Representative.
- C. At the request of Licensor, Licensee shall remove from Licensor's property any employee who fails to conform to the instructions of the Licensor Representative in connection with the work on Licensor's property. Licensee shall indemnify Licensor against any claims arising from the removal of any such employee from Licensor's property.
- D. Licensee shall notify the Licensor Representative at least ten (10) working days in advance of proposed performance of any work in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Licensor's track(s) at any time, for any reason, unless and until a railroad flagman is provided to watch for trains. Upon receipt of such ten (10) day notice, the Licensor

Representative will determine and inform Licensee whether a flagman need be present and whether any special protective or safety measures need to be implemented. If flagging or other special protective or safety measures are performed by Licensor, Licensor will bill Licensee for such expenses incurred by Licensor, unless Licensor and a federal, state or local governmental entity have agreed that Licensor is to bill such expenses to the federal, state or local governmental entity. If Licensor will be sending the bills to Licensee, Licensee shall pay such bills within thirty (30) days of receipt of billing. If Licensor performs any flagging, or other special protective or safety measures are performed by Licensor, Licensee agrees that Licensee is not relieved of any of responsibilities or liabilities set forth in this Agreement.

- E. The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between Licensor and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, Licensee (or the governmental entity, as applicable) shall pay on the basis of the new rates and charges.
- F. Reimbursement to Licensor will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Licensor is required to pay the flagman and which could not reasonably be avoided by Licensor by assignment of such flagman to other work, even though Licensee may not be working during such time. When it becomes necessary for Licensor to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Licensee must provide Licensor a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, Licensee will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional ten (10) days notice must then be given to Licensor if flagging services are needed again after such five day cessation notice has been given to Licensor.
- G. Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of the work performed by Licensee or its contractor. Licensee shall be responsible for initiating, maintaining and supervising all safety, operations and programs in connection with the work. Licensee and its contractor shall at a minimum comply with Licensor's safety standards listed in **Exhibit D**, hereto attached, to ensure uniformity with the safety standards followed by Licensor's own forces. As a part of Licensee's safety responsibilities, Licensee shall notify Licensor if it determines that any of Licensor's safety standards are contrary to good safety practices. Licensee and its contractor shall furnish copies of **Exhibit D** to each of its employees before they enter the job site.

- H. Without limitation of the provisions of paragraph G above, Licensee shall keep the job site free from safety and health hazards and ensure that their employees are competent and adequately trained in all safety and health aspects of the job.
- I. Licensee shall have proper first aid supplies available on the job site so that prompt first aid services may be provided to any person injured on the job site. Prompt notification shall be given to Licensor of any U.S. Occupational Safety and Health Administration reportable injuries. Licensee shall have a non-delegable duty to control its employees while they are on the job site or any other property of Licensor, and to be certain they do not use, be under the influence of, or have in their possession any alcoholic beverage, drug or other substance that may inhibit the safe performance of any work.
- J. If and when requested by Licensor, Licensee shall deliver to Licensor a copy of its safety plan for conducting the work (the "Safety Plan"). Licensor shall have the right, but not the obligation, to require Licensee to correct any deficiencies in the Safety Plan. The terms of this Agreement shall control if there are any inconsistencies between this Agreement and the Safety Plan.

Section 4. LICENSEE TO BEAR ENTIRE EXPENSE.

The Licensee shall bear the entire cost and expense incurred in connection with the design, construction, maintenance, repair and renewal and any and all modification, revision, relocation, removal or reconstruction of the Pipeline, including any and all expense which may be incurred by the Licensor in connection therewith for supervision, inspection, flagging, or otherwise.

Section 5. REINFORCEMENT, RELOCATION OR REMOVAL OF PIPELINE.

- A. The license herein granted is subject to the needs and requirements of the Licensor in the safe and efficient operation of its railroad and in the improvement and use of its property. The Licensee shall, at the sole expense of the Licensee, reinforce or otherwise modify the Pipeline, or move all or any portion of the Pipeline to such new location, or remove the Pipeline from the Licensor's property, as the Licensor may designate, whenever, in the furtherance of its needs and requirements, the Licensor, at its sole election, finds such action necessary or desirable.
- B. All the terms, conditions and stipulations herein expressed with reference to the Pipeline on property of the Licensor in the location hereinbefore described shall, so far as the Pipeline remains on the property, apply to the Pipeline as modified, changed or relocated within the contemplation of this section.

Section 6. NO INTERFERENCE WITH LICENSOR'S OPERATION.

- A. The Pipeline and all parts thereof within and outside of the limits of the property of the Licensor shall be designed, constructed and, at all times, maintained, repaired, renewed and operated in such manner as to cause no interference whatsoever with the constant, continuous and uninterrupted use of the tracks, property and facilities of the Licensor and nothing shall be done or suffered to be done by the Licensee at any time that would in any manner impair the safety thereof.
- B. Explosives or other highly flammable substances shall not be stored on Licensor's property without the prior written approval of Licensor.

- C. No additional vehicular crossings (including temporary haul roads) or pedestrian crossings over Licensors's trackage shall be installed or used by Licensee or its contractors without the prior written permission of Licensors.
- D. When not in use, any machinery and materials of Licensee or its contractors shall be kept at least fifty (50) feet from the centerline of Licensors's nearest track.
- E. Operations of Licensors and work performed by Licensors's personnel may cause delays in the work to be performed by Licensee. Licensee accepts this risk and agrees that Licensors shall have no liability to Licensee or any other person or entity for any such delays. Licensee shall coordinate its activities with those of Licensors and third parties so as to avoid interference with railroad operations. The safe operation of Licensors's train movements and other activities by Licensors take precedence over any work to be performed by Licensee.

Section 7. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.

- A. Fiber optic cable systems may be buried on the Licensors's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Licensee shall telephone the Licensors during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except for holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on the Licensors's premises to be used by the Licensee. If it is, Licensee will telephone the telecommunications company(ies) involved, arrange for a cable locator, make arrangements for relocation or other protection of the fiber optic cable, all at Licensee's expense, and will commence no work on the Licensors's property until all such protection or relocation has been accomplished. Licensee shall indemnify and hold the Licensors harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of or caused in any way by Licensee's failure to comply with the provisions of this paragraph.
- B. IN ADDITION TO OTHER INDEMNITY PROVISIONS IN THIS AGREEMENT, THE LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND AND HOLD THE LICENSOR HARMLESS FROM AND AGAINST ALL COSTS, LIABILITY AND EXPENSE WHATSOEVER (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS AND EXPENSES) CAUSED BY THE NEGLIGENCE OF THE LICENSEE, ITS CONTRACTORS, AGENTS AND/OR EMPLOYEES, RESULTING IN (1) ANY DAMAGE TO OR DESTRUCTION OF ANY TELECOMMUNICATIONS SYSTEM ON LICENSOR'S PROPERTY, AND/OR (2) ANY INJURY TO OR DEATH OF ANY PERSON EMPLOYED BY OR ON BEHALF OF ANY TELECOMMUNICATIONS COMPANY, AND/OR ITS CONTRACTOR, AGENTS AND/OR EMPLOYEES, ON LICENSOR'S PROPERTY, EXCEPT IF SUCH COSTS, LIABILITY OR EXPENSES ARE CAUSED SOLELY BY THE DIRECT ACTIVE NEGLIGENCE OF THE LICENSOR. LICENSEE FURTHER AGREES THAT IT SHALL NOT HAVE OR SEEK RECOURSE AGAINST LICENSOR FOR ANY CLAIM OR CAUSE OF ACTION FOR ALLEGED LOSS OF PROFITS OR REVENUE OR LOSS OF SERVICE OR OTHER CONSEQUENTIAL DAMAGE TO A TELECOMMUNICATION COMPANY USING LICENSOR'S PROPERTY OR A CUSTOMER OR USER OF SERVICES OF THE FIBER OPTIC CABLE ON LICENSOR'S PROPERTY.**

Section 8. CLAIMS AND LIENS FOR LABOR AND MATERIAL; TAXES.

- A. The Licensee shall fully pay for all materials joined or affixed to and labor performed upon property of the Licensor in connection with the construction, maintenance, repair, renewal, modification or reconstruction of the Pipeline, and shall not permit or suffer any mechanic's or materialman's lien of any kind or nature to be enforced against the property for any work done or materials furnished thereon at the instance or request or on behalf of the Licensee. The Licensee shall indemnify and hold harmless the Licensor against and from any and all liens, claims, demands, costs and expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished.
- B. The Licensee shall promptly pay or discharge all taxes, charges and assessments levied upon, in respect to, or on account of the Pipeline, to prevent the same from becoming a charge or lien upon property of the Licensor, and so that the taxes, charges and assessments levied upon or in respect to such property shall not be increased because of the location, construction or maintenance of the Pipeline or any improvement, appliance or fixture connected therewith placed upon such property, or on account of the Licensee's interest therein. Where such tax, charge or assessment may not be separately made or assessed to the Licensee but shall be included in the assessment of the property of the Licensor, then the Licensee shall pay to the Licensor an equitable proportion of such taxes determined by the value of the Licensee's property upon property of the Licensor as compared with the entire value of such property.

Section 9. RESTORATION OF LICENSOR'S PROPERTY.

In the event the Licensee in any manner moves or disturbs any of the property of the Licensor in connection with the construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Pipeline, then in that event the Licensee shall, as soon as possible and at Licensee's sole expense, restore such property to the same condition as the same were before such property was moved or disturbed, and the Licensee shall indemnify and hold harmless the Licensor, its officers, agents and employees, against and from any and all liability, loss, damages, claims, demands, costs and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from injury to or death of persons whomsoever, or damage to or loss or destruction of property whatsoever, when such injury, death, damage, loss or destruction grows out of or arises from the moving or disturbance of any other property of the Licensor.

Section 10. INDEMNITY.

- A. As used in this Section, "Licensor" includes other railroad companies using the Licensor's property at or near the location of the Licensee's installation and their officers, agents, and employees; "Loss" includes loss, damage, claims, demands, actions, causes of action, penalties, costs, and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from: (a) injury to or death of persons whomsoever (including the Licensor's officers, agents, and employees, the Licensee's officers, agents, and employees, as well as any other person); and/or (b) damage to or loss or destruction of property whatsoever (including Licensee's property, damage to the roadbed, tracks, equipment, or other property of the Licensor, or property in its care or custody).
- B. **AS A MAJOR INDUCEMENT AND IN CONSIDERATION OF THE LICENSE AND PERMISSION HEREIN GRANTED, TO THE FULLEST EXTENT PERMITTED BY LAW, THE LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS THE LICENSOR FROM**

ANY LOSS OF ANY KIND, NATURE OR DESCRIPTION ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART):

1. THE PROSECUTION OF ANY WORK CONTEMPLATED BY THIS AGREEMENT INCLUDING THE INSTALLATION, CONSTRUCTION, MAINTENANCE, REPAIR, RENEWAL, MODIFICATION, RECONSTRUCTION, RELOCATION, OR REMOVAL OF THE PIPELINE OR ANY PART THEREOF;

2. ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LICENSE;

3. THE PRESENCE, OPERATION, OR USE OF THE PIPELINE OR CONTENTS ESCAPING THEREFROM;

4. THE ENVIRONMENTAL STATUS OF THE PROPERTY CAUSED BY OR CONTRIBUTED TO BY LICENSEE;

5. ANY ACT OR OMISSION OF LICENSEE OR LICENSEE'S OFFICERS, AGENTS, INVITEES, EMPLOYEES, OR CONTRACTORS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER; OR

6. LICENSEE'S BREACH OF THIS AGREEMENT,

EXCEPT WHERE THE LOSS IS CAUSED BY THE SOLE DIRECT AND ACTIVE NEGLIGENCE OF THE LICENSOR, AS DETERMINED IN A FINAL JUDGMENT BY A COURT OF COMPETENT JURISDICTION, IT BEING THE INTENTION OF THE PARTIES THAT THE ABOVE INDEMNITY WILL OTHERWISE APPLY TO LOSSES CAUSED BY OR ARISING FROM, IN WHOLE OR IN PART, LICENSOR'S NEGLIGENCE.

- C. Upon written notice from Licensor, Licensee agrees to assume the defense of any lawsuit or proceeding brought against any indemnitee by any entity, relating to any matter covered by this License for which Licensee has an obligation to assume liability for and/or save and hold harmless any indemnitee. Licensee shall pay all costs incident to such defense, including, but not limited to, reasonable attorney's fees, investigators' fees, litigation and appeal expenses, settlement payments and amounts paid in satisfaction of judgments.

Section 11. REMOVAL OF PIPELINE UPON TERMINATION OF AGREEMENT.

Prior to the termination of this Agreement howsoever, the Licensee shall, at Licensee's sole expense, remove the Pipeline from those portions of the property not occupied by the roadbed and track or tracks of the Licensor and shall restore, to the satisfaction of the Licensor, such portions of such property to as good a condition as they were in at the time of the construction of the Pipeline. If the Licensee fails to do the foregoing, the Licensor may, but is not obligated, to perform such work of removal and restoration at the cost and expense of the Licensee. In the event of the removal by the Licensor of the property of the Licensee and of the restoration of the roadbed and property as herein provided, the Licensor shall in no manner be liable to the Licensee for any damage sustained by the Licensee for or on account thereof, and such removal and restoration shall in no manner prejudice or impair any right of action for damages, or otherwise, that the Licensor may have against the Licensee.

Section 12. WAIVER OF BREACH.

The waiver by the Licensor of the breach of any condition, covenant or agreement herein contained to be kept, observed and performed by the Licensee shall in no way impair the right of the Licensor to avail itself of any remedy for any subsequent breach thereof.

Section 13. TERMINATION.

- A. If the Licensee does not use the right herein granted or the Pipeline for one (1) year, or if the Licensee continues in default in the performance of any covenant or agreement herein contained for a period of thirty (30) days after written notice from the Licensor to the Licensee specifying such default, the Licensor may, at its option, forthwith immediately terminate this Agreement by written notice.
- B. In addition to the provisions of subparagraph (a) above, this Agreement may be terminated by written notice given by either party hereto to the other on any date in such notice stated, not less, however, than thirty (30) days subsequent to the date upon which such notice shall be given.
- C. Notice of default and notice of termination may be served personally upon the Licensee or by mailing to the last known address of the Licensee. Termination of this Agreement for any reason shall not affect any of the rights or obligations of the parties hereto which may have accrued, or liabilities, accrued or otherwise, which may have arisen prior thereto.

Section 14. AGREEMENT NOT TO BE ASSIGNED.

The Licensee shall not assign this Agreement, in whole or in part, or any rights herein granted, without the written consent of the Licensor, and it is agreed that any transfer or assignment or attempted transfer or assignment of this Agreement or any of the rights herein granted, whether voluntary, by operation of law, or otherwise, without such consent in writing, shall be absolutely void and, at the option of the Licensor, shall terminate this Agreement.

Section 15. SUCCESSORS AND ASSIGNS.

Subject to the provisions of Section 14 hereof, this Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors and assigns.

Section 16. SEVERABILITY.

Any provision of this Agreement which is determined by a court of competent jurisdiction to be invalid or unenforceable shall be invalid or unenforceable only to the extent of such determination, which shall not invalidate or otherwise render ineffective any other provision of this Agreement.

EXHIBIT C
Union Pacific Railroad Company
Contract Insurance Requirements

Licensee shall, at its sole cost and expense, procure and maintain during the life of this Agreement (except as otherwise provided in this Agreement) the following insurance coverage:

A. Commercial General Liability insurance. Commercial general liability (CGL) with a limit of not less than \$5,000,000 each occurrence and an aggregate limit of not less than \$10,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage).

The policy must also contain the following endorsement, WHICH MUST BE STATED ON THE CERTIFICATE OF INSURANCE: "Contractual Liability Railroads" ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site.

B. Business Automobile Coverage insurance. Business auto coverage written on ISO form CA 00 01 10 01 (or a substitute form providing equivalent liability coverage) with a limit of not less \$5,000,000 for each accident, and coverage must include liability arising out of any auto (including owned, hired, and non-owned autos).

The policy must contain the following endorsements, WHICH MUST BE STATED ON THE CERTIFICATE OF INSURANCE:

- Coverage For Certain Operations In Connection With Railroads ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Property" as the Designated Job Site.
- Motor Carrier Act Endorsement - Hazardous materials clean up (MCS-90) if required by law.

C. Workers Compensation and Employers Liability insurance. Coverage must include but not be limited to:

Licensee's statutory liability under the workers' compensation laws of the state(s) affected by this Agreement.

Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit \$500,000 each employee.

If Licensee is self-insured, evidence of state approval and excess workers compensation coverage must be provided. Coverage must include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

D. Railroad Protective Liability insurance. Licensee must maintain "Railroad Protective Liability" insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage) on behalf of Railroad only as named insured, with a limit of not less than \$2,000,000 per occurrence and an aggregate of \$6,000,000.

The definition of "JOB LOCATION" and "WORK" on the declaration page of the policy shall refer to this Agreement and shall describe all WORK or OPERATIONS performed under this agreement.

E. Umbrella or Excess insurance. If Licensee utilizes umbrella or excess policies, and these policies must "follow form" and afford no less coverage than the primary policy.

F. Pollution Liability insurance. Pollution liability coverage must be included when the scope of the work as defined in the Agreement includes installation, temporary storage, or disposal of any "hazardous" material that is injurious in or upon land, the atmosphere, or any watercourses; or may cause bodily injury at any time.

If required, coverage may be provided in separate policy form or by endorsement to Contractors CGL or RPL. In any form coverage must be equivalent to that provided in ISO form CG 24 15 "Limited Pollution Liability Extension Endorsement" or CG 28 31 "Pollution Exclusion Amendment" with limits of at least \$5,000,000 per occurrence and an aggregate limit of \$10,000,000.

If the scope of work as defined in this Agreement includes the disposal of any hazardous or non-hazardous materials from the job site, Contractor must furnish to Railroad evidence of pollution legal liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting the materials, with coverage in minimum amounts of \$1,000,000 per loss, and an annual aggregate of \$2,000,000.

Other Requirements

G. All policy(ies) required above (except worker's compensation and employers liability) must include Railroad as "Additional Insured" using ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage). The coverage provided to Railroad as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48 provide coverage for Railroad's negligence whether sole or partial, active or passive, and shall not be limited by Licensee's liability under the indemnity provisions of this Agreement.

H. Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless (a) insurance coverage may not lawfully be obtained for any punitive damages that may arise under this agreement, or (b) all punitive damages are prohibited by all states in which this agreement will be performed.

I. Licensee waives all rights of recovery, and its insurers also waive all rights of subrogation of damages against Railroad and its agents, officers, directors and employees for damages covered by the workers compensation and employers liability or commercial umbrella or excess liability obtained by Licensee required in this agreement, where permitted by law This waiver must be stated on the certificate of insurance.

J. All insurance policies must be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the work is to be performed.

K. The fact that insurance is obtained by Licensee or by Railroad on behalf of Licensee will not be deemed to release or diminish the liability of Licensee, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad from Licensee or any third party will not be limited by the amount of the required insurance coverage.

EXHIBIT D
SAFETY STANDARDS

MINIMUM SAFETY REQUIREMENTS

The term "employees" as used herein refer to all employees of Licensee or its contractors, subcontractors, or agents, as well as any subcontractor or agent of any Licensee.

I. Clothing

- A. All employees of Licensee will be suitably dressed to perform their duties safely and in a manner that will not interfere with their vision, hearing, or free use of their hands or feet.

Specifically, Licensee's employees must wear:

- (i) Waist-length shirts with sleeves.
 - (ii) Trousers that cover the entire leg. If flare-legged trousers are worn, the trouser bottoms must be tied to prevent catching.
 - (iii) Footwear that covers their ankles and has a defined heel. Employees working on bridges are required to wear safety-toed footwear that conforms to the American National Standards Institute (ANSI) and FRA footwear requirements.
- B. Employees shall not wear boots (other than work boots), sandals, canvas-type shoes, or other shoes that have thin soles or heels that are higher than normal.
- C. Employees must not wear loose or ragged clothing, neckties, finger rings, or other loose jewelry while operating or working on machinery.

II. Personal Protective Equipment

Licensee shall require its employee to wear personal protective equipment as specified by Railroad rules, regulations, or recommended or requested by the Railroad Representative.

- (i) Hard hat that meets the American National Standard (ANSI) Z89.1 – latest revision. Hard hats should be affixed with Licensee's company logo or name.
- (ii) Eye protection that meets American National Standard (ANSI) for occupational and educational eye and face protection, Z87.1 – latest revision. Additional eye protection must be provided to meet specific job situations such as welding, grinding, etc.
- (iii) Hearing protection, which affords enough attenuation to give protection from noise levels that will be occurring on the job site. Hearing protection, in the form of plugs or muffs, must be worn when employees are within:
 - 100 feet of a locomotive or roadway/work equipment
 - 15 feet of power operated tools
 - 150 feet of jet blowers or pile drivers
 - 150 feet of retarders in use (when within 10 feet, employees must wear dual ear protection – plugs and muffs)

- (iv) Other types of personal protective equipment, such as respirators, fall protection equipment, and face shields, must be worn as recommended or requested by the Railroad Representative.

III. On Track Safety

Licensee and its contractor are responsible for compliance with the Federal Railroad Administration's Roadway Worker Protection regulations – 49CFR214, Subpart C and Railroad's On-Track Safety rules. Under 49CFR214, Subpart C, railroad contractors are responsible for the training of their employees on such regulations. In addition to the instructions contained in Roadway Worker Protection regulations, all employees must:

- (i) Maintain a minimum distance of at least twenty-five (25) feet to any track unless the Railroad Representative is present to authorize movements.
- (ii) Wear an orange, reflectorized work wear approved by the Railroad Representative.
- (iii) Participate in a job briefing that will specify the type of On-Track Safety for the type of work being performed. Licensee must take special note of limits of track authority, which tracks may or may not be fouled, and clearing the track. Licensee will also receive special instructions relating to the work zone around machines and minimum distances between machines while working or traveling.

IV. Equipment

- A. It is the responsibility of Licensee to ensure that all equipment is in a safe condition to operate. If, in the opinion of the Railroad Representative, any of Licensee's equipment is unsafe for use, Licensee shall remove such equipment from Railroad's property. In addition, Licensee must ensure that the operators of all equipment are properly trained and competent in the safe operation of the equipment. In addition, operators must be:
 - Familiar and comply with Railroad's rules on lockout/tagout of equipment.
 - Trained in and comply with the applicable operating rules if operating any hy-rail equipment on-track.
 - Trained in and comply with the applicable air brake rules if operating any equipment that moves rail cars or any other rail bound equipment.
- B. All self-propelled equipment must be equipped with a first-aid kit, fire extinguisher, and audible back-up warning device.
- C. Unless otherwise authorized by the Railroad Representative, all equipment must be parked a minimum of twenty-five (25) feet from any track. Before leaving any equipment unattended, the operator must stop the engine and properly secure the equipment against movement.
- D. Cranes must be equipped with three orange cones that will be used to mark the working area of the crane and the minimum clearances to overhead powerlines.

V. General Safety Requirements

- A. Licensee shall ensure that all waste is properly disposed of in accordance with applicable federal and state regulations.
- B. Licensee shall ensure that all employees participate in and comply with a job briefing conducted by the Railroad Representative, if applicable. During this briefing, the Railroad Representative will specify safe work procedures, (including On-Track Safety) and the potential hazards of the job. If any employee has any questions or concerns about the work, the employee must voice them during the job briefing. Additional job briefings will be conducted during the work as conditions, work procedures, or personnel change.
- C. All track work performed by Licensee meets the minimum safety requirements established by the Federal Railroad Administration's Track Safety Standards 49CFR213.
- D. All employees comply with the following safety procedures when working around any railroad track:
 - (i) Always be on the alert for moving equipment. Employees must always expect movement on any track, at any time, in either direction.
 - (ii) Do not step or walk on the top of the rail, frog, switches, guard rails, or other track components.
 - (iii) In passing around the ends of standing cars, engines, roadway machines or work equipment, leave at least 20 feet between yourself and the end of the equipment. Do not go between pieces of equipment if the opening is less than one car length (50 feet).
 - (iv) Avoid walking or standing on a track unless so authorized by the employee in charge.
 - (v) Before stepping over or crossing tracks, look in both directions first.
 - (vi) Do not sit on, lie under, or cross between cars except as required in the performance of your duties and only when track and equipment have been protected against movement.
- E. All employees must comply with all federal and state regulations concerning workplace safety.

EXHIBIT E
CONTRACTOR'S
RIGHT OF ENTRY AGREEMENT

THIS AGREEMENT is made and entered into as of the _____ day of _____, 20_____, by and between **UNION PACIFIC RAILROAD COMPANY**, a _____ Delaware corporation ("Railroad"); and _____, ("Contractor").

RECITALS:

Contractor has been hired by **CITY OF ALAMOGORDO** to perform work relating to installation of 10 inch reuse water pipeline (the "work"), with all or a portion of such work to be performed on property of Railroad between Railroad's Milepost 882.66 and 884.03 on Railroad's Carrizozo Subdivision at or near Alamogordo, Otero County, NM, as such location is in the general location shown on the print marked **Exhibit A**, attached hereto and hereby made a part hereof, which work is the subject of a contract dated November 9, 2016 between Railroad and **CITY OF ALAMOGORODO**.

Railroad is willing to permit Contractor to perform the work described above at the location described above subject to the terms and conditions contained in this Agreement

AGREEMENT:

NOW, THEREFORE, it is mutually agreed by and between Railroad and Contractor, as follows:

ARTICLE 1 - DEFINITION OF CONTRACTOR.

For purposes of this Agreement, all references in this agreement to Contractor shall include Contractor's contractors, subcontractors, officers, agents and employees, and others acting under its or their authority.

ARTICLE 2 - RIGHT GRANTED; PURPOSE.

Railroad hereby grants to Contractor the right, during the term hereinafter stated and upon and subject to each and all of the terms, provisions and conditions herein contained, to enter upon and have ingress to and egress from the property described in the Recitals for the purpose of performing the work described in the Recitals above. The right herein granted to Contractor is limited to those portions of Railroad's property specifically described herein, or as designated by the Railroad Representative named in Article 4.

ARTICLE 3 - TERMS AND CONDITIONS CONTAINED IN EXHIBITS B, C AND D.

The terms and conditions contained in **Exhibit B**, **Exhibit C** and **Exhibit D**, attached hereto, are hereby made a part of this Agreement.

ARTICLE 4 - ALL EXPENSES TO BE BORNE BY CONTRACTOR; RAILROAD REPRESENTATIVE.

A. Contractor shall bear any and all costs and expenses associated with any work performed by Contractor, or any costs or expenses incurred by Railroad relating to this Agreement.

B. Contractor shall coordinate all of its work with the following Railroad representative or his or her duly authorized representative (the "Railroad Representative"):

Jared E. Talbot
Mgr Track Mntce
810 Eddy St.
Alamogordo, NM 88310
Cell Phone: 402-830-5450
Email: jetalbot@up.com

Denny L. Adams
8300 Airport Rd., Building A
Santa Teresa, NM 88008
Phone # 575-502-3106
Cell # 915-319-9062
Email: dladams@up.com

C. Contractor, at its own expense, shall adequately police and supervise all work to be performed by Contractor and shall ensure that such work is performed in a safe manner as set forth in Section 7 of **Exhibit B**. The responsibility of Contractor for safe conduct and adequate policing and supervision of Contractor's work shall not be lessened or otherwise affected by Railroad's approval of plans and specifications involving the work, or by Railroad's collaboration in performance of any work, or by the presence at the work site of a Railroad Representative, or by compliance by Contractor with any requests or recommendations made by Railroad Representative.

ARTICLE 5 - SCHEDULE OF WORK ON A MONTHLY BASIS.

The Contractor, at its expense, shall provide on a monthly basis a detailed schedule of work to the Railroad Representative named in Article 4B above. The reports shall start at the execution of this Agreement and continue until this Agreement is terminated as provided in this Agreement or until the Contractor has completed all work on Railroad's property.

ARTICLE 6 - TERM; TERMINATION.

A. The grant of right herein made to Contractor shall commence on the date of this Agreement, and continue for one year, unless sooner terminated as herein provided, or at such time as Contractor has completed its work on Railroad's property, whichever is earlier. Contractor agrees to notify the Railroad Representative in writing when it has completed its work on Railroad's property.

B. This Agreement may be terminated by either party on ten (10) days written notice to the other party.

ARTICLE 7 - CERTIFICATE OF INSURANCE.

A. Before commencing any work, Contractor will provide Railroad with the (i) insurance binders, policies, certificates and endorsements set forth in **Exhibit C** of this Agreement, and (ii) the insurance endorsements obtained by each subcontractor as required under Section 12 of **Exhibit B** of this Agreement.

B. All insurance correspondence, binders, policies, certificates and endorsements shall be sent to:

Union Pacific Railroad Company
Real Estate – Utility Contracts
1400 Douglas St. - MS1690
Omaha, NE 68179-1690
Folder # 02972-29

ARTICLE 8 - DISMISSAL OF CONTRACTOR's EMPLOYEE.

At the request of Railroad, Contractor shall remove from Railroad's property any employee of Contractor who fails to conform to the instructions of the Railroad Representative in connection with the work on Railroad's property, and any right of Contractor shall be suspended until such removal has occurred. Contractor shall indemnify Railroad against any claims arising from the removal of any such employee from Railroad's property.

ARTICLE 9- ADMINISTRATIVE FEE.

Upon the execution and delivery of this Agreement, Contractor shall pay to Railroad One Thousand Dollars (\$1,000.00) as reimbursement for clerical, administrative and handling expenses in connection with the processing of this Agreement.

ARTICLE 10 - CROSSINGS.

No additional vehicular crossings (including temporary haul roads) or pedestrian crossings over Railroad's trackage shall be installed or used by Contractor without the prior written permission of Railroad.

ARTICLE 11.- EXPLOSIVES.

Explosives or other highly flammable substances shall not be stored or used on Railroad's property without the prior written approval of Railroad.

IN WITNESS WHEREOF, the parties hereto have duly executed this agreement in duplicate as of the date first herein written.

UNION PACIFIC RAILROAD COMPANY

Name of Contractor)

By:_____

Title:_____

By:_____

Title:_____

—

EXHIBIT B
TO
CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

Section 1. NOTICE OF COMMENCEMENT OF WORK - FLAGGING.

A. Contractor agrees to notify the Railroad Representative at least ten (10) working days in advance of Contractor commencing its work and at least thirty (30) working days in advance of proposed performance of any work by Contractor in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Railroad's track(s) at any time, for any reason, unless and until a Railroad flagman is provided to watch for trains. Upon receipt of such thirty (30)-day notice, the Railroad Representative will determine and inform Contractor whether a flagman need be present and whether Contractor needs to implement any special protective or safety measures. If flagging or other special protective or safety measures are performed by Railroad, Railroad will bill Contractor for such expenses incurred by Railroad, unless Railroad and a federal, state or local governmental entity have agreed that Railroad is to bill such expenses to the federal, state or local governmental entity. If Railroad will be sending the bills to Contractor, Contractor shall pay such bills within thirty (30) days of Contractor's receipt of billing. If Railroad performs any flagging, or other special protective or safety measures are performed by Railroad, Contractor agrees that Contractor is not relieved of any of its responsibilities or liabilities set forth in this Agreement.

B. The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between Railroad and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, Contractor (or the governmental entity, as applicable) shall pay on the basis of the new rates and charges.

C. Reimbursement to Railroad will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other Railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Railroad is required to pay the flagman and which could not reasonably be avoided by Railroad by assignment of such flagman to other work, even though Contractor may not be working during such time. When it becomes necessary for Railroad to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Contractor must provide Railroad a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, Contractor will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that

period. An additional thirty (30) days notice must then be given to Railroad if flagging services are needed again after such five day cessation notice has been given to Railroad.

Section 2. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED

A. The foregoing grant of right is subject and subordinate to the prior and continuing right and obligation of the Railroad to use and maintain its entire property including the right and power of Railroad to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, roadways, signal, communication, fiber optics, or other wirelines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be freely done at any time or times by Railroad without liability to Contractor or to any other party for compensation or damages.

B. The foregoing grant is also subject to all outstanding superior rights (whether recorded or unrecorded and including those in favor of licensees and lessees of Railroad's property, and others) and the right of Railroad to renew and extend the same, and is made without covenant of title or for quiet enjoyment.

Section 3. NO INTERFERENCE WITH OPERATIONS OF RAILROAD AND ITS TENANTS.

A. Contractor shall conduct its operations so as not to interfere with the continuous and uninterrupted use and operation of the railroad tracks and property of Railroad, including without limitation, the operations of Railroad's lessees, licensees or others, unless specifically authorized in advance by the Railroad Representative. Nothing shall be done or permitted to be done by Contractor at any time that would in any manner impair the safety of such operations. When not in use, Contractor's machinery and materials shall be kept at least fifty (50) feet from the centerline of Railroad's nearest track, and there shall be no vehicular crossings of Railroads tracks except at existing open public crossings.

B. Operations of Railroad and work performed by Railroad personnel and delays in the work to be performed by Contractor caused by such railroad operations and work are expected by Contractor, and Contractor agrees that Railroad shall have no liability to Contractor, or any other person or entity for any such delays. The Contractor shall coordinate its activities with those of Railroad and third parties so as to avoid interference with railroad operations. The safe operation of Railroad train movements and other activities by Railroad takes precedence over any work to be performed by Contractor.

Section 4. LIENS.

Contractor shall pay in full all persons who perform labor or provide materials for the work to be performed by Contractor. Contractor shall not create, permit or suffer any mechanic's or materialmen's liens of any kind or nature to be created or enforced against any property of Railroad for any such work performed. Contractor shall indemnify and hold harmless Railroad from and against any and all liens, claims, demands, costs or expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished. If Contractor fails to promptly cause any lien to be released of record, Railroad may, at its election, discharge the lien or claim of lien at Contractor's expense.

Section 5. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.

A. Fiber optic cable systems may be buried on Railroad's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Contractor shall telephone Railroad during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on Railroad's property to be used by Contractor. If it is, Contractor will telephone the telecommunications company(ies) involved, make arrangements for a cable locator and, if applicable, for relocation or other protection of the fiber optic cable. Contractor shall not commence any work until all such protection or relocation (if applicable) has been accomplished.

b. In addition to other indemnity provisions in this Agreement, Contractor shall indemnify, defend and hold Railroad harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of any act or omission of Contractor, its agents and/or employees, that causes or contributes to (1) any damage to or destruction of any telecommunications system on Railroad's property, and/or (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on Railroad's property. Contractor shall not have or seek recourse against Railroad for any claim or cause of action for alleged loss of profits or revenue or loss of service or other consequential damage to a telecommunication company using Railroad's property or a customer or user of services of the fiber optic cable on Railroad's property.

Section 6. PERMITS - COMPLIANCE WITH LAWS.

In the prosecution of the work covered by this Agreement, Contractor shall secure any and all necessary permits and shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work including, without limitation, all applicable Federal Railroad Administration regulations.

Section 7. SAFETY.

A. Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of the work performed by Contractor. Contractor shall be responsible for initiating, maintaining and supervising all safety, operations and programs in connection with the work. Contractor shall at a minimum comply with Railroad's safety standards listed in **Exhibit D**, hereto attached, to ensure uniformity with the safety standards followed by Railroad's own forces. As a part of Contractor's safety responsibilities, Contractor shall notify Railroad if Contractor determines that any of Railroad's safety standards are contrary to good safety practices. Contractor shall furnish copies of **Exhibit D** to each of its employees before they enter the job site.

B. Without limitation of the provisions of paragraph A above, Contractor shall keep the job site free from safety and health hazards and ensure that its employees are competent and adequately trained in all safety and health aspects of the job.

C. Contractor shall have proper first aid supplies available on the job site so that prompt first aid services may be provided to any person injured on the job site. Contractor shall promptly notify Railroad of any U.S. Occupational Safety and Health Administration reportable injuries. Contractor shall have a nondelegable duty to control its employees while they are on the job site or any other property of

Railroad, and to be certain they do not use, be under the influence of, or have in their possession any alcoholic beverage, drug or other substance that may inhibit the safe performance of any work.

D. If and when requested by Railroad, Contractor shall deliver to Railroad a copy of Contractor's safety plan for conducting the work (the "Safety Plan"). Railroad shall have the right, but not the obligation, to require Contractor to correct any deficiencies in the Safety Plan. The terms of this Agreement shall control if there are any inconsistencies between this Agreement and the Safety Plan.

Section 8. INDEMNITY.

A. To the extent not prohibited by applicable statute, Contractor shall indemnify, defend and hold harmless Railroad, its affiliates, and its and their officers, agents and employees (individually an "Indemnified Party" or collectively "Indemnified Parties") from and against any and all loss, damage, injury, liability, claim, demand, cost or expense (including, without limitation, attorney's, consultant's and expert's fees, and court costs), fine or penalty (collectively, "Loss") incurred by any person (including, without limitation, any Indemnified Party, Contractor, or any employee of Contractor or of any Indemnified Party) arising out of or in any manner connected with (i) any work performed by Contractor, or (ii) any act or omission of Contractor, its officers, agents or employees, or (iii) any breach of this Agreement by Contractor.

b. The right to indemnity under this Section 8 shall accrue upon occurrence of the event giving rise to the Loss, and shall apply regardless of any negligence or strict liability of any Indemnified Party, except where the Loss is caused by the sole active negligence of an Indemnified Party as established by the final judgment of a court of competent jurisdiction. The sole active negligence of any Indemnified Party shall not bar the recovery of any other Indemnified Party.

c. Contractor expressly and specifically assumes potential liability under this Section 8 for claims or actions brought by Contractor's own employees. Contractor waives any immunity it may have under worker's compensation or industrial insurance acts to indemnify the Indemnified Parties under this Section 8. Contractor acknowledges that this waiver was mutually negotiated by the parties hereto.

d. No court or jury findings in any employee's suit pursuant to any worker's compensation act or the Federal Employers' Liability Act against a party to this Agreement may be relied upon or used by Contractor in any attempt to assert liability against any Indemnified Party.

e. The provisions of this Section 8 shall survive the completion of any work performed by Contractor or the termination or expiration of this Agreement. In no event shall this Section 8 or any other provision of this Agreement be deemed to limit any liability Contractor may have to any Indemnified Party by statute or under common law.

Section 9. RESTORATION OF PROPERTY.

In the event Railroad authorizes Contractor to take down any fence of Railroad or in any manner move or disturb any of the other property of Railroad in connection with the work to be performed by Contractor, then in that event Contractor shall, as soon as possible and at Contractor's sole expense, restore such fence and other property to the same condition as the same were in before such fence was taken down or such other property was moved or disturbed. Contractor shall remove all of Contractor's tools, equipment, rubbish and other materials from Railroad's property promptly upon completion of the work, restoring Railroad's property to the same state and condition as when Contractor entered thereon.

Section 10. WAIVER OF DEFAULT.

Waiver by Railroad of any breach or default of any condition, covenant or agreement herein contained to be kept, observed and performed by Contractor shall in no way impair the right of Railroad to avail itself of any remedy for any subsequent breach or default.

Section 11. MODIFICATION - ENTIRE AGREEMENT.

No modification of this Agreement shall be effective unless made in writing and signed by Contractor and Railroad. This Agreement and the exhibits attached hereto and made a part hereof constitute the entire understanding between Contractor and Railroad and cancel and supersede any prior negotiations, understandings or agreements, whether written or oral, with respect to the work to be performed by Contractor.

Section 12. ASSIGNMENT - SUBCONTRACTING.

Contractor shall not assign or subcontract this Agreement, or any interest therein, without the written consent of the Railroad. Contractor shall be responsible for the acts and omissions of all subcontractors. Before Contractor commences any work, the Contractor shall, except to the extent prohibited by law; (1) require each of its subcontractors to include the Contractor as "Additional Insured" in the subcontractor's Commercial General Liability policy and Business Automobile policies with respect to all liabilities arising out of the subcontractor's performance of work on behalf of the Contractor by endorsing these policies with ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage; (2) require each of its subcontractors to endorse their Commercial General Liability Policy with "Contractual Liability Railroads" ISO Form CG 24 17 10 01 (or a substitute form providing equivalent coverage) for the job site; and (3) require each of its subcontractors to endorse their Business Automobile Policy with "Coverage For Certain Operations In Connection With Railroads" ISO Form CA 20 70 10 01 (or a substitute form providing equivalent coverage) for the job site.

EXHIBIT C
TO
CONTRACTOR'S
RIGHT OF ENTRY AGREEMENT
Union Pacific Railroad Company
Insurance Provisions For
Contractor's Right of Entry Agreement

Contractor shall, at its sole cost and expense, procure and maintain during the course of the Project and until all Project work on Railroad's property has been completed and the Contractor has removed all equipment and materials from Railroad's property and has cleaned and restored Railroad's property to Railroad's satisfaction, the following insurance coverage:

- A. **Commercial General Liability** insurance. Commercial general liability (CGL) with a limit of not less than \$5,000,000 each occurrence and an aggregate limit of not less than \$10,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage).

The policy must also contain the following endorsement, which must be stated on the certificate of insurance:

- Contractual Liability Railroads ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site.
- Designated Construction Project(s) General Aggregate Limit ISO Form CG 25 03 03 97 (or a substitute form providing equivalent coverage) showing the project on the form schedule.

- B. **Business Automobile Coverage** insurance. Business auto coverage written on ISO form CA 00 01 10 01 (or a substitute form providing equivalent liability coverage) with a combined single limit of not less \$5,000,000 for each accident and coverage must include liability arising out of any auto (including owned, hired and non-owned autos).

The policy must contain the following endorsements, which must be stated on the certificate of insurance:

- Coverage For Certain Operations In Connection With Railroads ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Property" as the Designated Job Site.
- Motor Carrier Act Endorsement - Hazardous materials clean up (MCS-90) if required by law.

- C. **Workers' Compensation and Employers' Liability** insurance. Coverage must include but not be limited to:

- Contractor's statutory liability under the workers' compensation laws of the state where the work is being performed.
- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit \$500,000 each employee.

If Contractor is self-insured, evidence of state approval and excess workers compensation coverage must be provided. Coverage must include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

The policy must contain the following endorsement, which must be stated on the certificate of insurance:

- Alternate Employer endorsement ISO form WC 00 03 01 A (or a substitute form providing equivalent coverage) showing Railroad in the schedule as the alternate employer (or a substitute form providing equivalent coverage).

D. Railroad Protective Liability insurance. Contractor must maintain "Railroad Protective Liability" (RPL) insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage) on behalf of Railroad as named insured, with a limit of not less than \$2,000,000 per occurrence and an aggregate of \$6,000,000. The definition of "JOB LOCATION" and "WORK" on the declaration page of the policy shall refer to this Agreement and shall describe all WORK or OPERATIONS performed under this agreement. Contractor shall provide this Agreement to Contractor's insurance agent(s) and/or broker(s) and Contractor shall instruct such agent(s) and/or broker(s) to procure the insurance coverage required by this Agreement. A BINDER STATING THE POLICY IS IN PLACE MUST BE SUBMITTED TO RAILROAD BEFORE THE WORK MAY COMMENCE AND UNTIL THE ORIGINAL POLICY IS FORWARDED TO UNION PACIFIC RAILROAD.

E. Umbrella or Excess insurance. If Contractor utilizes umbrella or excess policies, these policies must "follow form" and afford no less coverage than the primary policy.

F. Pollution Liability insurance. Pollution liability coverage must be included when the scope of the work as defined in the Agreement includes installation, temporary storage, or disposal of any "hazardous" material that is injurious in or upon land, the atmosphere, or any watercourses; or may cause bodily injury at any time.

If required, coverage may be provided in separate policy form or by endorsement to Contractors CGL or RPL. In any form coverage must be equivalent to that provided in ISO form CG 24 15 "Limited Pollution Liability Extension Endorsement" or CG 28 31 "Pollution Exclusion Amendment" with limits of at least \$5,000,000 per occurrence and an aggregate limit of \$10,000,000.

If the scope of work as defined in this Agreement includes the disposal of any hazardous or non-hazardous materials from the job site, Contractor must furnish to Railroad evidence of pollution legal liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting the materials, with coverage in minimum amounts of \$1,000,000 per loss, and an annual aggregate of \$2,000,000.

Other Requirements

G. All policy(ies) required above (except worker's compensation and employers liability) must include Railroad as "Additional Insured" using ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage). The coverage provided to Railroad as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48 provide coverage for Railroad's negligence whether sole

or partial, active or passive, and shall not be limited by Contractor's liability under the indemnity provisions of this Agreement.

- H.** Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless the law governing this Agreement prohibits all punitive damages that might arise under this Agreement.
- I.** Contractor waives all rights of recovery, and its insurers also waive all rights of subrogation of damages against Railroad and its agents, officers, directors and employees. This waiver must be stated on the certificate of insurance.
- J.** Prior to commencing the work, Contractor shall furnish Railroad with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this Agreement.
- K.** All insurance policies must be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state where the work is being performed.
- L.** The fact that insurance is obtained by Contractor or by Railroad on behalf of Contractor will not be deemed to release or diminish the liability of Contractor, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad from Contractor or any third party will not be limited by the amount of the required insurance coverage.

EXHIBIT D
TO
CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

MINIMUM SAFETY REQUIREMENTS

The term "employees" as used herein refer to all employees of Contractor as well as all employees of any subcontractor or agent of Contractor.

I. Clothing

- A. All employees of Contractor will be suitably dressed to perform their duties safely and in a manner that will not interfere with their vision, hearing, or free use of their hands or feet.

Specifically, Contractor's employees must wear:

- (i) Waist-length shirts with sleeves.
 - (ii) Trousers that cover the entire leg. If flare-legged trousers are worn, the trouser bottoms must be tied to prevent catching.
 - (iii) Footwear that covers their ankles and has a defined heel. Employees working on bridges are required to wear safety-toed footwear that conforms to the American National Standards Institute (ANSI) and FRA footwear requirements.
- B. Employees shall not wear boots (other than work boots), sandals, canvas-type shoes, or other shoes that have thin soles or heels that are higher than normal.
- C. Employees must not wear loose or ragged clothing, neckties, finger rings, or other loose jewelry while operating or working on machinery.

II. Personal Protective Equipment

Contractor shall require its employees to wear personal protective equipment as specified by Railroad rules, regulations, or recommended or requested by the Railroad Representative.

- (i) Hard hat that meets the American National Standard (ANSI) Z89.1 – latest revision. Hard hats should be affixed with Contractor's company logo or name.
- (ii) Eye protection that meets American National Standard (ANSI) for occupational and educational eye and face protection, Z87.1 – latest revision. Additional eye protection must be provided to meet specific job situations such as welding, grinding, etc.
- (iii) Hearing protection, which affords enough attenuation to give protection from noise levels that will be occurring on the job site. Hearing protection, in the form of plugs or muffs, must be worn when employees are within:
 - 100 feet of a locomotive or roadway/work equipment
 - 15 feet of power operated tools
 - 150 feet of jet blowers or pile drivers
 - 150 feet of retarders in use (when within 10 feet, employees must wear dual ear protection – plugs and muffs)
 -
- (iv) Other types of personal protective equipment, such as respirators, fall protection equipment, and face shields, must be worn as recommended or requested by the Railroad Representative.

III. On Track Safety

Contractor is responsible for compliance with the Federal Railroad Administration's Roadway Worker Protection regulations – 49CFR214, Subpart C and Railroad's On-Track Safety rules. Under 49CFR214, Subpart C, railroad contractors are responsible for the training of their employees on such regulations. In addition to the instructions contained in Roadway Worker Protection regulations, all employees must:

- (i) Maintain a distance of twenty-five (25) feet to any track unless the Railroad Representative is present to authorize movements.
- (ii) Wear an orange, reflectorized workwear approved by the Railroad Representative.
- (iii) Participate in a job briefing that will specify the type of On-Track Safety for the type of work being performed. Contractor must take special note of limits of track authority, which tracks may or may not be fouled, and clearing the track. Contractor will also receive special instructions relating to the work zone around machines and minimum distances between machines while working or traveling.

IV. Equipment

- A. It is the responsibility of Contractor to ensure that all equipment is in a safe condition to operate. If, in the opinion of the Railroad Representative, any of Contractor's equipment is unsafe for use, Contractor shall remove such equipment from Railroad's property. In addition, Contractor must ensure that the operators of all equipment are properly trained and competent in the safe operation of the equipment. In addition, operators must be:
 - Familiar and comply with Railroad's rules on lockout/tagout of equipment.
 - Trained in and comply with the applicable operating rules if operating any hy-rail equipment on-track.
 - Trained in and comply with the applicable air brake rules if operating any equipment that moves rail cars or any other railbound equipment.
- B. All self-propelled equipment must be equipped with a first-aid kit, fire extinguisher, and audible back-up warning device.
- C. Unless otherwise authorized by the Railroad Representative, all equipment must be parked a minimum of twenty-five (25) feet from any track. Before leaving any equipment unattended, the operator must stop the engine and properly secure the equipment against movement.
- D. Cranes must be equipped with three orange cones that will be used to mark the working area of the crane and the minimum clearances to overhead powerlines.

V. General Safety Requirements

- A. Contractor shall ensure that all waste is properly disposed of in accordance with applicable federal and state regulations.
- B. Contractor shall ensure that all employees participate in and comply with a job briefing conducted by the Railroad Representative, if applicable. During this briefing, the Railroad Representative will specify safe work procedures, (including On-Track Safety) and the potential hazards of the job. If any employee has any questions or concerns about the work, the employee must voice them during the job briefing. Additional job briefings will be conducted during the work as conditions, work procedures, or personnel change.

- C. All track work performed by Contractor meets the minimum safety requirements established by the Federal Railroad Administration's Track Safety Standards 49CFR213.
- D. All employees comply with the following safety procedures when working around any railroad track:
 - (i) Always be on the alert for moving equipment. Employees must always expect movement on any track, at any time, in either direction.
 - (ii) Do not step or walk on the top of the rail, frog, switches, guard rails, or other track components.
 - (iii) In passing around the ends of standing cars, engines, roadway machines or work equipment, leave at least 20 feet between yourself and the end of the equipment. Do not go between pieces of equipment if the opening is less than one car length (50 feet).
 - (iv) Avoid walking or standing on a track unless so authorized by the employee in charge.
 - (v) Before stepping over or crossing tracks, look in both directions first.
 - (vi) Do not sit on, lie under, or cross between cars except as required in the performance of your duties and only when track and equipment have been protected against movement.
- E. All employees must comply with all federal and state regulations concerning workplace safety.

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 12/06/2016

Report Date: 12/2/2016

Report No: 6.

Submitted By:

Subject: Approve Resolution No. 2016-43 establishing rates for residential solid waste collection and related services effective January 1, 2017. (*Mark Threadgill*)

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact: Net Zero fiscal impact. Increase to customer's monthly solid waste charge is equal to increase City pays Southwest Disposal for service.

Recommendation: Staff recommends approval of Resolution No. 2016-43

Background:

Notification of a rate adjustment from Southwest Disposal is required under Section 7.5 Adjustments to Service Fee Municipal Solid Waste Agreement with Waste Connections of New Mexico, Inc. d/b/a SOUTHWEST DISPOSAL dated 1/10/2012.

As stated in the notice from Southwest Disposal dated October 24, 2016 there are two components to the annual rate adjustment; one based on CPI and the other based on Rocky Mountain No. 2 Diesel Retail Prices subject to a contract base of \$3.15 gallon.

For calendar year 2017 the rate adjustment is a net increase in the monthly charge for residential customers. The CPI increased by 1.4% while the fuel charges remain unchanged. The net result being:

Residential Service (curb & alley)	+\$0.1372 mo.
Inground Service	+\$0.2894 mo.
Overload Service	+\$0.7665 per unit
City Owned facilities	+\$143.58 mo.

Note that these rates are those SW Disposal charges the city for solid waste pick-up. Residential customers are charged, in addition to the SW rates, \$2.20 per month convenience center fee and \$2.71 month tipping/admin fee. The current monthly charge to residential

customers (curb & alley) is \$14.64.

RESOLUTION NO. 2016-43

WHEREAS, THE City of Alamogordo provides residential solid waste collection services to the City's residents; and,

WHEREAS, the City provides the residential solid waste collection services through an agreement with an independent contractor; and,

WHEREAS, the agreement provides that the rates for residential solid waste collection services may be revised annually;

NOW, THEREFORE BE IT RESOLVED by the Alamogordo City Commission that the rates for residential solid waste collection and related services as specified in Attachment "A" be adopted and become effective January 1, 2017.

PASSED, APPROVED AND ADOPTED this December ____, 2016.

CITY OF ALAMOGORDO, NEW MEXICO
A New Mexico Municipal Corporation

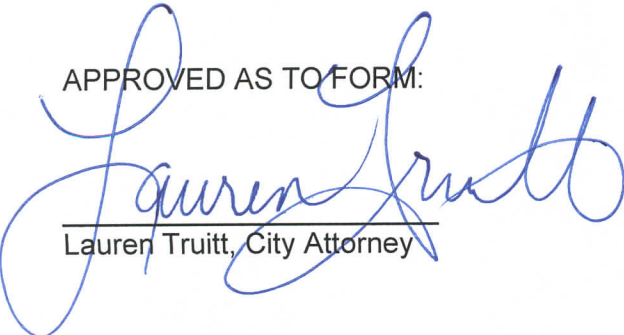
Richard A. Boss, Mayor

SEAL

ATTEST:

Rachel Hughs, City Clerk

APPROVED AS TO FORM:



Lauren Truitt, City Attorney

ATTACHMENT "A"

Resolution No. 2016-43

Residential Solid Waste Collection:

Curb or alley collection	\$ 9.8684 mo.
In Ground	\$20.8133 mo.
Overload Service	\$55.1271 per unit

Other:

City owned facilitates	\$10,326.7426 mo.
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AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 12/06/2016

Report Date: 11/28/2016

Report No: 7.

Submitted By: Lauren Truitt

Subject: Consider, and act upon, final publication for Ordinance No. 1531 Amending certain sections and adding new sections to Chapter 29 regulating special events. (*Lauren Truitt, City Attorney*) **(Roll call required)**

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation: Approve Ordinance No. 1531 for final publication. (Roll call required)

Background: This amendment will clarify the permitting process for special events, and will establish a procedure for permitting street closures

ORDINANCE NO. 1531

AN ORDINANCE AMENDING CERTAIN SECTIONS AND ADDING NEW SECTIONS TO CHAPTER 29 REGULATING SPECIAL EVENTS

BE IT ORDAINED by the City Commission of the City of Alamogordo New Mexico that Chapter 29, Article 29-01 of the *Code of Ordinances* be amended to read as follows:

CHAPTER 29 – ZONING ARTICLE 29-01 - PROVISIONS

SECTION ONE:

29-01-085. Skateboarding.

Roller skating, skateboarding, the use of in-line skates or bicycles is prohibited on sidewalks in the Historic Downtown Alamogordo on New York Avenue from 8th Street to 12th Street.

SECTION TWO:

29-01-086. Farmer's Market.

A Farmer's Market is hereby allowed in the City due to its benefits to the city and the health and welfare of its citizens.

The City Manager is authorized and charged with the responsibility for:

1. Establishing the location of the Farmer's Market in the city parks.
2. Establishing the location of display and sales areas.
 - a. The City manager or designated representative is authorized and directed to establish space limitations for the farmer's market and rules for display facilities, set up, signs, sales and cleanup, which will be incorporated in, and attached to each permit.
3. Classifying such areas with relation to the kinds of produce, commodities and crafts displayed:
 - a. Display and sales shall be restricted to locally grown agricultural products, including fruits, vegetables, nuts, plants, eggs, honey, and home food preparations limited to baked goods produced or prepared by the seller, including cream or "soft" pies sealed to prevent contamination and approved for sale by the state environmental protection agency.

The fee for a farmer's market permit shall be \$70.00 per year, which said permit shall be obtained from the city clerk's office prior to display and sale. All other parks policies shall apply.

SECTION THREE:

29-01-087. Days of Operation.

The market shall be available for not more than 3 days per week from April 15 through Nov 30 of each calendar year.

SECTION FOUR:

29-01-088. Prohibited Acts.

1. Food and drink concessions and sales for on-premises consumption.
2. Amplified speakers and yelling.
3. Blockage of ingress and egress to market areas.

SECTION FIVE:

29-01-090. - Regulation of special events and temporary activity structures.

(a) *Purpose and intent.* It is the purpose and intent of these temporary use regulations to establish procedures for permitting certain types of temporary activities. The intent is to prevent the creation of any nuisance or annoyance to the occupants of or visitors to adjacent buildings or premises while avoiding lengthy or costly approval procedures.

(b) *Special event definition.* A special event includes but is not limited to carnivals, circuses, fairs, festivals, animal displays, amusement rides, flea markets (not inside a permanent structure), special events promoting local agricultural products, arts and crafts markets, promotions, Christmas tree sales, retail sale of fireworks, special sales events, auto sales events, neighborhood parties, and similar public assemblies on public or private property.

(c) *Temporary activity structure definition.* Temporary activity structures are those structures, facilities, or uses that occur on a seasonal or sporadic basis and involve the processing and/or sale of commodities, or are needed in conjunction with a special event.

(d) *Issuance.* A special event permit may be issued to authorize a special event within all zoning districts of the city.

1. *Eligibility.* A special event permit may be administratively issued if:
 - a. The requested special event does not exceed a total of ten (10) days (to include set-up and dismantling);
 - b. The event occurs no more than twelve times in a twelve month period;
 - c. If an event will be held more than twelve (12) times in a one year period, the applicant must seek city commission approval.
2. Submission requirements: Thirty (30) days prior to the event, the applicant shall submit:
 - (a) an application.
 - (b) Applicable fees.

(e) *Permit for a temporary activity structure.* A permit for a temporary activity structure may be issued to authorize a temporary activity structure, such as stands, tents, canopies and other similar structures, to be located within all zoning districts of the city.

(1) *Exemptions.* The following do not require a permit for a temporary activity structure:

- a. Any trailer, mobile housing unit or recreational vehicle as defined in Section 25-01-010 of this Code;
- b. An accessory structure used solely for storage which lacks indoor plumbing but which otherwise complies with the New Mexico Building Code;
- c. A structure erected on property owned by the city, including the county fairgrounds;
- d. A structure used as a construction office at a site where construction work is being carried on;
- e. A structure which complies with the New Mexico Commercial Building Code, except for attachment to a foundation, used for instruction at a school.;~~and~~

(2) *Submission requirements.* The applicant is required to submit to the city the following:

- a. Completed application form together with support documentation; and
- b. Applicable fees in accordance with Section 2-01-030(i) of this Code.

(3) *Prior determinations for temporary activity structure permit approval.* The city manager shall only approve an application for a temporary activity structure permit, if all of the following findings can be made:

- a. The proposed temporary use will be compatible with adjacent uses and will not adversely affect the surrounding neighborhood by means of odor, noise, dust, or other nuisance.
- b. Increased traffic caused by the temporary activity structure will not adversely affect the surrounding neighborhood or city at large.
- c. The proposed temporary activity structure is consistent with all city regulations and codes.
- d. The city manager may impose such conditions on a temporary activity structure as are necessary to meet the purposes of this chapter and protect the public health, safety and welfare.

(f) *Appeal of administrative review decision.* Any person who is dissatisfied with the decision of the city manager may appeal that decision to the city commission.

3. Street Closure: Any event that requires street closures must apply for a separate permit and pay applicable fees. Permits shall be granted by the city manager when deemed to be in the interest of public safety.

4. Prodecure:

(a) At least seven (7) days after approval of the permit, the permit shall be publically posted by the city.

(b) If the city manager approves the Administrative Special Event Permit, s/he shall sign the application for the city. The city manager may require such additional

conditions as well, in his/her judgment, secure substantially the objectives of the district regulations.

If the Applicant disagrees with the conditions set by the city manager, the applicant may appeal to the City Commission.

The provisions of this ordinance are intended to be severable and, should any portion herein be declared null, void, or of not effect, it is the intention of the City Commission that the remainder of the ordinance shall remain in full effect as if the voided portion had not been enacted.

DONE this ____ day of _____, 2016.

CITY OF ALAMOGORDO, NEW MEXICO
A New Mexico municipal corporation

By: _____
Richard A. Boss, Mayor

ATTEST:

Rachel Hughs, City Clerk

APPROVED AS TO FORM:

Lauren E. A. Truitt, City Attorney

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 12/06/2016

Report Date: 11/28/2016

Report No: 8.

Submitted By: Stella Rael

Subject: Consider and act upon final publication of Ordinance 1530, a request for a map amendment to the official zoning map of the City of Alamogordo to rezone the property located at 1806 9th Street from-C1 – Neighborhood Business to R3 – Two Family Dwelling. *(Stella Rael, Planning and Zoning Administrator)*
Roll Call Required

Fiscal Impact: None

Amount Budgeted: \$0.00

Fund: N/A

Additional Fiscal Impact:

Recommendation: Planning and Zoning Commission recommended approval of the requested map amendment by a vote of 4-0-0 at their October 6, 2016 regular meeting.

Staff Recommends approval for final publication

Background: Background: The applicants are requesting a map amendment to the official zoning map of the City of Alamogordo to rezone the property located at 1806 9th Street from C1 – Neighborhood Business to R3 – Two Family Dwelling.

The Alamogordo Daily News published notice of this hearing on September 18, 2016. Staff mailed Twenty nine (29) letters by certified/return receipt mail to all property owners of record within two hundred (200) feet from the property excluding public right-of-way, of the property for which the rezoning is sought. As of this writing, staff has received two letters returned as undeliverable and no written responses to this notice. Staff Recommends approval.

ORDINANCE No. 1530

AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF ALAMOGORDO, CHANGING THE CLASSIFICATION OF A CERTAIN PROPERTY COMMONLY KNOWN AS 1806 NINTH STREET FROM THEIR PRESENT DESIGNATION AND ZONING DISTRICT OF C-1 NEIGHBORHOOD BUSINESS TO R-3 TWO FAMILY DWELLING, WITHIN THE CORPORATE BOUNDARIES OF THE CITY OF ALAMOGORDO, OTERO COUNTY, NEW MEXICO.

WHEREAS, Phillip and Adelinda Efird (hereinafter referred to as "the Owners") are the owners of certain real property commonly known as 1806 Ninth Street and legally described below (herein after referred to as "the Property") located within the corporate boundaries of the City of Alamogordo, New Mexico, (hereinafter referred to as "the City"); and

WHEREAS, an application has been filed in the Owner's names under Case No. **Z-2016-0004(A)** to change the zoning of the Property, and

WHEREAS, the Planning and Zoning Commission, after notice and hearing did recommend to the City Commission adoption of an ordinance amending the zoning map by removing the Property from the present designation and zoning district of C-1, Neighborhood Business District to R-3, Two Family Dwelling District; and

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

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

College Addition, Block 35, Lots 11 and 12

Is hereby changed from C-1, Neighborhood Business District to R-3, Two Family Dwelling District; and the official zoning map and comprehensive plan of the City are hereby amended to reflect this change.

PASSED, APPROVED, AND ADOPTED this _____ day of _____, 2016

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

By: _____
Richard Boss, Mayor

ATTEST:

Rachel Hughs, City Clerk

APPROVED AS TO FORM:

Lauren Truitt, Assistant City Attorney

Record of Decision
City of Alamogordo
A New Mexico Municipal Corporation

Case#: **Z-2016-0004(A)**

For the Subject Property as follows:

Commonly Known As: **1806 Ninth Street**

Uniform Property Code & Parcel Code: **01N-4-056-094-422-217**

Legal Description: **COLLEGE ADDITION, BLOCK 35, LOTS 11 AND 12**

The Alamogordo Planning & Zoning Commission considered this item on **October 6, 2016** and recommended the following action to the Alamogordo City Commission by a vote of 4-0-0

Approve the rezoning of the property detailed above for Case # **Z-2016-0004(A)**.

.....
The Alamogordo City Commission issued the following decision on **November 1, 2016**, by a vote of _____

Approve as recommended for first publication Ordinance # 1530

.....
The Alamogordo City Commission issued the following decision on **November 1, 2016** , by a vote of _____

Approve as recommended for final publication Ordinance #1530 .

Attest:

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

Rachel Hughs, City Clerk

Richard Boss, Mayor



City of Alamogordo

City Commission



Rezoning Request Case:
Z-2016-0004(A)

Stella Rael, PNZ Administrator
November 1, 2016

Zoning Request Case: Z-2016-0004(A)



Request:

The applicants are requesting a map amendment to the official zoning map of the City of Alamogordo to rezone the property located at 1806 9th Street from-C1 - Neighborhood Business to R3 - Two Family Dwelling.

Owner(s)/Applicant:

Phillip B. and Adelinda Efird

Zoning Request Case: Z-2016-0004(A)



Section 29-01-020 - Amendments and Changes

Petition for amendment. From time to time, the city, after public notice and hearing, may amend the zoning regulations and established districts. Amendment may be initiated by motion of the city commission; by petition of the owners of the property to be affected; or by petition of one (1) or more agents, designated in an acknowledged power of attorney, or owner or owners of the property affected. Every such proposed amendment shall be considered by the planning and zoning commission before being considered by the city commission.

Zoning Request Case: Z-2016-0004(A)



Aerial
Photo



Zoning Request Case: Z-2016-0004(A)



Zoning Request Case: Z-2016-0004(A)



Findings of Fact

- 1. The property is located at 1806 9th Street, within the C-1 Neighborhood Business District; more specifically identified as Tax Parcel # 01-03787
- 2. The request is for a map amendment to rezone the property to R-3 (Two Family Dwelling).
- 3. The application was filed on August 31, 2016
- 4. The legal notice was published on September 18, 2016
- 5. Twenty nine (29) letters were mailed by certified/return receipt mail to all property owners of record within two hundred (200) feet from the property excluding public right-of-way, of the property for which the rezoning is sought.
- 6. As of October 14, 2016 there were four letters returned undeliverable and two phone calls were received from property owners within the two hundred radius stating that they had no objection to the proposed zoning.
- 7. Planning and Zoning Commission recommended approval by a vote of 4-0-0, at the regularly scheduled meeting of October 6, 2016.

Zoning Request Case: Z-2016-0004(A)



Staff Recommends:

To accept the finding of facts as presented and approve Zone Request Case: Z-2016-0004(A).

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 12/06/2016

Report Date: 11/28/2016

Report No: 9.

Submitted By: Lauren Truitt

Subject: Consider and act upon final publication for Ordinance No. 1532 Creating a new section in the Code of Ordinances pertaining to the White Sands Beautification. (*Lauren Truitt, City Attorney*) **(Roll Call Required)**

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation:

Approve Ordinance No. 1532 for final publication. (Roll Call Required)

Background:

ORDINANCE NO. 1532

CREATING A NEW SECTION IN CHAPTER 29 OF *CODE OF ORDINANCES* PERTAINING TO WHITE SANDS BEAUTIFICATION DISTRICT

BE IT ORDAINED by the City Commission of the City of Alamogordo New Mexico that Chapter 29, Article 29-01 of the *Code of Ordinances* be amended to read as follows:

CHAPTER 29 - ZONING ARTICLE 29-01 - WHITE SANDS BEAUTIFICATION DISTRICT

SECTION ONE:

29-01-100. White Sands Beautification District.

(a) Zoning District Map Amendment. The official City of Alamogordo Zoning District Map is amended by the addition of the White Sands Corridor Overlay District ("White Sands District") classification to the properties in the vicinity to the White Sands Boulevard. The extent and limits of the White Sands Corridor Overlay District are generally depicted in the White Sands Corridor Maps appended to this ordinance. In the event of a discrepancy between the White Sands Corridor map and the official Zoning District Map, the latter shall control. When the requirements of the White Sands Corridor Overlay District are in conflict with those of the underlying district, the more restrictive limitation or requirement controls. The underlying zoning district classification of properties within the White Sands Corridor Overlay District is unchanged by this map amendment.

- (b) General Provisions. The purposes of the White Sands District are:
- (1) The beautification of the White Sands District through a citizen-based, volunteer, grassroots effort; and
 - (2) The establishment of a Master Plan to guide the City's efforts towards beautification, anti-blight and economic development of the White Sands District; and
 - (3) The development of Regulations for the White Sands District consistent with the Master Plan;
 - (4) The identification and utilization of available funding, donations and grants for the beautification of the White Sands District consistent with the approved Master Plan and regulations enacted pursuant to it; and
 - (5) The review, approval and/or denial of improvement projects within the White Sands District consistent with the Master Plan and regulations enacted pursuant to it; and
 - (6) The review, approval and/or denial of all applications for new construction, exterior alteration and change of use in the White Sands District consistent with the Master Plan and regulations enacted pursuant to the master plan.

(c) Minimum Maintenance Requirements. All buildings and structures in the White Sands Corridor Overlay District shall be preserved against decay and deterioration and free from certain structural defects in the following manner, by the owner thereof or such other person or persons who may have the legal custody and control thereof. The owner or other person having legal custody and control thereof shall repair such building or structure if it is found to have any of the defects identified in the approved Master Plan and regulations enacted pursuant to it requiring such repair.

(d) Compliance with General and Specific Design Standards Required. All development located within the White Sands District shall comply with all applicable general development standards consistent with the approved Master Plan and regulations enacted pursuant to it.

(e) General Design Standards for the White Sands Corridor Overlay District. In any review of proposed additions or alterations to structures located in the White Sands Corridor Overlay District, the standards of the approved Master Plan and regulations enacted pursuant to it shall be complied with. Such standards shall include, but not limited to the following:

- (1) Architectural Style, including:
 - a. Materials; and
 - b. Color; and
 - c. Roof Form, Slope and Shape.
- (2) Streetscape Standards
- (3) Signs; Murals
- (4) Walk Areas
- (5) Size, Mass and Shape
- (6) Walls and Fences
- (7) Remodeling and Alteration.

Persons requesting approval of any application for the construction, or remodeling or alteration of nonconforming structures located in the White Sands District shall not be required to bring the total structure into conformance with the standards for the White Sands District. However, the portion of the building that is remodeled or altered shall conform to those standards. "Related to and compatible with" means existing together with unity and coherence.

SECTION TWO:

29-01-110. White Sands Beautification Committee

(a) Designation. There is hereby created a White Sands Boulevard review board, which shall be referred to as the "White Sands Beautification Committee", which will be responsible for reviewing and approving improvement projects within the White Sands District, that require demolition, building and sign permits, and that make modifications to the exterior appearance of buildings, signing, landscaping and parking, in order to insure compliance with the design standards and guidelines adopted for the White Sands District.

(b) Delegation. The governing body and the planning commission hereby delegate their authority to the White Sands Beautification Committee as described in this section, except those powers retained by the governing body and the planning commission in the Alamogordo Municipal Code.

(c) Powers and Duties. The White Sands Beautification Committee, will meet on a regular basis as directed by the chair, but in no event will meetings be conducted less frequently than quarterly, unless there are no agenda items, and at such other times as the chair may determine, shall have the powers and duties specified in this section:

- (1) to study and investigate the White Sands Corridor, for the purpose of the formulation of a master plan, and shall make such surveys as it deems necessary for the formulation of such a master plan for the city; and in this connection the White Sands Beautification Committee shall have power and authority to hold public hearings for the formulation of such master plan;
- (2) propose amendments to regulations governing the White Sands District;
- (3) review current ordinances applicable to master plan and intent of white sands beautification committee and recommend additions, changes, or deletions, in part or whole, with the goal to streamline regulatory guidance and improve process efficiency;
- (4) advise and assist officials, committees and commissions of the municipal government in making recommendations to the governing body relating to the White Sands Corridor;
- (5) perform other acts as requested by the governing body; provided that such acts relate specifically to this section;
- (6) apply for, accept, administer and comply with the requirements regarding an appropriation of funds or a gift, grant or donation of property or money;
- (7) develop funding programs for the improvement of the exterior appearance of properties in the district through grants or loans;
- (8) fund the rehabilitation of properties in the District, but only as may be specifically approved by the City Commission in a plan and budget; and
- (9) undertake improvements designed to increase the safety or attractiveness of the District to businesses which may wish to locate there or to visitors to the District, including, but not limited to, litter cleanup and control, and landscaping.

(d) Membership and Appointment

(1) **Composition and Membership**. The White Sands Beautification Committee shall consist of

- (a) six members appointed by the City Commissioners with each Commissioner appointing one member;
- (b) a Committee Chair appointed by the City's Mayor; and
- (c) the Chair of the City's Planning and Zoning Commission.

(2) **Term**. The six Members appointed by the City Commissioners shall serve two-year overlapping terms with three members serving a two year term and three members serving a three year term. The Chairperson of the Planning and Zoning Commission shall serve during the period he or she occupies the position of Chair of the Planning and Zoning Commission. Members shall serve until their successors have been appointed and qualified. These terms are for initial

implementation; thereafter, each of the six members shall serve a two year term. The Committee Chair shall serve a three year term. Members and the Committee Chair may be reappointed.

- (e) Adoption of Bylaws. The Committee may adopt its own bylaws.
- (f) Ad Hoc Subcommittees
 - (1) Delegation. The Committee may delegate its authority to ad hoc subcommittees as specifically provided in this article, except for those powers retained by the governing body, the planning commission and the Committee.
 - (2) Powers and Duties. Ad hoc subcommittees shall gather information for, make recommendations to, and otherwise assist the White Sands Beautification Committee in accomplishing its powers and duties, as the Committee deems appropriate.
- (g) Staff Support. The objective and thrust of the Beautification Committee is to function as a citizen-based, grassroots effort that is independent of regular staff involvement. However, at the request of the Chair, the Planning and Zoning Department will have primary and lead responsibility for coordinating with the Chair of the Beautification committee on an as-needed basis. Staff support can also be accessed by the Chair through contacts with the City Manager.

DONE this _____ day of _____, 2016.

CITY OF ALAMOGORDO, NEW MEXICO
A New Mexico municipal corporation

By: _____
Richard A. Boss, Mayor

ATTEST:

Rachel Hughs, City Clerk

APPROVED AS TO FORM:

Lauren E. A. Truitt, City Attorney

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 12/06/2016

Report Date: 11/29/2016

Report No: 10.

Submitted By: Lauren Truitt

Subject: Consider, and act upon a Release of Lien for property located at 1112 Airport Ave. *(Lauren Truitt, City Attorney)*

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation: Approve release of lien.

Background:

A Utility Lien was placed in 1112 Airport Avenue on January 4, 2016. At the time the lien was filed, the property owners were Charles and Lesa Stone.

On September 9, 2015, Mr. and Mrs. Stone deeded the property to Mr. Arthur Williams (See attached Deed). This transfer of property did not appear in the county records at the time the city lien was filed..

SPECIAL WARRANTY DEED

Charles Stone II and Lesa Stone, husband and wife,
for consideration paid, grants to:

Arthur R. Williams, a married man dealing in his sole and separate property,

whose address 11009 Whitey Ford
El Paso TX, 79934

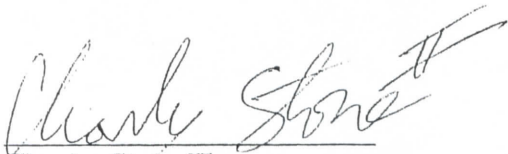
the following described real estate in Otero County, New Mexico:

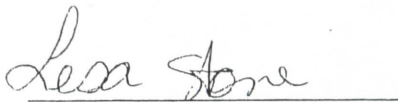
Lot Sixteen B (16B), Replat B, Block Nine (9), Sacramento Park Subdivision, Alamogordo, Otero
County, New Mexico.

SUBJECT TO: Easements, restrictions and reservations of record.

SUBJECT TO: Any set of facts which a physical inspection or accurate survey of the premises may reveal.
with special warranty covenants.

Witness my hand(s) and seal(s) on April 17, 2013.

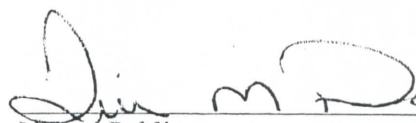

Charles Stone II

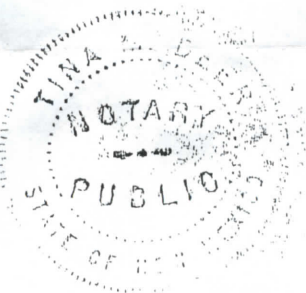

Lesa Stone

STATE OF NEW MEXICO)
COUNTY OF OTERO) ss.

This instrument was acknowledged before me on April 17, 2013 by Charles Stone II and Lesa Stone, husband and wife.

My Commission Expires: 6-3-15


Notary Public



NOTICE OF LIEN

NOTICE IS HEREBY GIVEN that the City of Alamogordo, New Mexico ("City"), by and through its Clerk, claims a lien upon the below-described property.

1. The lien is established under City ordinances codified as §§28-02-120 and 28-03-060, *Code of Ordinances of the City of Alamogordo, New Mexico* and under §§3-23-6 and 3-26-2 NMSA 1978 (As Amended).
2. The purpose of the lien is to recover unpaid charges for water, sewer services provided by the City.
3. The name of the owner and the property against which the lien is Charles & Lesa Stone, whose address is 1112 Airport Ave., Alamogordo, NM 883101112.
4. The property against which the lien is established is described as follows:
Sacramento Park Replat B Block 9, Lot 16B, Block 9 of the City of Alamogordo, County of Otero, State of New Mexico having the street address of 1112 Airport Ave., Alamogordo, NM 88310.
5. The Principal amount of the lien is \$1,653.13.
6. The lien is established for services provided during the period from 3/1/14 to 8/31/15 (account #97935-26686)
7. The principal amount of the lien shall bear interest at the rate of twelve (12%) percent per year from the date of filing of the Notice of Lien unless otherwise provided by law.

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

By: Nancy Jacobs 12/17/2015
NANCY JACOBS, CITY CLERK

[illegible]

The foregoing Notice of Lien was acknowledged before me this 17th day of December 2015, by Nancy Jacobs, City Clerk of the City of Alamogordo, New Mexico, a New Mexico municipal corporation, on behalf of said corporation.

My commission expires: May 25, 2019

Carolee Smith
Notary Public

APPROVED AS TO FORM:

Stephen P. Thies, City Attorney

APPROVED AS TO AMOUNT:

Sue Ashe
Sue Ashe, Accounting Project Analyst

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 12/06/2016

Report Date: 12/2/2016

Report No: 11.

Submitted By: Lauren Truitt

Subject: Consider, and act upon, a request to release a utility line filed in 2008 for the property located at 404 Zia Avenue. (*Lauren Truitt, City Attorney*)

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation: Approve the Lien release.

Background:

On September 26, 2008 a lien was placed on the property located at 404 Zia Avenue for unpaid water and sewer services in the amount of \$326.82. The unpaid water and sewer services were \$176.82, plus \$150 Administrative Fee.

The current owner of the property, Mr. Ellenburg is requesting the city to release the lien. Since four years have elapsed since the filing of the lien, it would be my recommendation that the commission approve the release of the lien.

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 12/06/2016

Report Date: 12/1/2016

Report No: 12.

Submitted By: Mark Threadgill

Subject: Discussion concerning utility base rates. *(Mark Theadgill, Customer Service Manager)*

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation:

Background: .

Discussion concerning utility base rates.

Base Rates – Background

The City of Alamogordo Municipal Utility System has had a “base rate” or “minimum charge” for water and sewer service since at least 1968. In 1968 the City charged a minimum of \$3.00 per month even if there was zero water consumption. The minimum charge for sewer service was \$1.50 per month.¹ While the minimum rates increased through the years this basic billing concept endured.

In April 1993 the City Commission revised the utility billing model to implement a monthly customer charge (commonly referred to as “base rate”) based on installed meter size and a monthly commodity charge based on water consumed at the premises each month.²

In January 2001 City Commission implemented Tier rates for water consumption based on meter size and adopted new rates.³ While rates and tier thresholds have evolved over the ensuing years we continue to follow the basics of this billing model today.

In March 2004 staff presented Ord. 1208 to the Commission *“In order to more fairly distribute the cost of water, sewer and garbage service to all customers, the City of Alamogordo Staff is recommending that all inactive Utility Billing accounts which have access to a City provided service pay the minimum monthly distribution charge. This charge will help defer some of the cost subsidized by the majority of the users back to all users of the water system.”*⁴ The proposal presented two recommendations for dealing with inactive utility accounts – those that had service available but, for whatever reason, were not using the service, estimated at the time to be about 1,100 inactive accounts.

The first recommendation was to charge base rates to all users that have an available city provided service based on meter size.

The second recommendation was to allow customers the option of paying the monthly base rates or pay a reconnection fee of \$250 and have the property brought into compliance with current City Codes when service is reactivated.

After very little discussion the ordinance was approved for first publication

On April 13, 2004 the City Commission unanimously approved (consent item) Ordinance 1208. The ordinance, as adopted, included no reference to the charging of base rates but did include a connection/reconnection fee of \$250.00.

On or about April 15, 2004 the City mailed notification of the changes enacted by Ordinance 1208 to the utility customers allowing them 15 days to decide if their inactive account will be charged monthly base rates or incur a reconnection fee upon service being reactivated. The number of responses received and the decision of the various customers is unknown at this time.

¹ City of Alamogordo Resolution No. 1968-13 and Ordinance No. 420 adopted July 23, 1968.

² City of Alamogordo Ordinance No. 872 adopted April 13, 1993.

³ City of Alamogordo Ordinance No. 1106 adopted January 9, 2001.

⁴ City Commission Agenda Report, March 9, 2004, Item #6

On May 25, 2004 then City Manager McCourt brought ordinance 1208 back to the Commission after several contractors had contacted him about the \$250.00 fee for new connections. Mr. McCourt stated that after meeting with the President of the Builder's Association he was planning to bring forth an amendment to the ordinance at the next commission meeting.

On June 8, 2004 Mr. McCourt presented Ordinance 1210 to the City Commission. This ordinance removed the connection/re-connection fee of \$250.00, implemented base rate charges for inactive accounts, established a disconnection requirement if the property owner did not wish to pay the base rates, and established an administrative connection charge.

Considerable discussion ensued concerning the language of the proposed ordinance – much of it centered on the meaning of “disconnecting” from the system and the proposed work/cost involved to disconnect. Ultimately the item was tabled.

Ordinance No. 1210 was again brought before the Commission on July 27, 2004. The City Manager explained that based on the previous meeting's discussion that staff was proposing several changes to the ordinance outlined in an e-mail handout (copy not readily available); 1) eliminate connect/reconnect fee of \$250, 2) implement an administrative connection fee according to cost of particular situation and, 3) that city crews would do the work to disconnect at a fixed fee (\$250). The City Manager also stated that the requirement to remove the meter can and sidewalk had been deleted (the draft ordinance that accompanied the agenda item DOES require that meter, setter and meter can be removed).

There was considerable discussion concerning the ordinance with at least one Commissioner questioning whether the City should allow disconnection from the system once connected. One citizen addressed the Commission, Mr. Tom French. He questioned allowing a disconnection from the system and offered the use of two years' worth of base rates instead of a flat fee to disconnect. He stated the fee should be a deterrent to disconnecting. Mr. French also stated that the building association was in favor of the proposal. At one point a Commissioner asked what realtors thought of not being able to disconnect but none came forward from the audience.

Commission finally agreed to amend the proposed ordinance to include a disconnect fee of 24 times base rates (water and sewer) based on meter size. The ordinance was approved for first publication unanimously.

On August 24, 2004 the City Commission, with little discussion, unanimously approved Ordinance 1210.

While researching Ordinances 1208 and 1210 it was clear that the intent of staff and the City Commission was that all locations within the City served by the municipal utility should pay, at a minimum, the approved base rates for water and sewer, or pay to be disconnected from the system. However, there is no evidence that any significant effort was made to implement Ordinance 1210 after its adoption.

In addition to the standard base rates (water and sewer) and commodity rates, in 2014 the City Commission approved unanimously a \$1.00 per month per account capital surcharge for the rehabilitation, repair, replacement, renovation and creation of water facilities.⁵ The proceeds from the capital surcharge are placed in a capital improvement fund for the purposes stated above.

⁵ City of Alamogordo Ordinance No. 1467 adopted June 10, 2014.

During the comprehensive review of Utility Billing in 2015 one of the issues identified was the non-billing of “inactive” accounts – properties which had water and sewer service available but were not charged, at a minimum, the base rates or had paid to disconnect from the system per Ordinance 1210. Nor were these accounts being charged the capital surcharge per Ordinance 1467. At that time it was estimated that the utility was losing, through unrealized revenue, some \$367,000 annually.

Included in the final report of the Utility Billing Review were a number of recommendations, policies and ordinance revisions⁶ addressing “inactive” accounts. These were presented to the City Commission in November and December 2015, reviewed and adopted⁷. The revisions are now codified in the Alamogordo Code of Ordinances, Chapter 28.

The policy and ordinances approved by the City Commission are currently being followed by the Utility Billing Division.

Base Rate Revenues

Base rates account for approximately 50% of utility revenue. This reliable revenue stream helps insure the fiscal integrity of the utility enterprise and contributes to the utility’s favorable interest rates for bonds and loans.

Selected Utility Revenues FY16 and FY17

	Thru November	FY16	FY17	% Inc.
Water Base Rate	\$	1,109,750	\$ 1,150,418	3.66%
Sewer Base Rate	\$	879,246	\$ 910,377	3.54%
Capital Surcharge	\$	61,341	\$ 63,171	2.98%
Water Consumption	\$	1,400,531	\$ 1,484,658	6.01%
Sewer Consumption	\$	496,553	\$ 534,652	7.67%
Total	\$	3,947,421	\$ 4,143,277	4.96%
Base Rates	\$	1,988,996	\$ 2,060,795	3.61%
Consumption	\$	1,897,084	\$ 2,019,310	6.44%
Capital	\$	61,341	\$ 63,171	2.98%

⁶ Building Contractors Association of Otero County & Otero County Association of Realtors were notified and provided copies of proposed changes via e-mail dated November 6, 2015.

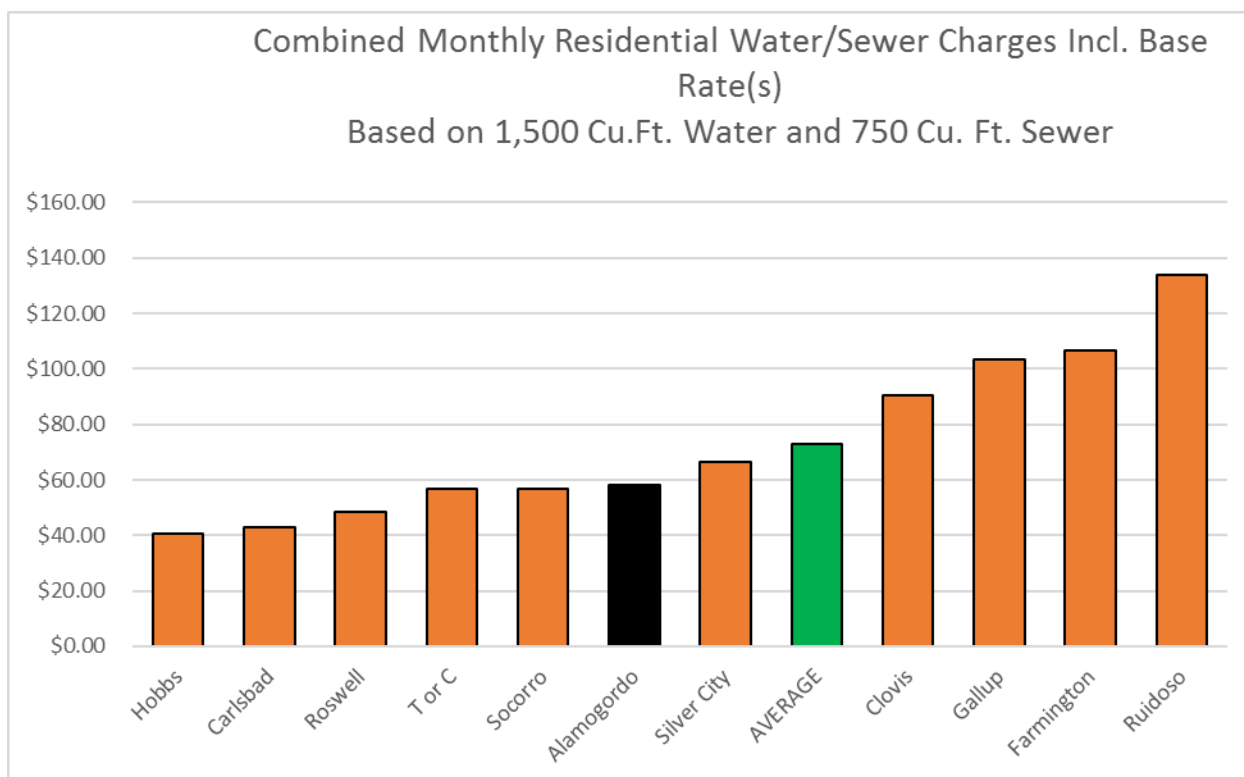
⁷ City of Alamogordo Ordinance No. 1506 adopted December 15, 2015.

If the utility were to rely solely on consumption, no base rates, the commodity rate would have to at least double and could be subject to frequent, possibly severe, increases if consumption were to decline.

Base rate Comparison

A simple head-to-head comparison of base rates levied by communities in New Mexico would not be accurate. Each community has tailored their rates to their specific needs. Some include a minimal amount of the commodity (water and/or sewer) with the base rate, others have higher commodity rates to offset lower base rates and still others bill in units of cubic feet while others in gallons.

Using the current rates for 11 communities in New Mexico, a monthly water usage of 1,500 cu. ft., a monthly (WQA) of sewer consumption of 750 cu. ft., and applying the appropriate charges provides a baseline comparison⁸ among the communities.



As shown, Alamogordo's charges fall solidly in the middle of the 11 communities and well below the average.

⁸ This is not a comprehensive rate comparison - calculations based on current published rates. No effort was made to determine comparable franchise fee, debt load, general fund/tax subsidy, operating or capital requirements.

Base Rates for Inactive Accounts

The City of Alamogordo Municipal Water & Sewer System is operated as an enterprise, that is, it is operated, maintained, repaired and expanded not by the levy of taxes but through the collection of approved rates for the services available. While it is generally agreed that these charges are rightly assessed on direct users of the system there is some disagreement on charges being assessed on those that derive an indirect benefit from the system.

The City of Alamogordo, as the owner/operator of the municipal water and sewer system, is obligated to provide water and sewer services to all property within the city. In addition to the direct services provided individual properties the city provides water and fire hydrants throughout the community in order to provide protection to all property. The water/sewer system also provides recycled water to city green spaces which enhances the quality of life for the entire community.

In general the entire community benefits from a viable water/sewer system that is capable of meeting not only the current community needs, but continuing to expand in order to meet future requirements dictated by growth and/or diminishing supplies. As these benefits are enjoyed by all, regardless of water/sewer consumption, it is appropriate that the cost of the water/sewer system be dispersed across as wide a base as practical and not borne solely by the “active” users of the system. Continuing to assess charges against only “active” users of the system results in continuous increases for “active” users while those deriving the indirect benefits continue to do so free of charge.

Once water service lines are installed from the city mains to the property the city is responsible for the maintenance and repair of said lines and repairing any damage that might occur to roads, alleys, sidewalks, etc., should a line fail. This city responsibility is not contingent on the amount of, if any, water used at a particular property.

Owners derive a benefit from the municipal water/sewer system being available to their property. Property with available water/sewer service commands a higher value than property without said services. The availability of sewer services is particularly beneficial to smaller parcels of land where improvements might be hindered if a septic system were needed. Fire insurance on the property/improvements is “affordable” because of the community wide availability of water and hydrants.

For rental property the owner/landlord benefits knowing the tenant can activate water/sewer services without the additional expense of connecting to the system or “importing” water, as is not uncommon in unincorporated areas. It can be argued that the availability of water/sewer to the property enhances the owner’s opportunity to rent the property.

The argument has been proffered that charging inactive accounts base rates, or any rate, is charging for nothing – which might be true if one looks only at what emanates from the faucet. In reality, what comes from the faucet is the end product of a complex and evolving system of acquisition, collection, treatment, storage, distribution and delivery of water. The delivery of the end product to a property has a cost and a benefit whether the end product is utilized or not. That cost should be shared by all the beneficiaries. This concept was probably best summarized by Mr. Tom French when, appearing before the City Commission on July 27, 2004, he stated *“The fact that water is available to a lot or home is not dissimilar than having to pay taxes. Just because the property owner is not going to use that particular*

*property for whatever purpose that is, does not mean that we should let them off the hook for the property taxes. We, as ratepayers, have to pay for a whole system and that doesn't just mean that we are paying for the meter out in front of their place. We have to pay for the pipes throughout town, the pipes that get water to town, the computerized systems, etc. as you are well aware."*⁹

⁹ Minutes of the City of Alamogordo Commission Meeting, agenda item #8, July 27, 2004.

Chapter 28 - WATER, SEWERS AND SEWAGE DISPOSAL^[1]

Footnotes:

--- (1) ---

Cross reference— Plumbing regulations, 8-06-010 et seq.; garbage, trash and refuse, ch. 14; health and sanitation, ch. 15; mobile home utility connections, 25-02-040; RV parks utilities, 25-03-030.

State Law reference— Authority to construct and maintain water and sewer systems, NMSA § 3-18-25; public utilities, NMSA § 3-23-1 et seq.; electric utility, NMSA § 13-24-1 et seq.; gas utility, NMSA § 3-25-1 et seq.; sewage facilities, NMSA 3-26-1 et seq.

ARTICLE 28-01. - IN GENERAL

28-01-010. - Definitions.

As used in this chapter:

Base rate is the fixed monthly fee charged all property owners serviced by the city's sewage system and municipal water supply and shall have the same meaning as "customer charge(s)."

BOD (denoting biochemical oxygen demand) shall mean the quantity of oxygen by weight utilized in the biochemical oxidation of organic matter under standard laboratory conditions in five (5) days at twenty (20) degrees Celsius expressed in milligrams per liter (mg/l).

City is defined as the City of Alamogordo, New Mexico, or any authorized person or entity acting in its behalf.

City commission is the governing body authorized to oversee the implementation of the City Code of Ordinances, or any authorized person acting in its behalf.

COD (denoting chemical oxygen demand) is a measure of the oxygen-consuming capacity of organic and inorganic matter present in wastewater as milligrams per liter (mg/l).

Cooling water is defined as the water discharged from any use such as air conditioning, cooling or refrigeration, or to which the only pollutant added is heat. This may also be termed as "noncontact cooling water." Water which comes into contact with raw materials or finished products from an industrial process is considered contact cooling water and is considered a polluted industrial waste.

CFR is defined as the Code of Federal Regulations, published by the office of the Federal Register, National Archives and Records Administration, as a Special Edition of the Federal Register.

Commodity charge. See "Consumption charge."

Consumption charge means the approved rate per volume of water and/or sewer used as measured by a meter and/or calculated per ordinance.

Customer charge is the fixed monthly fee charged property owners serviced by the city's sanitary sewer system and municipal water supply system and shall have the same meaning as base rate.

Cut off shall mean the turning off of the water supply to the property at the meter can.

Disconnect shall mean the severing of utility services to a property, including but not limited to removal of all, or part, of the city service lines, meter, meter can and all connecting hardware.

Effluent water. See "reclaimed water."

Garbage shall mean solid wastes from the preparation, cooking and dispensing of food, and from the handling, storing and sale of produce.

Hauled wastes is defined as wastes delivered to the city's sanitary sewer system by conveyance other than direct pipe connection to the sewer, usually by tank truck.

Holding tank wastes any wastes from holding tanks such as vessels, chemical toilets, campers, trailers, septic tanks and vacuum pump tank trucks.

Hot tub. See "swimming pool."

Household use is defined as the use of water for necessary living functions, like drinking, bathing, washing of clothes, and other uses in the home for personal health and sanitation.

Industrial liquid wastes shall mean all waterborne solids, liquids or gaseous wastes resulting from any industrial, manufacturing or food processing operation or process, or from the development of any natural resource, or any mixture of these with water or domestic sewage as distinct from normal domestic sewage. Industrial manufacturing processes shall include, but are not limited to: ordnance and accessories; food and allied products; tobacco manufacturers, textile mill products; apparel and other finished products made from fabrics and similar materials; lumber and wood products, except furniture and fixtures; printing, publishing, and allied industries; chemicals and allied products; petroleum refining and related industries; rubber and miscellaneous plastics products; leather and leather products; stone, clay, glass and concrete products; primary metal industries; fabricated metal products, except ordnance, machinery and transportation equipment; machinery, except electrical; electrical machinery, equipment and supplies; transportation equipment; photographic and optical goods; watches and clocks; miscellaneous manufacturing industries.

Interference is defined as a discharge which alone or in conjunction with a discharge or discharges from other sources which:

- (1) Inhibits or disrupts the city's wastewater treatment processes or operations or its sludge processes, use or disposal; and
- (2) Causes a violation of any state, federal, or local requirements placed on the final disposal of the treated effluent or sludge from the city treatment works.

Medical waste is defined as isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes, potentially contaminated laboratory wastes, and dialysis wastes.

Meter is a device designed to measure the flow/consumption of water delivered to a user (see "standard meter" and "non-standard meter").

Non-household use means all other uses, including but not limited to, commercial, industrial, irrigation, and agricultural uses.

Non-standard meter is a meter approved for use by the city which does not communicate electronically with the city and is required to be read manually to record flow/consumption. A standard meter may be converted to a non-standard meter by disconnecting and removing the meter interface unit (MIU).

Normal domestic wastewater shall mean waterborne wastes normally discharging from the sanitary conveniences of buildings (including apartments, houses and hotels), office buildings, factories and institutions, free from storm surface water and industrial wastes. Normal domestic wastewater shall mean "normal" for the city.

Pass through is defined as a discharge which exits the POTW into the receiving stream in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the city's discharge permit, including an increase in the magnitude or duration of a violation.

Person is defined as any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity; or their legal

representatives, agents, or assigns. This definition includes all federal, state, and local governmental entities.

pH shall mean the logarithm (base 10) of the reciprocal of the hydrogen ion concentration of a solution.

Pollutant shall include, but not be limited to, the following: dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, medical wastes, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, municipal, agricultural and industrial wastes, and certain characteristics of wastewater (e.g., pH, temperature, suspended solids, settleable solids, turbidity, color, BOD, COD, toxicity, or color).

Potable water is water treated within the city's system to standards acceptable for human consumption.

POTW (publicly owned treatment works). A "treatment works" as defined by section 212 of the Clean Water Act (33 U.S.C. § 1292) which is owned by the city. This definition includes any devices or systems used in the collection, storage, treatment, recycling, and reclamation of sewage or industrial wastes of a liquid nature and any conveyances which convey wastewater to a treatment plant.

Pretreatment is defined as the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into the city's wastewater facility.

Public sewer shall mean a sewer in which all owners of abutting properties shall have equal rights, and is controlled by public authority.

Reclaimed water is wastewater treated to standards acceptable for reuse under the New Mexico Environmental Department (NMED) discharge permit.

Sanitary sewer shall mean the public sewer portion of a wastewater facility which transports wastewater and to which storm, surface and ground water are not intentionally admitted.

Settleable solids means those solids which settle during a preselected period of time as expressed in milliliters per liter of sample.

Septage means the liquid removed from domestic septic tanks composed of sanitary and household liquid wastes.

Septage hauler is defined as the person or business engaged in the service of pumping domestic septic tanks and trucking the collection septage to the city's wastewater treatment works.

Sewage is defined as human excrement and gray water (household showers, dishwashing operations, etc.)

Smart meter. See "Standard meter."

Standard meter is a meter approved by the city which reads and records flow/consumption on a programmed interval and communicates that information electronically to the city for billing and management purposes.

Spa. See "swimming pool."

Storm sewer shall mean a sewer which carries storm water.

Storm water is defined as any flow occurring during or following any form of natural precipitation, and resulting from such precipitation, including snowmelt.

Swimming pool is any structure, including spas and hot tubs more than twenty-four (24) inches in depth and containing more than five hundred (500) gallons of water and intended primarily for recreational use.

Trap is a device for retaining sand, silt, grit mineral material, petroleum solvent, grease or oil by gravity-differential separation from wastewater and of a design and capacity approved by the city.

Treated water. See "potable water."

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

User is defined as any person who has a building sewer connected to the city's sanitary sewer, or contributes, causes or permits the contribution of wastewater into the city's POTW, including those who discharge hauled wastes to the POTW.

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

Wastewater facilities shall mean the structures, equipment and processes required to collect, transport and treat domestic industrial wastes and dispose of the effluent.

Wastewater treatment works shall mean an arrangement of devices and structures for treating wastewater, industrial wastes and sludge. Sometimes used as synonymous with waste treatment plant or wastewater treatment plant.

Water user is defined any person who has a meter connected to the city water system.

(Code 1960, § 8-9-2; Ord. No. 477, 5-2-72; Ord. No. 964, § 3, 11-14-95; Ord. No. 1168, § 1, 12-19-02; Ord. No. 1169, § 5, 2-11-03; Ord. No. 1199, § 1, 4-13-04; Ord. No. 1208, § 1, 4-13-04; Ord. No. [1506](#), § 1, 12-15-15)

Cross reference— Rules of construction and definitions generally, § 1-01-020.

ARTICLE 28-02. - SEWERS AND SEWAGE DISPOSAL^[2]

Footnotes:

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Cross reference— Sanitary facilities in trailer courts, § 25-02-070.

28-02-010. - Connections required—Generally.

Any person whose building is on a lot or land adjoining a street in which a sewage collection system exists and which building is within one hundred fifty (150) feet of a sanitary sewer main shall be required to connect his building to the sewage collection system. Failure to connect to the system shall be deemed a misdemeanor.

(Code 1960, § 8-8-2)

28-02-020. - Use of private facilities restricted—Generally.

No privies, cesspools or septic tanks shall be constructed or permitted within the area which is served by sanitary sewer facilities. Upon failure of a property owner to comply with the provisions hereof, written notice by the plumbing inspector shall be given demanding that connection with such sewer be made within thirty (30) days from date of such notice. Upon failure to comply with such notice, then and in that event the city shall have the power and the authority to make such connection, the cost and expense of which shall be a lien against any such property. The sewer connection fee as established by the city commission, for

each and every connection made within the sewer district of the city shall be paid in advance before a permit for such connection shall be issued.

(Code 1960, § 4-2-14)

State Law reference— Authority to adopt rules regulating connections, NMSA § 3-26-3B.

28-02-030. - Permit—Required—Connections.

Before any connection shall be made with the city sewers a permit shall be obtained from the plumbing inspector.

(Code 1960, § 8-4-1)

Cross reference— Licenses and miscellaneous business regulations, Ch. 17.

28-02-040. - Same—Application—Connections.

When application for a permit to connect with the city sewers is made, the person so making such application shall file with the city manager plans, drawings, specifications or descriptions of the proposed work, and if the same shall meet with the approval of the plumbing inspector, a permit for such construction shall be issued.

(Code 1960, § 8-4-2)

28-02-050. - Supervision by licensed plumber—Connections.

No connections to city sewers shall be made either directly or indirectly, except by or under the supervision of a licensed plumber.

(Code 1960, § 8-4-3)

28-02-060. - Inspection; fee—Connections.

- (a) The plumbing inspector or his duly authorized assistant must be notified when the work of a sewer connection is completed and ready for his inspection. All work must be left uncovered and convenient for examination until inspected and approved by the plumbing inspector or his duly authorized assistant.
- (b) For each such inspection made by the plumbing inspector, he shall be entitled to charge a fee of two dollars (\$2.00). The plumbing inspector shall be the judge of the total number of inspections necessary to be made.

(Code 1960, § 8-4-4)

28-02-070. - Charges—Connections.

The sewer connection charges shall be set by city commission from time to time and be payable to the city before such connection is granted.

(Code 1960, § 8-4-5; Ord. No. [1506](#), § 2, 12-15-15)

28-02-080. - Public buildings—Connections.

- (a) No public service building, hotel, school, public school, laundry or other kind of public service establishment shall be permitted to connect with the public sewers except at a manhole. If no standard manhole is available the construction and installation of a manhole necessary to such installation at a point to be designated by the city manager shall be charged to and paid for by the applicant and such sewer connection line shall open into such manhole.
- (b) The city manager or designee shall take notice of the provisions of this section and the same shall be strictly enforced, unless the city manager shall certify that some other method of making such connection will satisfy all public requirements.

(Code 1960, § 8-4-6; Ord. No. [1506](#), § 3, 12-15-15)

28-02-090. - Maintenance and repair of service lines—Connections.

A property owner is responsible for the maintenance and repair of service lines connecting his building to the sewage collection system including taps, saddles and wyes. A property owner is also responsible for any damage to public property resulting from the failure of such service lines, such failure including, but not limited to, leaks or collapses. Upon failure of a property owner to comply with the provisions hereof, written notice by the building inspector shall be given demanding that maintenance or repair be made within thirty (30) days from the date of such notice. Upon failure to comply with such notice, then and in that event, the city shall have the power and the authority to maintain or repair, the cost and expense of which shall be lien against any such property.

(Ord. No. 817, § 1, 5-14-91)

State Law reference— Authority to levy service charges. NMSA § 3-26-2A.

28-02-100. - Service charge—Charges.

The city shall charge and collect from all users of the sanitary sewage system, for the use thereof, a monthly service charge. Said charge is composed of two (2) components: a customer charge, and a commodity charge, both of which are calculated in the manner specified below:

- (1) Effective the first billing cycle as noted below:

- a. Customer charges: For each property to which sewer service is available from the city, the monthly customer charge shall be as follows:

Effective July 1, 2014:

Meter Size (inches)	Customer Charge
<1	\$ 13.60
1	19.15

1½	25.50
2	47.20
3	161.70
4	209.50
6	320.25

Effective July 1, 2015:

Meter Size (inches)	Customer Charge
<1	\$ 13.60
1	19.15
1½	25.50
2	47.20
3	161.70
4	209.50
6	320.25

- b. Commodity charge: Effective the first billing cycle after July 1, 2014, the commodity charge shall be one dollar and fifteen cents (\$1.15) for each one hundred (100) cubic feet of water used per month as follows: Effective the first billing cycle after July 1, 2015, the commodity charge shall be one dollar and fifteen cents (\$1.15) for each one hundred (100) cubic feet of water used per month as follows:
 1. For residential and multi-unit dwellings with not more than four (4) units, the monthly usage will be calculated by taking the average use during the two (2) consecutive billing cycles between November 15 and February 15 times nine-tenths (0.90). This average will be applied for the following twelve (12) months and will be adjusted annually based upon the actual usage in the preceding year.

2. For all other types of users, the monthly charge shall be calculated by taking the amount of water used in each month times nine-tenths (0.90).
 3. Water accounts which are used exclusively for irrigation purposes shall not be charged any fee under this section.
 4. The city manager may, upon being presented proof that nine-tenths (0.90) of the water consumed by a business does not enter the sanitary sewer system, nor being deposited upon any public property, enter into an agreement with that party to reduce the monthly charge below nine-tenths (0.90) of the water. Such agreements must be approved by the staff before becoming effective.
- c. Septage charge: Users of the city sanitary sewer system who introduce hauled wastes (as defined by section 28-02-140) into the city system shall pay a charge of twenty cents (\$0.20) per gallon of hauled wastes dumped. Said charges shall be payable monthly.
- (2) Users outside the city limits: For all users of the city sanitary sewer system who are located outside the city limits, the rate shall be two (2) times the rates specified above.

Thereafter, on February 1 of each year, the charge/rate shall be increased by the percentage change in the Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. city average for the month of June (Index base period: December 1996=100), unless said charge/rate is modified by subsequent resolution.

The city manager shall review the above rates annually and make recommendations for any changes to the city commission in conjunction with the submission of the annual budget. Any changes shall be implemented by a duly approved ordinance setting forth the amended rates.

(Code 1960, § 9-9-7; Ord. No. 594, § 1, 8-21-79; Ord. No. 598, § 2, 12-1-79; Ord. No. 615-80, § 1, 11-11-80; Ord. No. 649-82, § 12-14-82; Ord. No. 654, 6-14-83; Ord. No. 913, 6-14-94; Ord. No. 939, 3-13-95; Ord. No. 964, § 1, 11-14-95; Ord. No. 1010, 4-8-97; Ord. No. 1034, 6-9-98; Ord. No. 1059, § 1, 4-13-99; Ord. No. 1089, § 1, 4-11-00; Ord. No. 1107, 11-14-00; Ord. No. 1130, 12-11-01; Ord. No. 1168, § 2, 12-19-02; Ord. No. 1199, § 2, 4-13-04; Ord. No. 1224, § 1, 11-23-04; Ord. No. 1288, § 1, 1-9-07; Ord. No. 1348, § 1, 12-16-08; Ord. No. 1392, § 1, 1-11-11; Ord. No. 1431, § 1, 1-22-13; Ord. No. 1459, § 1, 1-14-14; Ord. No. 1467, § 1, 6-10-14; Ord. No. [1506](#), § 4, 12-15-15)

28-02-105. - Reclaimed water—Charges.

- (a) Any party wishing to receive reclaimed water from the city shall establish an account and apply for a meter as required by the water billing division.
- (b) Beginning with the first billing cycle after July 1, 2004, there shall be an increase in the charge of twenty-five cents (\$0.25) to fifty cents (\$0.50) for each one hundred cubic feet of reclaimed water used.
- (c) Beginning with the first billing cycle after February 1, 2009, there shall be a charge of one dollar twenty cents (\$1.20) for each one hundred cubic feet of reclaimed water used.
- (d) Users of ancillary services for reclaimed water shall pay the fees charged for those services in Section 28-03-085.

(Ord. No. 1132, 12-11-01; Ord. No. 1168, § 6, 12-19-02; Ord. No. 1199, § 5, 4-13-04; Ord. No. 1348, § 3, 12-16-08)

28-02-110. - Billing—Charges.

Billing for sewer service charges shall be done in conjunction with billing for water charges. Methods of billing and collection for delinquent accounts shall be as provided in section 28-03-060.

(Code 1960, § 8-5-2; Ord. No. 420, 7-23-68; Ord. No. 674, § 3, 4-24-84)

28-02-120. Lien - provided—Charges.

The city shall have a lien on each lot or parcel of land to which the city has provided water and sewer utility service for charges made for services furnished by such system. Notices of such lien shall be filed and such liens shall be enforced as provided by law.

(Code 1960, § 8-5-3; Ord. No. [1506](#), § 5, 12-15-15)

28-02-130. - Purpose and policy.

This ordinance sets forth uniform requirements for users of the Publicly Owned Treatment Works (POTW) for the City of Alamogordo, New Mexico, and enables the city to comply with all applicable state and federal laws, including the Clean Water Act (33 USC 1251 et seq.). The objectives of this ordinance are:

- a. To prevent the introduction of pollutants into the POTW that will interfere with the operation of the POTW;
- b. To prevent the introduction of pollutants into the POTW which will pass through the POTW, inadequately treated, into receiving waters or otherwise be incompatible with the POTW;
- c. To ensure that the quality of the wastewater treatment plant sludge is maintained at a level which allows its use and disposal in compliance with applicable statutes and regulations;
- d. To protect POTW personnel who may be affected by wastewater and sludge in the course of their employment and to protect the general public;
- e. To improve the opportunity to recycle and reclaim wastewater and sludge from the POTW;

This ordinance shall apply to all users of the POTW. The ordinance authorizes the issuance of wastewater discharge permits; authorizes monitoring, compliance, and enforcement activities; establishes administrative review procedures; requires user reporting; and provides for the setting of fees for the equitable distribution of costs resulting from the program established herein.

(Code 1960, § 8-9-1; Ord. No. 477, 5-2-72; Ord. No. 964, § 2, 11-14-95)

28-02-140. - Reserved.

Editor's note— Ord. No. 1168, § 1, adopted Dec. 19, 2002, renumbered existing section 28-02-140 as new section 28-01-010.

28-02-150. - Prohibited discharges to sanitary sewer.

No person shall discharge or cause to be discharged any storm water, surface water, groundwater, roof runoff, subsurface drainage, uncontaminated cooling water or unpolluted industrial process waters to any sanitary sewer, unless authorized by the city.

(Code 1960, § 8-9-3; Ord. No. 477, 5-2-72; Ord. No. 964, § 4, 11-14-95)

28-02-160. - Discharges to storm sewers.

Storm water and all other unpolluted drainage shall be discharged to such sewers as are specifically designated as storm sewers, or to a natural outlet approved by the city commission. Industrial cooling water or unpolluted process waters may be discharged, on approval of the city commission, to a storm sewer or natural outlet.

(Code 1960, § 8-9-4; Ord. No. 477, 5-2-72; Ord. No. 964, § 5, 11-14-95)

28-02-170. - General sewer use requirements.

a. *General prohibitions.*

No user shall introduce or cause to be introduced into the POTW any pollutant or wastewater which causes pass through or interference. These general prohibitions apply to all users of the POTW whether or not they are subject to categorical pretreatment standards or any other national, state, or local pretreatment standards or requirements.

b. *Specific prohibitions.*

No user shall introduce or cause to be introduced into the POTW the following pollutants, substances, or wastewater:

1. Pollutants which create a fire or explosive hazard in the POTW, including, but not limited to, wastestreams with a closed-cup flashpoint of less than 140°F (60°C) using the test methods specified in 40 CFR 261.21;
2. Wastewater having a pH less than 5.5 or more than 9.5, or otherwise causing corrosive structural damage to the POTW or equipment;
3. Solid or viscous substances in amounts which will cause obstruction of the flow in the POTW resulting in interference but in no case solids greater than one-half (½) inch in any dimension;
4. Pollutants, including oxygen-demanding pollutants (BOD, etc.), released in a discharge at a flow rate and/or pollutant concentration which, either singly or by interaction with other pollutants, will cause interference with the POTW;

(Code 1960, § 8-9-5; Ord. No. 477, 5-2-72; Ord. No. 491, 2-13-73; Ord. No. 964, §6, 11-14-95)

28-02-180. - Discharge of certain harmful wastes restricted—Industrial wastes.

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

- (a) Any liquid or vapor having a temperature higher than one hundred fifty (150) degrees Fahrenheit or sixty-five (65) degrees Celsius.
- (b) Any water or waste containing fats, grease, wax or oils, whether emulsified or not, in excess of one hundred (100) mg/l or containing substances which may solidify or become viscous at temperatures between thirty-two (32) degrees Fahrenheit and one hundred fifty (150) degrees Fahrenheit or zero (0) Celsius to sixty-five (65) degrees Celsius.

- (c) Any garbage that has not been properly shredded. The installation and operation of any garbage grinder larger than those normally manufactured and sold for residential and noncommercial use will not be installed without specific review and approval by the city commission.
- (d) Any waters or wastes containing strong acid, iron pickling wastes, or concentrated plating solutions, unless completely neutralized and approved by the city commission for discharge.
- (e) Any waters or wastes containing reducing substances of an organic or inorganic nature, toxic or nontoxic, which exert an immediate chlorine demand, if discharge of such agents will prevent the achievement of an adequate chlorine residual in the effluent of the wastewater treatment works.
- (f) Any waters or wastes containing phenols or other taste or odor producing substances, in concentrations exceeding limits established by the city commission, after treatment of the composite sewage, to meet the requirements of the state, federal or other public agencies of jurisdiction for such discharge to the receiving waters.
- (g) Any radioactive wastes or isotopes of such half-life or concentrations as may exceed limits established by the city commission, in compliance with applicable state and federal regulations.
- (h) Any waters or waste having a pH in excess of 9.5.
- (i) Materials which exert or cause:
 - (1) Unusual concentrations of inert suspended solids (such as, but not limited to, Fullers earth, lime residues) or of dissolved solids (such as, but not limited to, sodium chloride and sodium sulfate).
 - (2) Excessive discoloration (such as, but not limited to, dye wastes and vegetable tanning solutions).
 - (3) Unusual chemical oxygen demand, or biochemical oxygen demand, or chlorine requirements in such quantities as to constitute a significant load on the wastewater treatment works.
 - (4) Slugs or shocks constituting an unusual volume of flow or concentration of wastes which will disturb the normal functioning of the wastewater facility.
- (j) Waters or wastes containing substances which are not amenable to treatment or reduction by the wastewater treatment works employed, or amenable to treatment only to such degree that the effluent cannot meet the requirements of agencies having jurisdiction over discharge to the receiving waters.

(Code 1960, § 8-9-6; Ord. No. 477, 5-2-72)

28-02-190. - City commission's authority re discharge of harmful wastes—Industrial wastes.

- (a) If any waters or wastes are discharged, or are proposed to be discharged to the public sewers, which waters contain substances or possess the characteristics enumerated in section 28-02-180 of this article, and which, in the judgment of the city commission, may have a deleterious effect upon the wastewater facilities, or receiving waters, or which otherwise create a hazard to life or constitute a public nuisance, the city commission may:
 - (1) Reject the wastes,
 - (2) Require pretreatment to an acceptable condition for discharge to the public sewers, or
 - (3) Require control over the quantities and rates of discharge.
- (b) If the city commission permits the pretreatment or equalization of waste flows, the design and installation of the plants and equipment shall be subject to the review and approval of the city commission and the state and subject to the requirements of all applicable codes, ordinances and laws.

(Code 1960, § 8-9-7; Ord. No. 477, 5-2-72)

28-02-200. - Testing—Industrial wastes.

Testing of an industrial waste will be performed at least twice a year or whenever found necessary by the city commission. The person discharging the waste shall be liable for payment of all costs arising from the testing of the industrial waste.

(Code 1960, § 8-9-8; Ord. No. 477, 5-2-72)

28-02-210. - Traps—Industrial wastes.

Grease, oil and sand traps shall be provided when, in the opinion of the city commission, they are necessary for the proper handling of liquid wastes containing grease in excessive amounts, or any flammable wastes, sand or other harmful ingredients; except that such traps shall not be required for private living quarters or dwelling units. All traps shall be of a type and capacity approved by the city commission, and shall be located so as to be readily and easily accessible for cleaning and inspection. Grease and oil traps shall be installed in all new filling stations, garages, restaurants and other new facilities wherein heavy discharge of grease and oil is to be expected.

(Code 1960, § 8-9-9; Ord. No. 477, 5-2-72)

28-02-220. - Maintenance of preliminary treatment facilities—Industrial wastes.

Where preliminary treatment or flow-equalizing facilities are provided for any industrial liquid wastes, they shall be maintained continuously in satisfactory and effective operation by the owner at his own expense.

(Code 1960, § 8-9-10; Ord. No. 477, 5-2-72)

28-02-230. - Control manholes—Industrial wastes.

- (a) When required by the city commission, the owner of any property serviced by a building sewer carrying industrial liquid wastes shall install a suitable control manhole together with such necessary meters and other appurtenances in the building sewer to facilitate observation, sampling and measurement of the wastes.
- (b) Such manhole, when required, shall be accessibly and safely located, constructed in such a manner as to prevent infiltration of ground and surface waters, and should be constructed in accordance with plans approved by the city commission. The manhole shall be installed by the owner at his expense, and shall be maintained by him so as to be safe and accessible at all times.

(Code 1960, § 8-9-11; Ord. No. 477, 5-2-72)

28-02-240. - Compliance with standards—Industrial wastes.

All measurements, tests and analyses of the characteristics of waters and wastes shall be determined in accordance with the latest edition of "Standard Methods for the Examination of Water and Wastewater," published jointly by the American Public Health Association and American Water Works Association and the Water Pollution Control Federation, and shall be determined at the control manhole provided, or upon suitable samples taken at such control manhole. The control manhole provided shall be located so that sampling of the industrial waste will be performed before discharge into the public sewer system. Sampling

shall be carried out by customarily accepted methods to reflect the effect of constituents upon the wastewater treatment works and to determine the existence of hazards to life, limb and property. (The particular analyses involved will determine whether a twenty-four-hour composite of all outfalls of a premise is appropriate or whether a grab sample or samples should be taken. Normally, but not always, COD, BOD and settleable solids analyses are obtained from twenty-four-hour composites of all outfalls whereas pH's are determined from periodic grab samples.)

(Code 1960, § 8-9-12; Ord. No. 477, 5-2-72)

28-02-250. - Cost recovery—Rate schedule—Industrial wastes.

The city commission shall take necessary steps to establish a rate schedule for sewer service that assures an equitable system of cost recovery. The purpose hereof is that the industrial users shall pay for the costs incurred by the city commission in the construction, operation and maintenance of that portion of the wastewater facilities related to industrial wastes.

(Code 1960, § 8-9-13; Ord. No. 477, 5-2-72)

28-02-260. - Same—System conditions—Industrial wastes.

The cost recovery system shall satisfy the following conditions:

- (a) The apportionment of costs must take into consideration the individual industrial user's contribution as related to the total waste load, taking into account the volume and strength of all discharges.
- (b) The costs to be considered should include, but are not limited to:
 - (1) Amortization of the applicant's indebtedness for the cost of the treatment facilities (plant and interceptors).
 - (2) Operation and maintenance of the treatment facilities.
 - (3) Any additional costs which are necessary to assure adequate treatment on a continuous basis.
- (c) Substantial prepayment of the capital investment or other financial commitments will be required from each industry that contributes thirty (30) percent or more of the total volume or strength of the waste load to be treated by the project.

(Code 1960, § 8-9-14; Ord. No. 477, 5-2-72)

28-02-270. - Same—Assessment of charges—Industrial wastes.

A charge will be assessed against persons discharging industrial liquid wastes which are of a greater strength and volume than normal, untreated domestic wastewater. Normal, untreated domestic wastewater is defined as having a maximum yearly average biochemical oxygen demand and chemical oxygen demand not in excess of two hundred (200) milligrams per liter and four hundred (400) milligrams per liter, respectively. The same sewage is considered to contain settleable solids not in excess of five (5.0) milliliters per liter. The annual industrial charge will be the largest volume which results from application of the following mathematical relationships:

IC+A+(K)(V)1+	$\frac{a(SS - 5)}{5}$	+	$\frac{b(BOD - 200)}{200}$
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or

$IC + A + (K)(V)1 +$	$\frac{a(SS - 5)}{5}$	+	$\frac{b(BOD - 200)}{400}$
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Where:

IC = Industrial charge, dollars per year

V = Volume discharge, gallons per year

SS = Settleable solids of a given industrial waste, ml/l

a = 0.35 that percentage of the total cost which is attributable to settleable solids removal

b = 0.65 that percentage of the total cost which is attributable to either chemical oxygen demand removal or biochemical oxygen demand removal

A = Basic annual charge levied for being connected; whether or not sewage or other wastewaters are being discharged to the system, shall be sixty dollars (\$60.00) per year

K = Annual charge per unit volume of waste, six hundred eighty dollars (\$680.00) per million gallons

COD = Chemical oxygen demand of a waste, mg/l

BOD = Biochemical oxygen demand of a waste, mg/l

If settleable solids concentration is less than 5 ml/l, chemical oxygen demand is less than 400 mg/l, and biochemical oxygen demand is less than 200 mg/l, the charge shall be based on volume alone, and the following formula shall apply:

$$IC = A + (K)(V)$$

where the terms are as defined above.

(Code 1960, § 8-9-15; Ord. No. 477, 5-2-72)

28-02-280. - Annual report—Industrial wastes.

The department of public works shall furnish to the city commission an annual report of the operating expenses incurred in wastewater treatment and the city commission may, if necessary, adjust the annual industrial charge to reflect any increase or decrease in wastewater treatment cost based on the operating experiences of the previous year.

(Code 1960, § 8-9-16; Ord. No. 477, 5-2-72)

ARTICLE 28-03. - WATER

28-03-005 - Availability of water and sewer service

- (a) Every property within the municipal boundaries shall be deemed to have water and sewer utility service available if service lines exist from the city water and sewer mains to the property and such properties shall be subject to customer charges and capital improvement charges as set by city commission for the respective services.
- (1) New lots within subdivisions (as that term is defined in chapter 22 of the city Code of Ordinances) which have never been sold or otherwise transferred and which remain the property of the original developer shall be exempt from the customer charge and capital improvement charges for a period of three (3) years from the date of acceptance of the subdivision by the city.
 - (2) Vacant subdivision lots owned by the original developer as of the date of the passage of this ordinance (28-03-05) shall be exempt from customer charges and capital improvement charges for a period of two (2) years.
 - (3) An application for water meter submitted by any person(s) for lots exempted through this article shall void any and all exemptions and the property owner shall immediately be responsible for all customer charges, capital improvement charges and consumption charges approved by the city commission.

(Ord. No. [1506](#), § 6, 12-15-15)

28-03-010. - Water supply protection.

The city manager shall make such rules and regulations in furtherance of the purposes of this article and not inconsistent with the specific provisions of this article, for the installation, repair or alteration of air conditioning systems, water treatment equipment and water operated devices may be deemed necessary to properly protect the water supply system.

(Code 1960, § 4-2-11; Ord. No. [1506](#), § 7, 12-15-15)

28-03-020. - Application for water use.

No water shall be taken or used from the city water system, except by permission of the city commission through its duly authorized officers and agents.

(Code 1960, § 9-9-1)

28-03-030. - Rules and regulations.

The city commission shall from time to time make reasonable rules and regulations governing the distribution and use of the waters belonging to the city for either irrigation or domestic purposes. Any person taking or using such waters, for either irrigation or domestic purposes, in violation of any of the rules so made and established by the city commission shall be deemed guilty of a misdemeanor.

(Code 1960, § 9-9-2)

28-03-033. - Water conservation.

The flow of treated water from property into streets, alleys, gutters, and other public rights-of-way, ditches, or into a storm water drainage system or facility is contrary to the public health, safety and welfare of the citizens of the city and is therefore declared to be a nuisance. "Treated water" shall have the same

meaning as set forth in section 28-01-010 of the City Code. The city attorney is authorized to take legal action to abate such a nuisance, including but not limited to injunctive relief. This authorization to seek injunctive relief or other legal action to abate such a nuisance shall not preclude prosecution for a violation of this chapter.

The following water conservation measures shall be in effect at the times specified. No person, firm or corporation shall use any water in violation of any provision of this section.

- (a) The following water conservation measures shall be in effect for all users on the city water works system during the period of 12:00 midnight, May 1 through 12:00 midnight November 1.
 - (1) Outdoor use of water through a sprinkler system or use of water through a hose to water any grass, trees, plants or other vegetation shall be determined as follows.
 - a. Users with odd numbered addresses shall be permitted to use water in the above manner on each Wednesday, Friday and Sunday.
 - b. Users with even numbered addresses shall be permitted to use water in the above manner on each Tuesday, Thursday and Saturday.
 - c. Watering in the above manner shall be prohibited on each Monday.
 - d. In case of corner buildings having both odd and even numbers, the number carried on the books of the city's utilities department shall control.
 - (2) The conservation measures detailed in paragraph (1) above shall be in effect during the period of 12:00 midnight, May 1 through 12:00 midnight, November 1 and shall apply to all residences and to all businesses and institutions having grass, trees, plants or other vegetation and shall be followed at all parks and public buildings which are watered with treated water. Areas watered using reclaimed water or private wells are exempted from these restrictions. These conservation measures shall not apply to any person, firm or corporation engaged in the business of growing or selling plants of any kind.
 - (3) Beginning with the implementation of conservation measures on 12:00 midnight, May 1 through 12:00 midnight, November 1, outdoor watering of grass, trees, plants or other vegetation shall be prohibited between the hours of 9 a.m. and 6 p.m.
 - (4) Treated water may only be used for cleaning buildings, decks, sidewalks, driveways or other impervious surface areas during the days and times that outdoor watering of grass, trees, plants and other vegetation is allowed. However, treated water may be used to clean sidewalks, driveways or other paved areas should it be necessary to clean nonrecurring spills that could pose a hazard to the health and safety of the citizens of the city. A special permit may be issued by the city manager for washing down of impervious surfaces outside of normal watering hours.
 - (5) The provisions of this section taking place between 12:00 midnight, May 1 through 12:00 midnight, November 1 may be implemented at other times of the year by the city manager upon determination that conditions surrounding the city's water supply warrant the imposition of such conservation measures. Should the city manager implement conservation measures at a time other than between 12:00 midnight, May 1 through 12:00 midnight, November 1 when conservation measures are not in effect, the commission will consider such implementation at its next regular meeting and either ratify the city manager's actions or remove the conservation measures.
- (b) New homes shall have a grassed area not greater than fifteen (15) percent of the lot size. The square footage of any swimming pool installed on the lot is included in the fifteen percent to determine the maximum grassed area.
- (c) No new decorative outdoor fountains that use treated water will be permitted to be constructed or utilized.

- (d) Effective immediately hotels or motels or other establishments providing accommodations to overnight guests shall not change linens and towels daily for guests staying for more than one night unless specifically requested to do so by the guest.
- (e) Restaurants shall provide drinking water to customers only upon request.
- (f) All swimming pools, which are constructed after the effective date of Ordinance No. 948 must be equipped with filtration, pumping and recirculation systems.
- (g) Impervious pool covers are required on all pools and must be in place when the swimming pool is not in use. No water shall be drained from pools into the streets or alleys of the city.
- (h) Turf grass is prohibited in all parkways, narrow strips of land and sloped areas within the new residential or commercial sites for which a building permit is issued, unless irrigated with subsurface irrigation or non-treated water. For purposes of this section, "sloped areas" means an area with a slope ration of one (1) to three (3) or greater from the horizontal. "Subsurface irrigation" means a low pressure irrigation system installed below the surface of the ground or mulch, consisting of a water distribution system equipped with pre-installed water emitters that are rated by gallons per hour, and that is suitable for turf grass irrigation.

(Ord. No. 948, § 1, 6-13-95; Ord. No. 1008, 4-8-97; Ord. No. 1056, 3-23-99; Ord. No. 1087, 6-13-00; Ord. No. 1169, § 1, 2-11-03; Ord. No. 1397, 4-26-11)

28-03-034. - Nonessential water use restrictions.

- (a) The following restrictions shall apply to all customers of or persons who use or receive treated water from the city: The use of a free-flowing hose to wash any vehicle is prohibited. Vehicles may be washed only from a hand-held bucket or a hand-held hose equipped with a positive shutoff nozzle for quick rinses. This prohibition also includes the operation of vehicle washes such as fund-raisers held at commercial businesses. Mechanical commercial car washes are permitted.
- (b) "Wasting water" is prohibited. The following practices are wasting water:
 - (1) Using treated water for any purpose in such a way that it flows, sprays, or is otherwise excessively discharged upon any street, alley or other public right-of-way, ditch or drain;
 - (2) Failure to repair a leak, break, or malfunction within the water customer's plumbing or distribution system which results in excess use, loss or escape of water through the leak, break, or malfunction for any period of time beyond which such a leak, break, or malfunction should reasonably have been repaired or corrected.
 - (3) The director of utilities may issue a written warning to anyone who violates sections (b)(1) or (b)(2). If a customer or person who uses or receives treated water from the city does not correct the violation within seven (7) calendar days of notification, or such other time as specified by the director, the city may disconnect water service. Any customer or person whose service is disconnected may appeal the decision in writing to the city commission. The written appeal request shall set forth in detail (1) the specific relief requested, and (2) the reason(s) that the customer or other person believes that the determination to disconnect made by the director was arbitrary or capricious. The city commission shall consider such appeal at its next regularly scheduled commission meeting.
- (c) New or replacement bleeder lines from evaporative coolers shall not be larger than one-eighth-inch inside diameter. Bleeder lines shall not be routed into the sewer system when the discharge can be used to water landscaping or other outdoor vegetation, except where an exception has been granted by the city manager.

(Ord. No. 948, § 2, 6-13-95; Ord. No. 1169, § 2, 2-11-03; Ord. No. 1428, § 2, 12-18-12)

28-03-035. - Water rationing.

The following water conservation stages shall be in effect at the times specified. When Stage 1, Stage 2, or Stage 3 water rationing is in effect, no person, firm or corporation shall use any water in violation of any provision of this ordinance. Restrictions contained in each stage will be effective in all subsequent stages unless explicitly or implicitly repealed.

- (1) *Stage 1: Water rationing.* Whenever the estimated demands on the system exceed the estimated supply (storage, well capacity and surface flows) such that it appears that there will be a substantial shortage of water over the next six-month period, a "Water Emergency" will be declared. The city manager shall have the authority to impose Stage 1 water rationing. The city commission shall consider the actions of the city manager at its next meeting at which time the city commission shall approve or disapprove the action taken by the city manager. The following requirements shall be in effect.
 - a. The city manager shall make public announcements, through the print and broadcast media concerning the Stage 1 water rationing, whenever Stage 1 is in effect. The announcement will include a description of the rationing restrictions.
 - b. Use of water through a sprinkler system or use of water through a hose to water any grass, trees, plants or other vegetation shall be determined as follows:
 1. Users with odd numbered addresses shall be permitted to use water in the above manner on each Wednesday and Sunday.
 2. Users with even numbered addresses shall be permitted to use water in the above manner on each Tuesday and Saturday.
 3. Watering in the above manner shall be prohibited between the hours of 8 a.m. and 8 p.m.
 4. Owners of newly seeded or sodded lawns or newly planted trees and shrubs allowed under section 28-03-033(2) shall be required to comply with this section
 - c. These restrictions shall apply to all residences and to all businesses and institutions having lawns, gardens, trees, or shrubs, and shall be followed at all parks and public buildings which are watered with treated water. Areas watered with reclaimed or private well water are exempted from these restrictions. These restrictions shall not apply to any person, firm or corporation engaged in the business of growing or selling plants of any kind.
 - d. Treated water may be used to fill a swimming pool during the time that the homeowner is entitled to water his/her lawn.
 - e. Newly seeded or sodded lawns or newly planted trees or shrubs shall be exempted from Stage 1 water rationing for the time needed to establish the lawn, tree or shrub, provided the vegetation was planted before Stage 1 was imposed and the time needed to establish the lawn, tree or shrub does not exceed thirty (30) days. Said lawns, plants or shrubs must still comply with the Water conservation provisions of section 28-03-033. No lawns shall be newly seeded or sodded or trees or shrubs newly planted.
 1. Anyone who has seeded or sodded a lawn or planted trees or shrubs prior to Stage 1 water rationing shall obtain a permit from the City of Alamogordo for this exemption.
 2. Newly seeded or sodded shall mean an area that visibly lacks vegetation. Watering shall be restricted to an area that covers newly seeded or sodded portions of a lawn without extending unnecessarily to areas with established vegetation.
 - f. No water shall be used for fund-raising car washes.
 - g. Washing building, decks, sidewalks, driveways, parking areas, tennis courts, patios or other impervious surface areas with a hose except in emergencies to remove spills of hazardous

materials or to eliminate dangerous conditions which threaten the public health, safety, or welfare, is prohibited.

(2) *Stage 2 water rationing.* Whenever the estimated demands on the system exceed the estimated supply (storage, well capacity and surface flows) such that it appears that there will be a substantial shortage of water during the next two (2) month period, the city manager shall have the authority to impose Stage 2 water rationing. The following requirements will be in effect:

- a. The city manager will make public announcements through the print and broadcast media that Stage 2 is in effect. The announcements will include a description of the rationing restrictions.
- b. The city commission shall be called into emergency session in accordance with the current open meetings resolution after the imposition of Stage 2 to consider ratifying the city manager's action or to amend or lift the Stage 2 water rationing as circumstances warrant.
- c. Use of water through a sprinkler system or use of water through a hose to water any grass, trees, plants or other vegetation shall be determined as follows:
 1. Users with odd numbered addresses shall be permitted to use water in the above manner on each Friday.
 2. Users with even numbered addresses shall be permitted to use water in the above manner on each Tuesday.
 3. Watering in the above manner shall be prohibited between the hours of 8 a.m. and 8 p.m.
- d. These restrictions shall apply to all residences and to all businesses and institutions having lawns, gardens, trees, or shrubs and shall be followed at all parks and public buildings which are watered with treated water. Areas watered with reclaimed or private well water are exempt from these restrictions.
- e. No water shall be used to wash any vehicle except at places of business where autos are washed on every business day either with attendants, with automatic equipment or by self service.
- f. Surcharges:
 1. For all water used in Tier 2, a surcharge equal to and in addition to the in-city commodity rate for Tier 2.
 2. For all water used in Tier 3, a surcharge equal to and in addition to the in-city commodity rate for Tier 3.
 3. For all water used in Tier 4, a surcharge equal to and in addition to the in-city commodity rate for Tier 4.
 4. For all water used in Tier 5, a surcharge equal to and in addition to the in-city commodity rate for Tier 5.

These surcharges shall be instituted at the earliest possible date and remain in effect until water rationing is no longer required.

(3) *Stage 3 water rationing.* Whenever the estimated demands on the system exceed the estimated supply (storage, well capacity and surface flows) such that it appears that there will be a substantial shortage of water during the next twenty-day period, the city commission finds that the city is in a state of emergency and the following measures are necessary to protect the health and welfare of the citizens. The city manager shall have the authority to impose Stage 3 water rationing. The following requirements will be in effect:

- a. The city manager will make public announcements in the print and broadcast media that Stage 3 water rationing is in effect. The announcements will include a description of the provisions in effect.
 - b. The city commission shall be called into emergency session in accordance with the current open meetings resolution after the imposition of Stage 3 to consider ratifying the city manager's action or amend or lift the Stage 3 water rationing as circumstances warrant.
 - c. Use of treated water through a sprinkler system or use of treated water through a hose to water any grass, trees, plants or other vegetation shall be prohibited.
 - d. All watering of grass, trees, plants or other vegetation at all parks and public buildings owned by the city which are watered using treated water shall be prohibited. Areas watered with reclaimed or private well water are exempt from these restrictions.
 - e. No treated water shall be used to wash any vehicle except at places of business where autos are washed on every business day either with attendants, with automatic equipment or by self service. Such operations shall be limited to ten (10) hours per day, with the owner/operator to publicly post operating hours where visible to the general public.
 - f. No swimming pools will be filled with treated water and no treated water shall be added to any swimming pool. Indoor pools used for medical or rehabilitative purposes shall be exempt from this section. The public pool at the family recreation center shall be exempt from this section.
 - g. It shall be the policy of the city of Alamogordo to keep Stage 3 in effect for no longer than absolutely necessary. The city manager and the city commission shall take steps to lift the Stage 3 restrictions as soon as lifting the restrictions will not endanger the water supply by reducing amounts of water in storage.
- (4) The city manager will make written reports to the city commission at every regular city commission meeting (including emergency sessions called under this section) while water rationing is in effect. The city manager will make weekly written reports to the city commission while Stage 3 water rationing is in effect.

(Ord. No. 919, 7-26-94; Ord. No. 948, § 3, 6-13-95; Ord. No. 1008, 4-8-97; Ord. No. 1169, § 3, 2-11-03; Ord. No. 1175, 3-25-03; Ord. No. 1204, § 1, 6-22-04)

28-03-036. - Exceptions to enforcement.

The following shall constitute exceptions from compliance with the provisions of this chapter:

1. The water is the result of natural events such as rain or snow;
2. The flow is a result of temporary failures or malfunctions of the water supply system;
3. The flow is a result of water used for firefighting purposes including the inspection and pressure testing of fire hydrants or the use of water for firefighting training activities;
4. The use of water is required for the control of dust or the compaction of soil as may be required by the City Code.
5. The water is used to wash down areas where flammable or otherwise hazardous material has been spilled and creates a dangerous condition;
6. The water is used to prevent or abate public health, safety or accident hazards when alternate methods are not available;
7. The water is used for routine inspection or maintenance of the water supply system;
8. The water is used to facilitate construction within public right-of-way in accordance with the requirements of the city and good construction practices;

9. The use of water is permitted under the terms of a permit granted by the City Manager;
10. The water is used for street sweeping, sewer maintenance or other established utility and public works practice;
11. Watering contrary to the even/odd watering requirements under this chapter and from the time of day watering requirements of this chapter may be permissible for one (1) day only where application of chemicals requires immediate watering to preserve an existing lawn. In cases of commercial application, a receipt from a commercial lawn treatment company indicating the date of treatment, the address of the property treated, the name and address of the commercial contractor, and the chemical treatment required shall constitute evidence that the owner or person responsible for the property is entitled to this exception. Where treatment with a noncommercial application of chemicals requires immediate watering to preserve an existing lawn, the owner or person responsible for the property must contact the city manager prior to the application of chemicals and provide evidence satisfactory to the manager for approval of this exception.

(Ord. No. 1169, § 4, 2-11-03)

28-03-037. - City manager's authority to restrict water use.

During periods of unusual circumstances, such as, but not limited to drought or other interruptions to the supply of available water. The city manager may establish restrictions on the outdoor use of water that are more restrictive than established in this article. If the city manager takes such action, the action shall be placed upon the agenda of the city commission not later than the next regularly scheduled meeting of the city commission for approval, amendment, or disapproval. If approved or approved as modified, such approval shall be made by commission resolution specifically setting forth the provisions of the restriction in full and published in a newspaper of general circulation in the city after adoption. The city manager shall take such other steps as seems to him most effective to inform the public.

(Ord. No. 1186, § 2, 10-14-03; Ord. No. 1204, § 2, 6-22-04)

28-03-038. - Fees and penalties for noncompliance.

- (a) Each account holder is responsible for the control and use of water received through the city water meter. Each and every transgression of use of water from this article shall result in a surcharge of:

For the first transgression within any thirty-day period\$25.00

For the second transgression within any thirty-day period50.00

For the third transgression within any thirty-day period75.00

For each additional transgression within any thirty-day period100.00

For a fifth or subsequent noncompliance with this article or a flagrant violation, a public safety officer may elect to proceed under paragraph (d) of this section rather than this paragraph.

- (b) Any account holder receiving a surcharge under this section must pay any and all outstanding current charges on the account and then may request a review of the surcharge. The city manager shall establish a procedure for the review, which will include review by multiple individuals. If the review shows that the transgression was clearly caused by events or circumstances beyond or uncontrollable by the account holder, then the city manager may credit the account for the amount of the surcharge.
- (c) Any code enforcement officer, animal control officer, meter reader or public safety officer who witnesses a transgression of this ordinance will leave notice of the observed transgression at the business or residence where the violation takes place. A duplicate of the notice will be given to the

utility billing division which will send notice of the transgression to the account holder, should the account holder have a different address than the address where the violation is observed.

- (d) Any person, firm, or corporation violating any provision of this section shall be fined not more than five hundred dollars (\$500.00) for each offense, and a separate offense shall be deemed committed on each day during or on which a violation occurs or continues in accordance with the general violation provisions of the Code of Ordinances.

(Ord. No. 1204, § 2, 6-22-04)

28-03-040. - Contamination.

No person shall bathe in or wilfully cast any filth in, or wash any clothes or undergarments, towels or linen in any reservoir or reservoirs, streams, trenches, pipes or drains used in and necessary for the construction, transmission, maintenance or operation of the waterworks system of the city, or in the stream or source from which the water is taken. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor.

(Code 1960, § 9.9-3)

State Law reference— Authority to establish charges, NMSA § 3-27-4A.

28-03-050. - Meter installation required.

No water shall be used from any mains or pipes owned or controlled by the city, without a meter having been previously installed by the city. It shall be unlawful for any person to connect onto any city mains or pipes, or use water from such mains or pipes without having notified the city manager or his agent of such intention, and requesting the installation of a meter.

(Code 1960, § 9-9-4)

28-03-060. - Billing procedure.

- (a) Water bills shall be prepared and posted on a cycle billing system, whereby each water user is billed each thirty (30) days for water provided such user in the preceding thirty-day period.
 - (1) The city manager is authorized to develop and promulgate such policies and procedures to allow for a "budget billing" cycle whereby qualified owner occupied residential water users are billed a fixed monthly charge for customer charge and consumption charge for a defined period.
- (b) Payment is due and payable fifteen (15) calendar days from the billing date, and is considered delinquent if not paid within ten (10) calendar days from the due date. A final cut off notice will be mailed on the twenty-fifth calendar day from the billing date stating services will be disconnected in five (5) calendar days if the bill is not paid in full.
 - (1) For purposes of this section due dates, notice dates and cut off dates falling on a weekend or city observed holiday will automatically be extended to the next city business day.
- (c) If the payment for water, sewer or residential garbage collection fees, or any combined billing, is not made within thirty (30) calendar days from the due date, the water service shall be cut off and shall not again be supplied to the person liable for the payment until the total bill, with interest, penalties and reconnect fee, have been fully paid.

- (d) The cut off/turn on fee for water service shall be established by the city commission. This charge is for the labor of turning off and turning on water service and is exclusive of any city commission approved processing fee for delinquent accounts.
- (e) Any unpaid charge for water, sewer or garbage collection services is a lien upon the property served by such services and is superior to all other liens except general property taxes and those liens given priority equal to that of general property taxes, unless the owner has filed a city notarized form releasing owner of responsibility. This document must be filed with the city utility billing and legal departments at the time the tenant applies for utility services. This form cannot be retroactive. If a property owner files this form, the deposit for the tenant shall be as provided by ordinance.

(Code 1960, § 9-9-5; Ord. No. 514, 5-14-74; Ord. No. 674, § 1, 4-24-84; Ord. No. 913, 6-14-94; Ord. No. 939, 3-13-95; Ord. No. 972, 4-9-96; Ord. No. 1010, 4-19-97; Ord. No. 1027, § 1, 1-13-98; Ord. No. 1034, 6-9-98; Ord. No. 1129, § 1, 12-11-01; Ord. No. [1506](#), § 8, 12-15-15)

28-03-070. - Sales outside city limits.

- (a) *Contracts*: The city manager is hereby authorized on behalf of the city, to enter into such contracts as may be approved by the city commission for the sale of surplus water with property owners whose lands are located outside the city limits, and which property owners desire to receive city water for domestic purposes only; provided, however, that, such sale of surplus waters shall be limited to the area within 100 feet of a potable or non-potable water main. In the event of a water shortage, the water users outside of the city limits shall be the first to have city water services adjusted or terminated as the situation requires, and any contract for the sale of surplus waters shall contain an express provision therefor.
- (b) *Rates*: The landowners who shall enter into the above contract with the city shall be required to pay twice the rates and/or charges of water users for commensurate services when furnished within the city limits, for all necessary labor, materials, appurtenances, water meters, water usage, water tap and any permits which are necessary under the above contract and laws of the city. The payments which may be due hereunder shall be made to the city manager or his agent, prior to the time of installation for the commencing of such work. Notwithstanding the foregoing, the city shall have the right to enter into such contracts as may be approved by the city commission for the sale of surplus water to military users and to nonprofit educational, scientific, charitable, civic and similar organizations who desire water for domestic purposes and whose lands are located outside the city limits, at the same rates and/or charges made for such water services to lands located within the city limits.
- (c) *Availability*: It shall be the duty of the city manager or his agent, to confer with property owners whose lands are located outside the city limits and who wish to make application for usage of surplus water under the terms of contracts herein provided for, and the city manager or his agent shall determine if it is feasible to furnish such persons with surplus water, and if so, he shall receive their applications for water and convey such applications to the city commission along with his recommendations as to the availability of surplus water and as to the feasibility of furnishing such surplus water, if any be available, to the person making application.

(Code 1960, § 9-9-6; Ord. No. 514, 5-14-74; Ord. No. 527, 6-10-75; Ord. No. 872 § 2; Ord. No. 1396, 4-12-11)

28-03-080. - Rates.

The water rates for users of the municipal water supply of the city shall be as follows:

- (1) Effective the first billing cycle as noted below:
 - a. Customer charges: For each residential property to which water is available from the city, the monthly customer charge shall be as follows:

Effective July 1, 2014:

Meter Size (inches)	Customer Charge
<1	\$13.60
1	19.40
1½	29.00

Effective July 1, 2015:

Meter Size (inches)	Customer Charge
<1	\$13.90
1	19.80
1½	29.60

- b. Commodity charge: Effective July 1, 2014, all household users of water shall pay one dollar and forty cents (\$1.40) per one hundred (100) cubic feet of water used per month up to the amounts listed below for the appropriate meter size. Effective July 1, 2015, all household users of water shall pay one dollar and forty-five cents (\$1.45) per one hundred (100) cubic feet of water used per month up to the amounts listed below for the appropriate meter size.

Meter Size (inches)	Tier CF of Water
<1	1,500
1	2,000
1½	3,000

- c. Effective July 1, 2014, any household user exceeding the tier allotment for the user's meter size shall pay two dollars and twenty-five cents (\$2.25) per one hundred (100) cubic feet of water used in excess of the tier allotment up to the following levels: Effective July 1, 2015, any household user exceeding the tier allotment for the user's meter size shall pay two dollars and thirty-five cents (\$2.35) per one hundred (100) cubic feet of water used in excess of the tier allotment up to the following levels:

Meter Size (inches)	Tier CF of Water
<1	3,000
1	4,000
1½	5,000

- d. Effective July 1, 2014, any household user exceeding the level in subsection c., shall pay three dollars and fifty cents (\$3.50) for each one hundred (100) cubic feet of water used up to the following levels: Effective July 1, 2015, any household user exceeding the level in subsection c., shall pay three dollars and sixty-five cents (\$3.65) for each one hundred (100) cubic feet of water used up to the following levels:

Meter Size (inches)	Tier CF of Water
<1	4,000
1	5,000
1½	6,000

- e. Effective July 1, 2014, any household user exceeding the level in subsection d. shall pay five dollars and thirty cents (\$5.30) per one hundred (100) cubic feet of water used up to the following levels: Effective July 1, 2015, any household user exceeding the level in subsection d. shall pay five dollars and thirty cents (\$5.30) per one hundred (100) cubic feet of water used up to the following levels:

Meter Size (inches)	Tier CF of Water
<1	5,000

1	6,000
1½	7,000

- f. Effective July 1, 2014, any household user exceeding the level in subsection e. shall pay seven dollars and ninety-five cents (\$7.95) per one hundred (100) cubic feet of water used for any additional water used. Effective July 1, 2015, any household user exceeding the level in subsection e. shall pay seven dollars and ninety-five cents (\$7.95) per one hundred (100) cubic feet of water used for any additional water used.

The water rates for users of the municipal water supply of the city shall be as follows:

- (2) Effective the first billing cycle as noted below:

- a. Customer charges: For each non-residential property to which water is available from the city the monthly customer charge shall be as follows:

Effective July 1, 2014:

Meter Size (inches)	Customer Charge
<1	\$ 17.00
1	47.00
1½	76.95
2	99.15
3	207.00
4	288.40
6 >	504.30

Effective July 1, 2015:

Meter Size (inches)	Customer Charge
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<1	\$ 17.35
1	47.95
1½	78.50
2	101.15
3	211.15
4	294.20
6 >	514.40

- b. Commodity charge: Effective July 1, 2014, all non-household users of water shall pay one dollar and forty cents (\$1.40) per one hundred (100) cubic feet of water used per month up to the amounts listed below for the appropriate meter size. Effective July 1, 2015, all non-household users of water shall pay one dollar and forty-five cents (\$1.45) per one hundred (100) cubic feet of water used per month up to the amounts listed below for the appropriate meter size.

Meter Size (inches)	Tier CF of Water
<1	1,500
1	4,500
1½	7,500
2	12,000
3	21,000
4	24,000
6	45,000

- c. Effective July 1, 2014, any non-household user exceeding the tier allotment for the user's meter size shall pay two dollars and twenty-five cents (\$2.25) per one hundred (100) cubic feet of water used in excess of the tier allotment up to the following levels: Effective July 1, 2015, any non-household user exceeding the tier allotment for the user's meter size shall pay two dollars and thirty-five cents (\$2.35) per one hundred (100) cubic feet of water used in excess of the tier allotment up to the following levels:

Meter Size (inches)	Tier CF of Water
<1	3,000
1	7,500
1½	12,500
2	20,000
3	35,000
4	40,000
6	75,000

- d. Effective July 1, 2014, any non-household user exceeding the level in subsection c., shall pay three dollars and fifty cents (\$3.50) for each one hundred (100) cubic feet of water used up to the following levels: Effective July 1, 2015, any non-household user exceeding the level in subsection c., shall pay three dollars and sixty-five cents (\$3.65) for each one hundred (100) cubic feet of water used up to the following levels:

Meter Size (inches)	Tier CF of Water
<1	4,000
1	8,500
1½	13,500
2	21,000
3	36,000

4	41,000
6	76,000

- e. Effective July 1, 2014, any non-household user exceeding the level in subsection d. shall pay five dollars and thirty cents (\$5.30) per one hundred (100) cubic feet of water used up to the following levels: Effective July 1, 2015, any non-household user exceeding the level in subsection d. shall pay five dollars and thirty cents (\$5.30) per one hundred (100) cubic feet of water used up to the following levels:

Meter Size (inches)	Tier CF of Water
<1	5,000
1	9,500
1½	14,500
2	22,000
3	37,000
4	42,000
6	77,000

- f. Effective July 1, 2014, any non-household user exceeding the level in subsection e. shall pay seven dollars and ninety-five cents (\$7.95) per one hundred (100) cubic feet of water used for any additional water used. Effective July 1, 2015, any non-household user exceeding the level in subsection e. shall pay seven dollars and ninety-five cents (\$7.95) per one hundred (100) cubic feet of water used for any additional water used.
- (3) Multi-unit residences are those places with more than one (1) dwelling unit, each of which is generally rented to one (1) tenant for more than thirty (30) days at a time (i.e. trailer courts and apartment buildings). Any owner of a multi-unit residence may opt to modify the water rates charged in this section as follows:
- a. Customer charges: After February 1, 2004, the charge will be the same as the charge for a less than one inch customer charge. That charge will then be applied monthly, for each unit in the residence, based on the number of rental units at the residence (total units, rather than

occupied units will be used). Upon reaching an agreement with an owner, the city will verify the number of units available at the residence.

- b. The commodity rate will then be the quantity in the less than one-inch tier times the number of units. Owners of multi-unit residences are required to enter into a written agreement with the city to utilize this method of billing. This election may be made once in each calendar year. Adjustments may only be made in December. Any owner who does not enter a new agreement during December, will remain at the previously chosen rate for the following year.
- (4) Users outside the city limits: For all users of the municipal water supply which are located outside the city limits of the city, the rate shall be two (2) times the monthly customer and commodity charge.

Thereafter, on February 1 of each year, the charge/rate shall be increased by the percentage change in the Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. City Average for the month of June (Index base period: December 1996=100), unless said charge/rate is modified by subsequent resolution.

The city manager shall review the above rates annually and make recommendations for any changes to the city commission in conjunction with the submission of the annual budget. Any changes shall be implemented by a duly approved ordinance setting forth the amended rates.

- (5) **Capital improvement fund**: Effective July 1, 2014, a water capital improvement fund is created for the purpose of funding capital projects relating to the city's water system, specifically, but not limited to rehabilitation, repair, replacement, renovation and creation of water facilities. The water capital improvement fund shall not be used in conjunction with any street maintenance project or similar program. Funding for the water improvement fund shall be through the imposition of a monthly capital improvement surcharge of one dollar (\$1.00) payable by all owners of property to which water service is available. The water capital improvement fund shall be kept and accounted for separately from other funds and used solely for the purposes as set out in this subsection.

(Code 1960, § 9-9-7; Ord. No. 594, § 1, 8-21-79; Ord. No. 598, § 2, 12-1-79; Ord. No. 615-80, § 1, 11-11-80; Ord. No. 649-82, 12-14-82; Ord. No. 654, 6-14-83; Ord. No. 872 § 3; Ord. No. 913, 6-14-94; Ord. No. 939, 3-13-95; Ord. No. 1034, 6-9-98; Ord. No. 1059, § 2, 4-13-99; Ord. No. 1089, § 2, 4-11-00; Ord. No. 1106, 1-9-01; Ord. No. 1129, § 2, 12-11-01; Ord. No. 1153, § 1, 5-28-02; Ord. No. 1168, § 3, 12-19-02; Ord. No. 1199, § 3, 4-13-04; Ord. No. 1224, § 1, 11-23-04; Ord. No. 1288, § 2, 1-9-07; Ord. No. 1348, § 2, 12-16-08; Ord. No. 1392, § 2, 1-11-11; Ord. No. 1395, 4-26-11; Ord. No. 1431, § 2, 1-22-13; Ord. No. 1459, § 2, 1-14-14; Ord. No. 1467, § 2, 6-10-14; Ord. No. [1506](#), § 9, 12-15-15)

28-03-085. - Ancillary charges for nonroutine services.

The following ancillary charges are intended to defray costs of special, non-routine services provided to users of the city water system:

- (1) Late fee per customer if payment for water, sewer or residential garbage collection fees, or any combined billing is more than ten (10) calendar days past due\$10.00
- (2) Service calls (Monday—Friday, 8:00 a.m.—4:30 p.m.)32.00
Service calls during all other times64.00
- (3) **New application or transfer of service25.00**
- (4) Meter installation varies based on actual cost which includes parts mark-up.

- (5) Administrative connection charge (connection charge) will be charged according to the cost of the particular situation.
- (6) Administrative fee for all liens filed200.00
- (7) Processing fee (active delinquent accounts)31.00
- (8) Disconnection fee current water and sewer base rate multiplied by twenty-four (24) as adjusted for meter size.
- (9) Cut off/turn on fee32.00

If the property owner does not wish to pay the monthly minimum customer charge, the property owner will be required to disconnect from the city water system. The city will recognize the property owner as removed, once all work has been completed by the city. The property owner will be required to pay the fee of the current water and sewer customer charge multiplied by twenty-four (24) as adjusted for meter size and all costs associated with disconnection before the work order will be processed. Only the property owner, or his attorney in fact authorized to deal with the property, may order such disconnection.

(Ord. No. 913, 6-14-94; Ord. No. 939, 3-13-95; Ord. No. 972, 4-9-96; Ord. No. 1010, 4-8-97; Ord. No. 1034, 6-9-98; Ord. No. 1059, § 3, 4-13-99; Ord. No. 1095, 6-27-00; Ord. No. 1129, § 3, 12-11-01; Ord. No. 1146, 5-14-02; Ord. No. 1168, § 4, 12-19-02; Ord. No. 1199, § 4, 4-13-04; Ord. No. 1208, § 2, 4-13-04; Ord. No. 1210, 8-24-04; Ord. No. 1348, § 4, 12-16-08; Ord. No. 1351, § 1, 2-23-09; Ord. No. [1506](#), § 10, 12-15-15)

28-03-087. - Abatement of penalties and late fees.

- (a) Any person who incurs a penalty or late fee in the payment of a regularly charged utility bill to the city by reason of activation or deployment in the armed services of the United States may request that the penalty or late fee be waived. Waiver of the fees or penalties is dependent upon the requesting party showing adequate proof of activation or deployment. Any fee or penalty to be waived must have occurred in the billing period immediately preceding the activation or deployment.
- (b) The city manager and finance director may waive a penalty, late fee or interest for extraordinary circumstances provided such circumstances are documented in the customer's account and that no more than one (1) waiver is granted per account in any twelve (12) consecutive billing periods.

(Ord. No. 1127, 11-13-01; Ord. No. [1506](#), § 11, 12-15-15)

28-03-090. - Line tapping and meter setting fees.

For tapping the main water line of the city, extending the line from the main line to the water meter, installing the water meter cover and water meter, and any other materials that are incidental to complete the installation of a water meter, excepting the charge for cutting and replacing pavement, the following fees shall be paid in advance of installation:

- (a) For water meters installed inside the city limits, the user shall pay to the city the cost of the meter and materials, plus the cost of all labor involved in setting and installing its meter, plus all administrative fees incurred by the city.
- (b) For water meters installed outside the city limits, the user shall pay to the city twice the actual cost of the meter and materials, plus twice the cost of all labor involved in setting and installing the meter, plus twice all administrative fees.
- (c) If the pavement is cut to install any water meter, or sewer tap, a fee of three dollars (\$3.00) per square foot shall be added to any other costs, regardless of whether the water meter, or sewer

tap, is installed inside or outside the city limits, to pay for the replacement of such paving. Such installations requiring cutting and replacement of paving shall conform to the following:

- (1) When it is necessary to cut existing asphalt paving, permission shall first be obtained from the public works director or his authorized agent. The cut shall be made in a neat and workmanlike manner. After the cut has been made, work shall progress as rapidly as possible, so that the cut section will not be open any longer than absolutely necessary.
- (2) Cutting of asphaltic paving shall be done in such a manner as to maintain straight, smooth lines the full length of the cut. The edges of the cut shall be vertical, and the cut shall extend through the full depth of the paving to prevent "breakouts" into the paving which is intended to be undisturbed.
- (3) Asphaltic paving shall be cut with a power saw, pneumatic chisel, or by alternate methods if approved by the public works director.
- (4) Before existing pavement is cut, traffic control markers, and street blocks shall be erected to direct the traffic safely around the area of work. Oil burning flares or approved equal shall be lighted and left on the job site during the nighttime hours. Flares shall be sufficient in number and brilliance, and placed in such a way as to adequately warn motorists of the construction location.

(Code 1960, § 9-9-8; Ord. No. 592, § 1, 8-21-79)

28-03-100. - Deposit.

- (a) The following deposits shall be paid by the applicant for water and sewer service at the time of application for service, for the purpose of a guarantee of payment of accounts and damages to service connections or meters:
 - (1) Residential accounts billed to owner\$ 70.00
 - (2) Residential accounts billed to renters140.00
 - a. Residential accounts billed to renters after receipt of owner's notarized release form210.00
 - (3) Commercial/business accounts deposit150.00
 - (4) Hydrant meter deposit815.00
 - (5) Accounts outside city billed to owner70.00
 - (6) Accounts outside city billed to renters140.00
 - a. Accounts outside city billed to renters after receipt of owner's notarized release form210.00
- (b) If the homeowner has established satisfactory credit under rules and regulations established by the city treasurer, the deposit shall be applied to the homeowner's account. The renter's deposit will be held until the account is finaled out. The rules and regulations shall be effective upon approval by the city commission.
- (c) If the customer has established satisfactory credit, the deposit plus final bill charges will be transferred to a new location at the customer's request.

(Code 1960, § 9-9-9; Ord. No. 674, § 2, 4-24-84; Ord. No. 913, 6-14-94; Ord. No. 939, 3-13-95; Ord. No. 972, 4-9-96; Ord. No. 1010, 4-19-97; Ord. No. 1027, § 2, 1-13-98; Ord. No. 1034, 6-9-98; Ord. No. 1095, § 2, 6-27-00; Ord. No. 1129, § 4, 12-11-01; Ord. No. 1168, § 5, 12-19-02; Ord. No. 1199, § 6, 4-13-04; Ord. No. 1348, § 5, 12-16-08)

28-03-110. - No free service.

No free service shall be allowed, and, to the extent that the city or any of its agencies or instrumentalities avail themselves of the service and facilities provided by the water system, they shall pay therefor the rates and charges herein prescribed.

(Code 1960, § 9-9-10)

28-03-120. - Testing of meters.

- (a) Any utility customer who feels that a water meter is not registering accurately may request to have his or her water meter tested. The written request must be submitted to the city's utility billing department and must be accompanied by a testing fee. The testing fee will be established by the utility billing department based on the cost of the current certified laboratory fee for the meter size being tested.
- (b) Upon request, a water meter will be tested by a certified laboratory. If the meter registers more than five (5) percent high, the city will replace the meter, refund the meter testing fee, and adjust the contested monthly water bill if appropriate. If the meter is found to be accurate within five (5) percent, or if the meter is slow, the city shall reinstall a meter and no refund of the meter testing fee will be made.

(Code 1960, § 9-9-11; Ord. No. 514, 5-14-74; Ord. No. 748, 2-14-89; Ord. No. 913, 6-14-94; Ord. No. 939, 3-13-95; Ord. No. 1010, 4-8-97; Ord. No. 1034, 6-9-98; Ord. No. 1095, § 3, 6-27-00; Ord. No. 1351, § 2, 2-2-3-09)

28-03-130. - System development fee.

Every application for final approval of a new subdivision within the city shall be accompanied by a system development fee. The system development fee shall be set by the city commission by resolution and shall be based on gross acreage within the proposed subdivision or replat. If the subdivision fails to receive final approval, the system development fee shall be returned to the applicant.

(Ord. No. 764, § 1, 7-11-89)

Cross reference— Subdivision regulations, Ch. 22.

28-03-140. - Capital contribution fee.

Each application for new water service where none has previously been provided shall be accompanied by a capital contribution fee. The capital contribution fee shall be established by resolution of the city commission and shall be returned to the applicant if new service is denied.

(Ord. No. 764, § 2, 7-11-89)

28-03-150. - Maintenance and repair of service lines.

City is responsible for the maintenance and repair of the service lines from the city's water main to and including the water meter and meter yoke. A property owner is responsible for the maintenance and repair of service lines connecting his building to the city water system at the outlet of the meter yoke. A property owner is also responsible for any water damage to public property, such as damage resulting from causes including, but not limited to, leaks or collapses of service lines and run-off or discharge of water.

(Ord. No. 841, § 1, 12-10-91; Ord. No. 1428, § 3, 12-18-12)

ARTICLE 28-04. - RESERVOIRS

28-04-010. - Application.

This article shall apply to all reservoirs owned by the City of Alamogordo, and all property owned by the city adjacent to such reservoirs.

(Ord. No. 653, § 1, 5-10-83)

28-04-020. - Enforcement.

This article may be enforced by any peace officer employed by the city, Otero or Lincoln County, or the State of New Mexico.

The city commission is authorized to grant such peace officer commissions or special commissions as may be necessary to enforce this article and related ordinances, in the vicinity of Bonito Lake.

(Ord. No. 653, § 1, 5-10-83)

28-04-030. - Trespass on city reservoirs.

No person shall enter upon any fenced or otherwise enclosed property adjacent to a city reservoir, or climb upon or into any tank reservoir, or place or deposit anything into any city reservoir, except where specifically authorized by the city manager or his designated agent. This section shall not apply to activities specifically permitted on the Bonito Lake reservoir.

(Ord. No. 653, § 1, 5-10-83)

28-04-040. - Bonito Lake.

- (a) The city reservoir known as Bonito Lake may be used for the public recreational activities of camping, picnicking, fishing, sightseeing and hiking. The city manager is hereby authorized to set admission fees for public users of the Bonito Lake Facilities. Any changes in the admission fees must be approved by the city commission before becoming effective.
- (b) The following are prohibited on Bonito Lake and the city owned property adjacent to it:
 - (1) Picnicking and camping outside areas specifically designated for those purposes;
 - (2) Fishing from other than the banks of the lake and other specifically designated areas;
 - (3) Wading, swimming, bathing or washing in Bonito Lake;
 - (4) Littering;
 - (5) The use of any boat or other watercraft on the lake;
 - (6) Hunting or discharge of any firearms;
 - (7) Permitting the trespass of any livestock into the lake;
 - (8) Driving of any vehicle in any area other than regularly maintained roads and access ways to camp sites, except where specifically authorized by the city manager or his designated agent;

- (9) Any other act which tends to pollute, contaminate or render impure or unwholesome any of the waters of Bonito Lake.

(Ord. No. 653, § 1, 5-10-83)