Alamogordo City Commission

NOTICE OF MEETING

Regular Meeting Agenda

October 10, 2017 - 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 .... City Manager
Petria Schreiber .... 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 a the north entrance of the City Hall, distributed to the appropriate news media, and posted on the City website: http://ci.alamogordo.nm.us within the required time frame. As a courtesy, the entire Agenda Packet has also been posted on the City of Alamogordo website: http://ci.alamogordo.nm.us

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

CALL TO ORDER & ROLL CALL

Announce the presence of a Quorum.

INVOCATION & PLEDGE OF ALLEGIANCE

APPROVAL OF AGENDA

PRESENTATIONS

1. Presentation of the Aftermath K9 video. *(Daron Syling, Police Chief)*

2. JLUS Mapping Tool presentation. *(Darron Williams, City Planner and Adrian Johnson)*

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.

3. Approve the minutes for the September 26, 2017 Regular meeting. *(Rachel Hughs, City Clerk)*

4. Approve the award of RFP 2017-006 Water & Wastewater Analytical Services, to Aqua Environmental Testing Lab. *(Brian Cesar, Assistant City Manager)*

5. Approve the award of RFP 2017-005, SCADA/RTU Programming & Commission Services for the City of Alamogordo, to IDESaA Incorporated. *(Brian Cesar, Assistant City Manager)*

6. Approve Change Order No. 4 in the amount of $20,130.81, including NMGRT, to CSW Contractors, Inc. related to the Rehab Effluent Storage Ponds - Desert Lakes Golf Course project. *(Bob Johnson, Engineering Manager)*

7. Approve Change Order No. 4, RFQ 2014-05, to Bohannan Huston, Inc. related to the engineering and design services for the Bonito Lake Restoration project, in an amount not to exceed $4,683.82, including tax. *(Bob Johnson, Engineering Manager)*

8. Approve the Grant Agreements between the New Mexico Aging and Long-Term Services Department (NMALTSD) and the City of Alamogordo to provide capital outlay funding to the Alamogordo Senior Center. *(Veronica Ortega, Community Services Director)*

ITEMS REMOVED FROM CONSENT AGENDA

NEW BUSINESS

9. Consider, and act upon, Resolution 2017-28, a Resolution authorizing publication of a Notice of Sale of $5,285,000 City of Alamogordo, NM General Obligation refunding bonds, Series 2017 and authorizing the City Commission, City Officers and City employees to take further action necessary in connection with the sale of the bonds. *(Julianne Hall, Finance Director)* (**Roll Call Vote Required)**

10. Consider, and act upon the addition of speed tables or speed humps on Washington Avenue between 10th Street and Indian Wells. *(Brian Cesar, Assistant City Manager)*

11. Consider and act upon first publication of Ordinance No. 1546 Amending certain sections of the Code of Ordinances concerning purchasing. *(Petria Schreiber, CityAttorney and Barbra Pyeatt, Procurement Manager)* **(Roll Call Voted Required)**

12. Consider and act upon Resolution No. 2017-27, A Resolution Adopting a Six Month Moratorium on New Off-Premise Billboards for the City of Alamogordo. *(Darron Williams, City Planner and Petria Schreiber, City Attorney)* **(Roll Call vote Required)**

13. Consider and act upon the acquisition of the real property owned by Mr. George Gonzalez and located in the SE 1/4 NE 1/4 SE 1/4 of Section 7 in the amount of $31,000. *(Petria Schreiber, City Attorney)*

14. Consider and act upon first publication of Ordinance No. 1548, an ordinance amending Sections 2-14-040 and 2-14-050 of the Alamogordo Code of Ordinances regarding economic development. *(Petria, Schreiber, City Attorney)* **(Roll Call Vote Required)**

15. Consider, and act upon a revision to the FY18 Street Maintenance Project. *(Brian Cesar, Assistant City Manager)*

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

ADJOURNMENT

AGENDA REPORT
CITY OF ALAMOGORDO
CITY COMMISSION

Meeting Date: 10/10/2017 **Report Date:** 10/05/2017 **Report No:** 1.

Submitted By: Rachel Hughs

Subject: Presentation of the Aftermath K9 video. *(Daron Syling, Police Chief)*

Fiscal Impact:
Amount Budgeted:
Fund:

Additional Fiscal Impact:

Recommendation:

Background: Police Chief Syling will give a presentation on the Aftermath K9 video.

AGENDA REPORT
CITY OF ALAMOGORDO
CITY COMMISSION

Meeting Date: 10/10/2017 **Report Date:** 10/04/2017 **Report No:** 2.

Submitted By: Darron Williams

Subject: JLUS Mapping Tool presentation. *(Darron Williams, City Planner and Adrian Johnson*)

Fiscal Impact:
Amount Budgeted:
Fund:

Additional Fiscal Impact:

Recommendation:

Background: JLUS Mapping Tool presentation by Darron Williams, City Planner and Adrian Johnson, Regional Compatibility Planner for Dona Ana County.

JLUS Website

http://snmepjointlanduse.sks.com/

AGENDA REPORT
CITY OF ALAMOGORDO
CITY COMMISSION

Meeting Date: 10/10/2017 **Report Date:** 10/05/2017 **Report No:** 3.

Submitted By: Rachel Hughs

Subject: Approve the minutes for the September 26, 2017 Regular meeting. *(Rachel Hughs, City Clerk)*

Fiscal Impact:
Amount Budgeted:
Fund:

Additional Fiscal Impact:

Recommendation: Approve the minutes.

Background: This is required by the Open Meetings Act.

CITY OF ALAMOGORDO, NEW MEXICO
CITY COMMISSION REGULAR MEETING MINUTES
6:30 P.M., COMMISSION CHAMBERS
September 26, 2017

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, CITY MANAGER
PETRIA SCHREIBER, 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 Reverend James Forney and the Pledge of Allegiance was led by Commissioner Martin.

APPROVAL OF AGENDA

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

PRESENTATIONS

1. Canyon Light Counseling will give a presentation on the severe drug overdose problem there is in New Mexico. *(John Baldonado, Owner of Canyon Light)*

Mr. John Baldonado said he was contracted by the State of New Mexico to do a prescription drug overdose prevention service in the County. He showed a presentation. He discussed and showed statistics on drug overdose death rates for various types of drugs and overdose trends in New Mexico and Otero County. He said from 2011 to 2015 we've had 67 overdose deaths in Otero County and this does not include suicide. He said there is a new program called the PMP or Patient Monitoring Program. Under this program, a Doctor is required to pull your name up before issuing a prescription. This is to see what prescriptions have been issued to a person over a year's time. (See Blue Book for Presentation).

Commissioner Payne asked if PMP is a Federal or State program. Mr. Baldonado answered that is a State Law that came into effect in January of this year. When they see a Doctor over prescribing, they will send him a letter. A copy of this letter will go to the Medical Board.

Commissioner Sikes said for over a year, Mayor Boss and she have had the opportunity to attend monthly meetings with this group. She complimented Mr. Baldonado on receiving a particular grant for the group. She said the Mayor and I have learned a lot about the drugs situation here in Otero County. The most shocking thing for us initially was realizing it is not street drugs and the people that are overdosing are people you know. One of the things that have come out of this is a grant to provide first responders with a drug that will counteract the opioid overdose. She asked if Mr. Baldonado could address this.

Mr. Baldonado said the Otero County Sheriff's Officers and the Alamogordo Police Department will be trained to carry and administer naloxone. Naloxone is the medication that is administered nasally to reverse an overdose of opioids. The naloxone is supplied by the Santa Fe Prevention Alliance. It is free and is through the SRT grant. We were able to get a little more supply for the County, because typically in rural areas the Law Enforcement Officer is the first responder. In the coming year's grant, we are working on education and medicated assisted treatment. This is where people can go for medication to help taper them off of their addictive substance. He announced that this Saturday at the old Sands Theater from 9:00 am to 1:00 pm they are holding their 2nd Annual Celebration of people being clean and sober.

Mayor Boss thanked Mr. Baldonado for his service to this community.

PUBLIC COMMENT

None.

CITY MANAGER'S REPORT

Acting City Manager Maggie Paluch made the following remarks:
1. She said staff has been working with Downtown Venture Group on negotiating a contract. Staff believes that we are close to a lease that is fair and reasonable for both parties. Additionally the City has completed and submitted the summary application for OCEDC for their blessing of the 1.5 million dollars to be used out of local LEDA funds. The participation agreement, the lease, the loan agreement are almost complete from the city staff. We have also hired outside counsel to review the proposed loan agreement for the $500,000 from interest from the LEDA funds. Additionally staff has reached out to several Attorneys to get a separate opinion on the validity of using the LEDA funds on this project. We are looking at holding a Special meeting with the Commission to devote an entire evening to these documents and Ordinance changes that would be required. We hope to have this before you in the next two to three weeks
2. She addressed the projects the City has funded in the past five years. She said each year the City conducts an audit on the company receiving the funds to determine if they are in compliance with their participation agreement. The first one was in 2015, with Emergen Technologies, approved for $250,000 from local LEDA funds for building improvements in exchange for creating 24 jobs. In 2016, Neptune Aviation was approved for $214,850 for incentives towards a security agreement for collateral, and exchange Neptune would create 5 jobs. This money did not go directly to Neptune. This is the same thing with Pre-Check. In 2016, Pre-Check was approved for $75,000 of local LEDA funding. The funding went to a surety bond and Pre-Check was required to create 15 jobs in two years. Currently, the local LEDA fund has approximately 7 million dollars available for local economic development projects. The fund generates approximately $800,000 a year.
3. She said Facility Maintenance is installing sidewalk lights on Cuba and 15th Street and removing the school zone. On 9th Street there will be a crosswalk system and installed between the Library and City Hall. We have had a request from a Commissioner to research the possibility of a raised crosswalk on Washington in between 14th Street and Roosevelt. We have been looking into a cost analysis for this topic and it will go before the Commission on the meeting of October 11th.
4. She said the new Community Services brochure is out. This brochure is available at City Hall, the Civic Center, the library and the Recreation Center.
5. She introduced Assistant City Attorney Molly Kicklighter. Molly hails from the Public Defender's Office and we are excited to have her.

REMARKS AND INQUIRIES BY THE CITY COMMISSION

None.

CONSENT AGENDA

2. Approve the minutes for the September 12, 2017 Regular meeting. *(Rachel Hughs, City Clerk)*

3. Approve the statements related to the Executive Session held on September 12, 2017. *(Rachel Hughs, City Clerk)*

4. Approve Resolution No. 2017-26 requesting written approval from the Local Government Division of the Department of Finance & Administration, State of New Mexico for the revised

budget figures computed as of September 26, 2017. *(Kathy Gilsdorf, Budget Analyst)* (Roll Call Vote required)

5. Approve the agreement with Otero County for Alamogordo Public Library Services to County residents. *(Sharon Rowe, Library Manager)*

6. Approve the agreements with Otero County for Alamo Senior Center services to County residents. *(Veronica Ortega, Community Services Director)*

Mayor Pro-Tem Hernandez moved to approve items 2, 3, 4, 5, 6 of the consent calendar.
Commissioner Baldwin seconded the motion.
Roll Call Vote was taken for item # 4.
Motion carried with a vote of 7-0-0.

NEW BUSINESS

7. Consider, and act upon, Ordinance 1545 for first publication to authorize the issuance and sale of the City of Alamogordo, NM, General Obligation refunding bonds, Series 2017, in the aggregate principal amount of $5,175,000 for the purpose of defraying the cost of refunding, paying, discharging and liquidating the City of Alamogordo, NM General Obligation Bonds, Series 2009, etc. *(Chris Muirhead, Modrall Sperling Attorney)* (Roll Call Vote Required)

Mr. Muirhead said he is the Bond Counsel for the City. He introduced Regina Gaysina as the Financial Advisor to the City, from RBC Capital Markets.

Ms. Gaysina presented the analysis of the refunding of Series 2009 General Obligation Bonds, and also the options the City has on how to sell those bonds. She also showed the pros and cons for each of the options. She said this is to help the Commission to make a decision as to how to proceed with the refunding. (See Blue Book for Power Point).

Mr. Muirhead said the Ordinance is going to defease the 2009 Bonds issued. Just to remind you, a revenue bond is going to be a gross receipts tax or some other enterprise fund that is going to pay for the debt. This is a GO or General Obligation which is paid for with ad valorem taxes. In 2009, these bonds were issued primarily for enlarging and improving the waste water system. A much smaller amount of $920,000 was for road improvements. In that Ordinance it permits a defeasance of these bonds with a first call date being August 1, 2019. This Ordinance is drafted to accommodate any particular direction you are going to go based on what Ms. Gaysina just presented. It can be revised for the 24th so that you can do a private bank placement with NMFA or a public sale. We will have all that lined up by the 24th. The blanks that are in this document will be filled in with the pricing information or direction about what the pricing looks like at that time. It is a continuation of the ad valorem property tax pledge; it does not extend beyond the maturity of the 2009 bonds. All you are doing is substituting lower interest rates for the higher interest rates for the next ten years on this debt. The main step will be the next meeting here on October 24, 2017 to adopt the Ordinance.

Mayor Boss asked if the overall savings is about $350,000. Mr. Muirhead said yes, it looks like a present value savings of $350,000, so you are backing it out to give you the current value of those dollars.

Mayor Pro-Tem Hernandez moved to approve.
Commissioner Sikes seconded the motion.
Roll call vote was taken.
Motion carried with a vote of 7-0-0.

8. Consider, and act upon, the award of Public Works Bid No. 2017-012 to White Sands Construction, related to the Family Recreation Center Locker Room Renovations project, in an amount not to exceed $358,452.00, including NMGRT. *(Nancy Beshaler, Project Manager)*

Project Manager Beshaler said this project is to upgrade all the interior finishes and fixtures which will make it more ADA Compliant. The concrete benches will be removed, and they will be removing the existing lockers, but will reuse them to save money. They will replace the plumbing fixtures, remove all electrical fixtures, upgrade to LED lighting and upgrade the cooling system. The floors will be finished with a sealant that will help in maintenance. The bids were open on August 17, 2017 with three responsive bidders. White Sands Construction was the lowest bidder.

Mayor Boss said we missed that one on the estimate. He asked if this money is part of the natatorium funds. Project Manager Beshaler said we have $240,000 from a State grant and the remainder of the budget is coming from the natatorium funding. Mayor Boss asked how we missed on the estimate. Project Manager Beshaler said the architect's estimate was off on the electrical and the base bid. We had some major items out of balance.

Commissioner Baldwin asked Project Manager Beshaler if she said there was a State grant and for how much it was for. She answered the State grant was for $240,000. He confirmed that the remainder of the money was coming out of the natatorium funding.

Mayor Pro-Tem Hernandez asked if we are going with LED for the replacement of the light fixtures. Project Manager Beshaler said we are. Mayor Pro-Tem Hernandez asked if the roof top system was a packaged system or a split system. Project Manager Beshaler said I believe it is a split top system. Mayor Pro-Tem Hernandez said he has never heard of a split top system.

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

9. Consider, and act upon, award of Public Works Bid No. 2017-009 to Smithco Construction, Inc., related to the Bonito Lake Restoration project, in an amount not to exceed $8,648,362.50, including NMGRT. *(Bob Johnson, Engineering Manager)*

Engineering Manager Johnson said this project will consist of the dewatering and removal of approximately 247,000 cubic yards of sediment and debris, temporary flow diversion facilities, and hauling to an offsite disposal. The project was advertised on July 6th and July 9th. The bids were open on September 7th, with four responsive bids received. It is the City's intent, at this time, to award only the base bid.

Mayor Boss asked Engineering Manager Johnson to award only the base bid. He answered yes, the base bid items consist of the flow diversion pipeline, the temporary cofferdam, mobilization, the excavation and debris removal of 247,000 cubic yards, some disposal site reseeding, a force account work allowance and an inspection testing allowance. The items within the additive alternates are not part of this award at this time.

Mayor Pro-Tem Hernandez asked what this would get us as far as the lake restoration. Engineering Manager Johnson answered approximately one half of the debris removal based on the last geotechnical study. Mayor Pro-Tem Hernandez asked what we anticipate the follow up to get the rest of it done. Engineering Manager Johnson said that is a bit of an unknown because we have FEMA and the Department of Homeland Security involved in those funding apparatus. With both of those organizations, especially with FEMA tied up with the Hurricanes in Texas and in Florida and the recent resignation of the head of that Department things are a bit in flux. Discussions are on-going, we have received only verbal commitments, but to what extent we don't know just yet. As those verbal commitments come to us in writing and we can fine tune things. The City is ready to move forward with increasing the level of debris removal and haul off, as well as, hopefully finding enough City funds to do some of the permanent improvements to the intake tower, the pedestrian's catwalk, the drain system improvements and the Dam face repairs. It's a little early at this stage to know if we are going to have the funding from the Department of Homeland Security and FEMA.

Mayor Boss said I'm confused, so this is only going to take out half of the debris. Engineering Manager Johnson said correct. Mayor Boss said we are just going to let it sit there, bypass the stream around the lake and hope for future funds. Or, are we going to utilize the reservoir, and then if we get the funds we drain the lake again. Engineering Manager Johnson said no, it is not intended to drain the lake. This is a one time shot. We have a time crunch, relative to the spotted owl nesting habitat. The first order of business is to get the temporary flow diversion pipeline and temporary cofferdam in place. The area of that construction is so close to the spotted owl nesting habitat that we have to get that done by the end of February. Beginning in March, the nesting habitat season begins and we will not be able to work there. That is going to be four to six months. Hopefully, during that time frame we can pursue the discussions with the Department of Homeland Security and FEMA in attempt to develop new funding sources. At this point, it is too early.

Mayor Boss asked if we do get that funding source are we going to get matching funds. Engineering Manager Johnson said we anticipate those matching funds to become available. He said it is 12.5 percent match. At a minimum, staff feels that we should receive another three million from FEMA.

Mayor Pro-Tem Hernandez asked how far this gets us to opening the campgrounds. Engineering Manager Johnson said this is a two year project. It is a 24 month project regardless of whether we award the base bid or we are able to award additional quantities, it is still a 24 month project. Mayor Pro-Tem Hernandez asked what about using the water. Mayor Boss added utilizing the water, when can we put it into the pipeline. Engineering Manager Johnson said in about 24 months.

Commissioner Sikes asked Engineering Manager Johnson where all the debris and sediment is going. He said there were two sites that were recently approved. The site that is planned for use is approximately five miles from the lake. It is currently an active quarry and will become inactive at the end of this calendar year. The owner of that quarry has worked with the engineering team and City staff to make sure that it has complied with all of the regulatory requirements. That quarry is estimated that we could put as much as 400,000 cubic yards of debris in it.

Mayor Pro-Tem Hernandez asked if we are going to own that debris. Engineering Manager Johnson said it is going to be deposited into the quarry and that will be the end of it. The City will not have ownership of it.

Mayor Boss asked if this is half of what we are estimating the project will cost. Engineering Manager Johnson said the quantity and the base bid is what FEMA had approved back in 2012. Mayor Boss asked if that was a result of core samples or something like that. Engineering Manager said that is correct. It is based on a geotechnical analysis. There was a geotechnical analysis done in 2014, at FEMA's or Homeland Security's request, by a company called EnTerra. Their estimates concluded 247,000 cubic yards of event related debris. Staff was never quite comfortable with that. When the funding was received in 2014 to begin the entire design of this process, staff felt that another look needed to be done. We had another geotechnical analysis done by Bohannon Huston. That analysis revealed a quantity of nearly 600,000 cubic yards of debris. Since that time, City staff and engineering staff has been constantly talking with FEMA and Department of Homeland Security about getting that quantity increased. Only recently have they indicated any budging on that number. Mayor Boss said the worst case scenario is that we spend this money to be able to fill the lake up with water and start pumping water. Engineering Manager Johnson said correct and open up the campground and make it available for Fish and Wildlife to restock the lake. Mayor Boss said we will just not have as big of a reservoir.

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

10. Consider, and act upon, a request from the Flickenger Center for installation of an additional Handicap Reserved Parking spot and sign in front of their property at 1110 New York Ave. *(Darron Williams, City Planner)*

City Planner Williams said this case is not one that we see very often and the Ordinance that covers it is not often used for this purpose. The Flickinger Center has asked to build a second handicapped parking space. He showed slides from a presentation on where their existing disabled parking area is and where the proposed space would go. He said the Ordinance that applies to this is not as clearly written as far as how to go about this, so our office took the measure to send out notices. We only received one response back as undeliverable; otherwise there were no objections from the surrounding area. He presented this to the Planning and Zoning Committee so they we aware of the case. They had no objections, and our recommendation is to approve. (See Blue Book for Power Point)

Mayor Pro-Tem Hernandez asked if it meets the requirements of ADA. City Planner Williams answered it has to in order to be applied.

Commissioner Sikes asked who was going to do it. City Planner Williams said the way the Ordinance is written it is unclear, but it gives the indication that the City will attain the sign and apply the paint. Commissioner Sikes said I am glad we are going through this process and we are all learning how to handle a handicap sign now. City Planner Williams said it is a little cumbersome in the process, and it is one of the things my office has taken on board is to help redefine this so that it is a little more logical and practicable.

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

11. Consider, and act upon, sale of city property located in Lot 17, Block 84, Town of Alamogordo, to Mr. William C. Arnold for $1,500. *(Petria Schreiber, City Attorney)*

City Attorney Schreiber said this is a proposal for the sale of land located on 10th Street and Florida Avenue. The square feet of this property is 1,581 square feet and the appraisal came in at exactly $1,500. We are here to approve the sale.

Mayor Pro-Tem Hernandez asked City Attorney Schreiber if the Commission is rezoning this property to C-3 Business tonight. She answered that we will be doing that later. Mayor Pro-Tem Hernandez said he would like to have this language stricken from the agenda report. He said other than that, I do not have a problem with it, other than we are selling it for less than $1.00 a square foot. I know that it is an unusable piece of property, but it could potentially cause a problem in that area for selling it for less than $1.00 a square foot. Mayor Boss said we did have a certified appraiser. Mayor Pro-Tem Hernandez said I understand, but the appraisal shows that property in that area is going for $1.44 a square foot and I understand for this property it is unusable. Commissioner Baldwin asked is it unusable for the way it is zoned. Mayor Pro-Tem Hernandez said because of the size of it. I am just afraid that the next person trying to sell a piece of property and they use this as a comparable.

City Attorney Schreiber said I believe the intention of buying this piece of property is to combine it with the one next to it and create a business there. There will be value added to that area.

Commissioner Baldwin moved to approve and have the request "Rezoned at C-3 Business" stricken from the Agenda Report.
Mayor Pro-Tem Hernandez seconded the motion.
Motion carried with a vote of 7-0-0.

12. Consider, and act upon, the lease agreement in between the Otero Hunger Coalition and the Housing Authority of the City of Alamogordo in reference to the building at 1614 Abuelito Drive. *(Evelyn Huff, Housing Authority Manager)*

Commissioner Payne recused herself from voting.

Housing Authority Manager Huff said about a year ago, the Commission voted to lease the building at 1614 Abuelito Drive, which is the Plaza Hacienda learning center to the Otero Hunger Coalition. That lease does say they have the right to renew it for up to 19 periods. The Otero Hunger Coalition has requested to renew this lease. She introduced Amy Josefosky and Janett Quick from the Otero Hunger Coalition.

Ms. Josefosky reviewed the Otero Hunger Coalition's accomplishments for the past year and briefly discussed future plans.

Ms. Quick said they served 14,550 meals this past year. She said they count by the plates served. They have also delivered meals throughout the year.

Commissioner Sikes asked Ms. Quick to tell the Commission how often she ends up at the railroad tracks giving out lunches. She said on Monday, Wednesday and Friday. Commissioner Sikes asked how many meals are given out each time. Ms. Quick said it is heartwarming. Commissioner Sikes said Janett Quick is really dedicated to this and it is because Ms. Quick that the Hunger Coalition manages to do a lot of the food recovery that they do and meals. I have had the opportunity to volunteer at these meals. It was only after we talked about renting the space that they started counting the meals. It's appreciative that you were required by the lease to do 1000 a month. Ms. Quick said actually I started counting the meals when I took over as Food Administrator. Our numbers have drastically increased because of awareness. Commissioner Sikes asked where they do all the meals. Ms. Quick said Monday night is at New Beginnings, Wednesday is Our Savior Lutheran Church and Friday is at the Salvation Army. We serve all of our meals from 5:00 pm to 6:00 pm. If someone comes in late, staff knows that they are not allowed to refuse them service. Commissioner Sikes asked who does all the cooking. Ms. Quick said it is done by her daughter and volunteers. We are always looking for volunteers to come help cook.

Commissioner Payne asked how many people that come to your meals have you identified as homeless or in need. Ms. Quick said it depends on the night and the situation, but we have identified 10 homeless and 15 in need. The rest of the people come for the fellowship. We ask no questions, it is for anyone that would like to come.

Commissioner Payne said in the last year there were supposed to be some opportunities to help the homeless, and I know that this has not been done. I am a little curious; I know you have applied for the Emergency Food and Shelter Grant, but only in the past few weeks. Ms. Quick said a lot of our Board members were not told what our Board Chair was going to ask for and say. I was very upset about those vouchers because I called our Board Chair, and I had people that were homeless and they needed a place to stay. Our Board Chair at that time said they she could put people up in housing, but when I called her, she did not recall saying that. Some of our Board members have actually paid for places where we've used funds from the Coalition to do that. Commissioner Payne asked if they knew how many that has been. Ms. Josepheski said roughly between four to six hotel rooms that I can count right off hand, in the past year.

Commissioner Sikes moved to approve.
Commissioner Baldwin seconded the motion.

Commissioner Payne asked how many emergency service calls have been taken at night or on a weekend. Ms. Josefosky said there have been no phone calls made at night or on the weekend.
Mayor Pro-Tem Hernandez recommended keeping accurate records and maybe spot checking these records through staff to make sure that you are meeting the requirements.

Mayor Boss asked if we had any use for that building other than this. City Manager Paluch said right now we do not have a use for that building. I would like to point out that Housing Authority does not have a budget to fix some of the issues in the building. We cannot use our current CFP, our Capital funding from the Federal Government, to fix any of the issues in that building, because those issues were not identified in the Capital Plan. To redo the Capital Plan it would take some time, but this does need to be considered. Housing Authority Manager Huff does have a plan going forward to work with the Hunger Coalition and set priorities on what can be fixed and what maybe could be held off on.

Housing Authority Manager Huff said we do have a plan if the Hunger Coalition lease is approved here. We are going to meet within the next few weeks to discuss the items going forward that they would like to see done with the building. We will take another two weeks to get prices or quotes and see what we can afford within our current operating budget. We also discussed, with the City Manager and the City Attorney, doing a monthly reporting versus once a year reporting. We discussed meeting with them more often to get more accurate numbers quicker.

Commissioner Payne asked who is paying for the utilities. Housing Authority Manager Huff said the Hunger Coalition has the electricity and the water. We have discussed about switching over the gas.

Motion carried with a vote of 6-0-1.
Commissioner Payne recused herself.

13. Consider, and act upon, Resolution 2017-30 authorizing and approving submission of a completed application for financial assistance and project approval to the New Mexico Finance Authority for MRA Plan. (*Darron Williams, City Planner)* (Roll Call Vote Required)

City Planner Williams said this is the Resolution and application to simply finish the process to get the reimbursable grant to do the MRA Plan.

Commissioner Baldwin moved to approve.
Mayor Pro-Tem Hernandez seconded the motion.
Roll call vote was taken.
Motion carried with a vote of 7-0-0.

14. Appointments to Boards and Committees. *(Richard Boss, Mayor)*
Mayor Boss read the openings and appointed Kenneth B. Nicholson and Rosanna Heath to the Mayor's Committee on Aging. No one was opposed.

Mayor Pro-Tem Hernandez moved to adjourn at 7:55 p.m.
Commissioner Turnbull seconded the motion.
Motion carried with a vote of 7-0-0.

ADJOURNMENT

____
Mayor Richard Boss

ATTEST:

____
City Clerk Rachel Hughs

(Prepared by Eric Barraza, Deputy Clerk)
Approved at the Regular Meeting held on October 10, 2017.

AGENDA REPORT
CITY OF ALAMOGORDO
CITY COMMISSION

Meeting Date: 10/10/2017 **Report Date:** 10/05/2017 **Report No:** 4.

Submitted By: Brian Cesar

Subject: Approve the award of RFP 2017-006 Water & Wastewater Analytical Services, to Aqua Environmental Testing Lab. *(Brian Cesar, Assistant City Manager)*

Fiscal Impact:
Amount Budgeted: $0.00
Fund: 081-5603-432-5747 081-5703-461-5747

Additional Fiscal Impact:

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

Background: The scope of work is to provide the City of Alamogordo with full-time professional analytical laboratory and testing services of the various components of its water and wastewater operations.

The RFP was advertised on August 6th, 2017 in both the Alamogordo Daily News and the Albuquerque Journal. One (1) responsive proposal was received on August 31,2017. Aqua Environmental Testing Lab.

Proposal was reviewed and determined to be acceptable and in compliance with the terms and conditions of the RFP.

Copy of proposal from Aqua Environmental Testing Lab can be viewed in the City Clerk's office.

AGENDA REPORT
CITY OF ALAMOGORDO
CITY COMMISSION

Meeting Date: 10/10/2017 **Report Date:** 10/05/2017 **Report No:** 5.

Submitted By: Brian Cesar

Subject: Approve the award of RFP 2017-005, SCADA/RTU Programming & Commission Services for the City of Alamogordo, to IDESaA Incorporated. *(Brian Cesar, Assistant City Manager)*

Fiscal Impact:
Amount Budgeted: $0.00
Fund: 081-9399-990-6899

Additional Fiscal Impact:

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

Background: The City is seeking proposals for programming and commissioning services for its expansion of SCADA/RTU systems, primarily but not limited to, water and wastewater operations. Sites include the Golf Course, well stations, lift stations, collection stations, water treatment plants, water storage facilities, wastewater treatment plant, Recreation Center, and Bonito Lake. All sites except for Bonito Lake are located within Otero County.

RFP was advertised on August 6, 2017 in both the Alamogordo Daily News and Albuquerque Journal. One proposal was received on August 31, 2017. IDESaA Incorporated.

Proposal was reviewed and determined to be acceptable and in compliance with the terms and conditions of the RFP.

Copy of proposal from IDESaA Incorporated can be viewed in the City Clerks Office.

AGENDA REPORT
CITY OF ALAMOGORDO
CITY COMMISSION

Meeting Date: 10/10/2017 **Report Date:** 10/06/2017 **Report No:** 6.

Submitted By: Bob Johnson

Subject: Approve Change Order No. 4 in the amount of $20,130.81, including NMGRT, to CSW Contractors, Inc. related to the Rehab Effluent Storage Ponds - Desert Lakes Golf Course project. *(Bob Johnson, Engineering Manager)*

Fiscal Impact: $20,130.81
Amount Budgeted: $300,000.00
Fund: 081-9399-990.68-99 PW1602

Additional Fiscal Impact:

Recommendation: Approve the Change Order.

Background: This Change Order adjusts final quantities at Desert Lakes Golf Course effluent pond 11, and extends the contract completion date.

City of Alamogordo

Engineering Dept.. • 1376 East Ninth St. • Alamogordo, NM 88310 • (575) 439-4337 • FAX (575) 439-4343

CONTRACT CHANGE ORDER

CHANGE ORDER NO. 4

REHAB EFFLUENT STORAGE PONDS – DESERT LAKES GOLF COURSE

PUBLIC WORKS PROJECT NO. 2016-002

DATE: **SEPTEMBER 29, 2017**

CONTRACTOR: CSW CONTRACTORS, INC.
8901 E. MOUNTAIN VIEW RD., SUITE 150
SCOTTSDALE, AZ 85258

OWNER: CITY OF ALAMOGORDO
1376 E. NINTH ST.
ALAMOGORDO, NM 88310

THE FOLLOWING CHANGES ARE HEREBY MADE TO THE CONTRACT DOCUMENTS:

Purpose of this Change Order is adjust final quantities from Change Order No. 3 and extend the contract completion date.

Item 3. Fill for Anchor – Increase of 325.36 CY at $22.49, total increase of $7,317.35.

Item 4. Rock Riprap on Slopes – Increase of 225.14 CY at $50.29, total increase of $11,322.29.

The contract completion date is hereby changed to September 14, 2017.

REVISED CONTRACT AMOUNT

1. Original Contract Amount $505,139.25*
2. Total Contract Amount Including Previously Approved Change Orders $572,167.49*
3. Amount of this Change Order (**Increase**) $20,130.81*
4. Total Revised Contract Amount to Date $592,298.30*

* includes New Mexico Gross Receipts Tax.

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

CHANGE ORDER RECOMMENDATION FOR APPROVAL:

BY: ______________________________ 9/29/17
Engineer Date

CHANGE ORDER ACCEPTED AND APPROVED:

BY: ______________________________ 10/03/2017
Contractor Date

CHANGE ORDER APPROVED BY CITY MANAGER:

BY: ______________________________ ______________
City Manager Date

BY: ______________________________ ______________
City Attorney Date

AGENDA REPORT
CITY OF ALAMOGORDO
CITY COMMISSION

Meeting Date: 10/10/2017 **Report Date:** 10/05/2017 **Report No:** 7.

Submitted By: Bob Johnson

Subject: Approve Change Order No. 4, RFQ 2014-05, to Bohannan Huston, Inc. related to the engineering and design services for the Bonito Lake Restoration project, in an amount not to exceed $4,683.82, including tax. *(Bob Johnson, Engineering Manager)*

Fiscal Impact: $4,683.82
Amount Budgeted: $10,219,425.00
Fund: 081-0008-461.60-79 PW1501

Additional Fiscal Impact:

Recommendation: Approve the Change Order.

Background: This Change Order is to provide additional engineering and design services related to the Construction Administration portion of the fee schedule. The final Proposal approved as part of the original Agreement allows for economic price adjustments to certain fixed fee project elements/services, if not provided within 12 months of Notice to Proceed, issued in May 2015. The US Bureau of Labor Statistics Employment Cost Index (ECI) increase was 1.8% between May 2015 and May 2016, and 2.3% from May 2016 to May 2017. The result is a net cost increase of $4,324.36 to the Construction Administration fee.

City of Alamogordo

Engineering Dept. • 1376 East Ninth St. • Alamogordo, NM 88310 • (575) 439-4337 • FAX (575) 439-4343

CONTRACT CHANGE ORDER

CHANGE ORDER NO. 4

BONITO LAKE RESTORATION

RFQ NO. 2014-05

DATE: **OCTOBER 3, 2017**

ENGINEER: BOHANNAN HUSTON, INC.
7500 JEFFERSON NE, COURTYARD 1
ALBUQUERQUE, NM 87107

OWNER: CITY OF ALAMOGORDO
1376 E. NINTH ST.
ALAMOGORDO, NM 88310

THE FOLLOWING CHANGES ARE HEREBY MADE TO THE CONTRACT DOCUMENTS:

Provide additional engineering and design services related to the Construction Administration portion of the fee schedule. The final Proposal approved as part of the original Agreement allows for economic price adjustments to certain fixed fee project elements/services, if not provided within 12 months of Notice to Proceed, issued in May 2015. The US Bureau of Labor Statistics Employment Cost Index (ECI) increase was 1.8% between May 2015 and May 2016, and 2.3% from May 2016 to May 2017. The result is a net cost increase of $4,324.36 to the Construction Administration fee.

REVISED CONTRACT AMOUNT

1. Original Contract Amount $1,298,811.94*
2. Total Contract Amount Including Previously Approved Change Orders.. $1,484,298.01*
3. Amount of this Change Order (**Increase**).. $ 4,683.82*
4. Total Revised Contract Amount to Date.. $1,488,981.83*

CHANGE ORDER ACCEPTED AND APPROVED:

BY: ______________________ 10-3-17
Engineer Date

CHANGE ORDER APPROVED BY CITY COMMISSION / CITY MANAGER:

BY: ______________________ ____________
City Manager Date

BY: ______________________ ____________
City Attorney Date

AGENDA REPORT
CITY OF ALAMOGORDO
CITY COMMISSION

Meeting Date: 10/10/2017 **Report Date:** 10/05/2017 **Report No:** 8.

Submitted By: Britney Courtier

Subject: Approve the Grant Agreements between the New Mexico Aging and Long-Term Services Department (NMALTSD) and the City of Alamogordo to provide capital outlay funding to the Alamogordo Senior Center. *(Veronica Ortega, Community Services Director)*

Fiscal Impact:
Amount Budgeted:
Fund:

Additional Fiscal Impact:

Fiscal Impact:	$111,850
Amount Budgeted:	$112,000
Fund:	071-0000-317-1613/State Grant

Recommendation: Approve the grant agreements.

Background: The Community Services Department requested funding via the 2016 ICIP funding process through the NM Aging & Long Term Services Department to reroof the fitness center and to replace the flooring in the kitchen. The NMALTSD Grant Agreement provides $43,600 for both projects.

Additionally, the Community Services Department requested funding to procure a new bus, and the Grant Agreement awards the Senior Center $68,250 for that project.
The appropriations will revert on June 30, 2021.

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

THIS AGREEMENT is made and entered into as of this ____day of _________, 20__, by and between the Aging and Long-Term Services Department, P.O. Box 27118, Santa Fe, NM 87502-7118, hereinafter called the "Department" or abbreviation such as "ALTSD", and the City of Alamogordo, hereinafter called the "Grantee". This Agreement shall be effective as of the date it is executed by the Department.

RECITALS

WHEREAS, in the Laws of 2016, Chp. 82, Section 10, Subsection A, Paragraph 40, the Legislature made an appropriation to the Department, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

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

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

AGREEMENT

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

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

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

A16A5040 $43,600 APPROPRIATION REVERSION DATE: 30-JUN-2021

Laws of 2016, Chp. 82, Section 10, Subsection A, Paragraph 40, forty-three thousand six hundred dollars ($43,600) for improvements to the facility to address code compliance issues at the Alamo senior center in Alamogordo in Otero county.

The Grantee's total reimbursements shall not exceed the appropriation amount forty-three thousand six hundred dollars, ($43,600), (the "Appropriation Amount") minus the allocation for Art in Public Places ($0)[1], if applicable, which equals forty-three thousand six hundred dollars ($43,600), (the "Adjusted Appropriation Amount").

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

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

This project is referred to throughout the remainder of this Agreement as the "Project"; the information contained in Article I(A) is referred to collectively throughout the remainder of this Agreement as the "Project Description." Exhibit 4 sets forth additional or more stringent requirements and conditions, which are incorporated by this reference as if set forth fully herein. If Attachment A imposes more stringent requirements than any requirement set forth in this Agreement, the more stringent requirements of Exhibit 4 shall prevail, in the event of irreconcilable conflict. The Grantee shall reference the Project's number in all correspondence with and submissions to the Department concerning the Project, including, but not limited to, Requests for Payment and reports.

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

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

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

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

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

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

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

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

Prior to the sale, lease, license, or operating agreement being approved pursuant to subparagraph (a) or (b) above, the Department may, in its discretion and unless inconsistent with New Mexico State Board of Finance imposed conditions, reimburse the Grantee for necessary expenditures

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

incurred to develop the Project sufficiently to make the sale, lease, license, or operating agreement commercially feasible, such as plan and design expenditures; and

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

a. The Grantee shall submit to the Department one copy of all Third Party Obligations and amendments thereto (including terminations) as soon as possible after execution by the Third Party but prior to execution by the Grantee.
b. Grantee acknowledges and agrees that if it chooses to enter into a Third Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such expenditures.
c. The Department may, in its absolute discretion, issue to Grantee a Notice of Obligation for the particular amount of that Third Party Obligation that only obligates the Department to reimburse Grantee's expenditures made on or before the Reversion Date or an Early Termination Date. The current Notice of Obligation form is attached to this Agreement as Exhibit 3.
d. The date the Department sends, by mail or email, the Notice of Obligation is the date that the Department's Notice of Obligation is effective. After that date, the Grantee is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third Party Obligation and request the Third Party begin work.

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

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

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

ARTICLE III. NOTICE PROVISIONS AND GRANTEE AND DEPARTMENT DESIGNATED REPRESENTATIVES

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

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

Grantee:	City of Alamogordo
Name:	Margaret Paluch
Title:	City Manager
Address:	1376 9th Street, Alamogordo, NM 88310
Email:	mpaluch@ci.alamogordo.nm.us
Telephone:	575-439-4203

Grantee:	City of Alamogordo,
Name:	Julianne Hall
Title:	Finance Director
Address:	1376 9th Street, Alamogordo, NM 88310
Email:	jhall@ci.alamogordo.nm.us
Telephone:	575-439-4215

Department:	Aging and Long-Term Services Department
Name:	Rebecca Martinez
Title:	Capital Projects Bureau Chief
Address:	P.O. Box 27118, Santa Fe, NM 87502-7118
Email:	rebeccas.martinez@state.nm.us
Telephone:	505-476-4678

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

ARTICLE IV. REVERSION DATE, TERM, EARLY TERMINATION

A. As referenced in Article I(A), the applicable law establishes a date by which Project funds must be expended by Grantee, which is referred to throughout the remainder of this Agreement as the "Reversion Date." Upon being duly executed by both parties, this Agreement shall be effective as of the date of execution by the Department. It shall terminate on June 30, 2021 the Reversion Date unless Terminated Before Reversion Date ("Early Termination") pursuant to Article V herein.

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

ARTICLE V. EARLY TERMINATION

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

Early Termination includes:

(i) Termination due to completion of the Project before the Reversion Date; or

(ii) Termination due to complete expenditure of the Adjusted Appropriation Amount before the Reversion Date; or

(iii) Termination for violation of the terms of this Agreement; or

(iv) Termination for suspected mishandling of public funds, including but not limited to, fraud, waste, abuse, conflicts of interest.

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

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

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

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

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

ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS

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

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

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

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

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

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

D. **Corrective Action Plan in the Event of Suspension**

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

ARTICLE VII. AMENDMENT

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

ARTICLE VIII. REPORTS

A. Paper Periodic Reports

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

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

B. Paper Final Report

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

C. Paperless Reporting

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

D. Requests for Additional Information/Project Inspection

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

ARTICLE IX. REQUEST FOR PAYMENT PROCEDURES AND DEADLINES

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

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

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

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

B. Deadlines

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

(i) Immediately as they are received by the Grantee but at a minimum twenty (20) days from the end of the calendar quarter in which the expenditure was incurred or liability of the Grantee

(ii) was incurred as evidenced by an unpaid invoice received by the Grantee from a third party contractor or vendor, if total unreimbursed expenditures or liabilities at calendar quarter end exceed $25,000; or

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

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

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

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

ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS; REPRESENTATIONS AND WARRANTIES

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

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

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

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

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

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

B. The Grantee hereby represents and warrants the following:

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

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

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

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

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

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

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

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

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

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

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

ARTICLE XII. IMPROPERLY REIMBURSED FUNDS

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

ARTICLE XIII. LIABILITY

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

ARTICLE XIV. SCOPE OF AGREEMENT

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

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

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

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

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

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

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

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

XVII. COMPLIANCE WITH UNIFORM FUNDING CRITERIA.

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

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

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

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

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

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

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

[THIS SPACE LEFT BLANK INTENTIONALLY]

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

GRANTEE

____
Signature of Official with Authority to Bind Grantee

By: __________________________
(Type or Print Name)

Its: __________________________
(Type or Print Title)

____
Date

AGING AND LONG-TERM SERVICES DEPARTMENT

By: ______________________________ Date:______________
ALTSD Cabinet Secretary

By: ______________________________ Date:______________
ALTSD Legal Counsel—Certifying Legal Sufficiency

By: ______________________________ Date:______________
ALTSD Chief Financial Officer

AGING & LONG-TERM SERVICES DEPARTMENT

EXHIBIT 1

ALTSD CAPITAL OUTLAY GRANT

MONTHLY / FINAL REPORT FORM & REQUEST FOR PAYMENT

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

DATE: __________

Grantee:____________ Grant Number:________ Reporting Period:______ Grant Expiration Date: ________

Address:________________ City State Zip Preparer's Name & Phone Number: ____________

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

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

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

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

REQUEST FOR PAYMENT

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

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

VENDOR INVOICE DETAIL *(Attach extra sheet if needed)*

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

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

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

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

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

____
Grantee Fiscal Officer Signature & Printed Name

____
Grantee Representative Signature & Printed Name *(Preparer)*

SWORN TO AND SUBSCRIBED BEFORE ME THIS____DAY OF______, 201__
Notary Public __________
My Commission Expires __________

STATE AGENCY USE ONLY

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

____
ALTSD Fiscal Date

____
ALTSD Capital Projects Bureau Date

EXHIBIT 2
STATE OF NEW MEXICO
CAPITAL GRANT PROJECT
NOTICE OF OBLIGATION TO REIMBURSE GRANTEE

DATE: ______________________________

TO: **Grantee Representative:** ______________________________

FROM: **Department Representative:** ______________________________

SUBJECT: **Notice of Obligation to Reimburse Grantee**

Project Number: ______________________________

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

Third Party Obligation (includes purchase orders and contract) #: ______________

Vendor or Contractor: ______________________________

Third Party Obligation Amount: ______________________________

Termination Date: ______________________________

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

Grant Amount adjusted for AIPP if applicable: ______________________

The Amount of this Notice of Obligation to Reimburse: ______________________

The Total Amount of all Previously Issued Notices of Obligation: ______________________

The Total Amount of all Notices of Obligation to Reimburse as of this Date: ______________

Department Representative: ______________________________

Title: ______________________________

Signature: ______________________________

Date: ______________________________

EXHIBIT 3
ALTSD CAPITAL OUTLAY
SPECIAL GRANT CONDITIONS

No special conditions are required for this grant.

EXHIBIT 4
ALTSD CAPITAL OUTLAY
PROJECT DESCRIPTION
SCOPE OF WORK (SOW)

Laws of 2016, Chp. 82, Section 10, Subsection A, Paragraph 40, forty-three thousand six hundred dollars ($43,600) for improvements to the facility to address code compliance issues at the Alamo senior center in Alamogordo in Otero county.

1. **Name of Grantee/ Fiscal Agent:** City of Alamogordo
2. **Project Title:** Alamo Senior Center Improve Code
3. **Grant Agreement Number:** A16A5040
4. **Background Narrative:** The fitness center is approaching 10 years in age, and typical New Mexican rain storms have taken its toll. The roof now leaks during heavy rain, which could make it unsafe for its intended use. The senior center fitness center is open five (5) days a week and offers over 20 classes in line dancing, Zumba, yoga and Tai Chi, strength training, and other fitness exercises. The senior center kitchen prepares on average 150 congregate lunches a day and another 150 hot lunch meals for delivery to home-bound seniors. The kitchen flooring was replaced approximately 8-10 years ago and is now worn and broken.

5. **Work Plan:** The project will begin as soon as a fully executed Grant Agreement contract is received. The capital outlay funds will be used to contract for a new roof for the 3,600 square foot fitness center and a complete replacement of our 2,000 square foot kitchen flooring. The contractor for the roof and flooring will be selected according to the city of Alamogordo's procurement procedures. The roofing is projected to be finished in July 2018. The kitchen flooring, however, will be scheduled at a time when we can move our congregate meals to the city's Civic Center, the only alternative place with a commercial kitchen and space to hold consumers during the actual re-flooring work.

6. **Budget Detail:**

Project Cost Activities	Other Funds	State Funds
Replacement of Fitness Center Roof		$19,824
Re-flooring of Kitchen		$23,776
Totals		**$43,600**

7. **Performance Measures:** The new roof for the fitness building and the new flooring for the kitchen will ensure the Alamo Senior Center can provide fitness opportunities and food service to our consumers in a safe and sanitary environment. The outcome from this project will be measured through the units of service for our fitness program as well as our congregate lunch and home-delivered meal programs. The center staff and city facility maintenance department will continue to maintain and repair our buildings for health and safety standards.

8. **Results Expected:** The results are expected to be to maintain our high level of service in our kitchen to provide a hot lunch and an opportunity to socialize with peers to all seniors living in or visiting our area; to provide a hot lunch and, in some cases, breakfast and weekend meals to homebound consumers; and to present the chance for improving health through directed group classes or individual exercise equipment in our fitness center.

9.

Time Frame/ Milestones: *Upon full execution of the Grant Agreement the following tasks will commence to meet the time frame/milestones.*	
Send out Notice of Bids or Solicit for 3 Written Quotes for Fitness Center Roofing	Month 1-3
Bid Award to Contractor/Vendor for Roofing; Construction to commence;	Month 3-6
Send Out Notice of Bids or Solicit for 3 Written Quotes for Kitchen Flooring	Month 4-5
Bid Award to Contractor/Vendor for Kitchen Flooring	Month 6
Roof Replacement Complete	Month 9-10
Begin Kitchen Flooring Replacement	Month 11-12
Kitchen Flooring Complete	Month 13
Project Completion & Review; Project close-out;	Month 14
Submit Exhibit 1 – Monthly / Final Report Form & Request for Payment according to contractual requirements as set forth in Articles VIII & IX of the Grant Agreement	Month 1-14

10. Responsible Staff:

Name:	Peter McKown, Alamo Senior Center Manager
Address:	2201 Puerto Rico Ave, Alamogordo, NM 88310
Email:	pmckown@ci.alamogordo.nm.us
Phone:	575-439-4150

NOTICE: The Grant Application, if approved for funding by Aging and Long-Term Services Department (ALTSD) and any attachments to the Grant Application are incorporated by reference into the scope of work. In the event of a conflict between any of the documents that are part of the Agreement, the ALTSD Cabinet Secretary, at the sole discretion of ALTSD, shall resolve that conflict.

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

THIS AGREEMENT is made and entered into as of this ____day of __________, 20__, by and between the Aging and Long-Term Services Department, P.O. Box 27118, Santa Fe, NM 87502-7118, hereinafter called the "Department" or abbreviation such as "ALTSD", and the City of Alamogordo, hereinafter called the "Grantee". This Agreement shall be effective as of the date it is executed by the Department.

RECITALS

WHEREAS, in the Laws of 2016, Chp. 82, Section 10, Subsection A, Paragraph 41, the Legislature made an appropriation to the Department, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

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

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

AGREEMENT

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

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

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

A16A5041 $68,250 APPROPRIATION REVERSION DATE: 30-JUN-2021

Laws of 2016, Chp. 82, Section 10, Subsection A, Paragraph 41, sixty-eight thousand two hundred fifty dollars ($68,250) to purchase and equip vehicles for the Alamo senior center in Alamogordo in Otero county.

The Grantee's total reimbursements shall not exceed the appropriation amount sixty-eight thousand two hundred fifty dollars, ($68,250), (the "Appropriation Amount") minus the allocation for Art in Public Places ($0)[1], if applicable, which equals sixty-eight thousand two hundred fifty dollars ($68,250), (the "Adjusted Appropriation Amount").

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

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

This project is referred to throughout the remainder of this Agreement as the "Project"; the information contained in Article I(A) is referred to collectively throughout the remainder of this Agreement as the "Project Description." Exhibit 4 sets forth additional or more stringent requirements and conditions, which are incorporated by this reference as if set forth fully herein. If Attachment A imposes more stringent requirements than any requirement set forth in this Agreement, the more stringent requirements of Exhibit 4 shall prevail, in the event of irreconcilable conflict. The Grantee shall reference the Project's number in all correspondence with and submissions to the Department concerning the Project, including, but not limited to, Requests for Payment and reports.

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

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

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

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

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

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

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

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

Prior to the sale, lease, license, or operating agreement being approved pursuant to subparagraph (a) or (b) above, the Department may, in its discretion and unless inconsistent with New Mexico State Board of Finance imposed conditions, reimburse the Grantee for necessary expenditures

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

incurred to develop the Project sufficiently to make the sale, lease, license, or operating agreement commercially feasible, such as plan and design expenditures; and

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

a. The Grantee shall submit to the Department one copy of all Third Party Obligations and amendments thereto (including terminations) as soon as possible after execution by the Third Party but prior to execution by the Grantee.
b. Grantee acknowledges and agrees that if it chooses to enter into a Third Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such expenditures.
c. The Department may, in its absolute discretion, issue to Grantee a Notice of Obligation for the particular amount of that Third Party Obligation that only obligates the Department to reimburse Grantee's expenditures made on or before the Reversion Date or an Early Termination Date. The current Notice of Obligation form is attached to this Agreement as Exhibit 3.
d. The date the Department sends, by mail or email, the Notice of Obligation is the date that the Department's Notice of Obligation is effective. After that date, the Grantee is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third Party Obligation and request the Third Party begin work.

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

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

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

ARTICLE III. NOTICE PROVISIONS AND GRANTEE AND DEPARTMENT DESIGNATED REPRESENTATIVES

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

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

Grantee:	City of Alamogordo
Name:	Margaret Paluch
Title:	City Manager
Address:	1376 9th Street, Alamogordo, NM 88310
Email:	mpaluch@ci.alamogordo.nm.us
Telephone:	575.439.4203

Grantee:	City of Alamogordo,
Name:	Julianne Hall
Title:	Finance Director
Address:	1376 9th Street, Alamogordo, NM 88310
Email:	jhall@ci.alamogordo.nm.us
Telephone:	575.439.4215

Department:	Aging and Long-Term Services Department
Name:	Rebecca Martinez
Title:	Capital Projects Bureau Chief
Address:	P.O. Box 27118, Santa Fe, NM 87502-7118
Email:	rebeccas.martinez@state.nm.us
Telephone:	505-476-4678

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

ARTICLE IV. REVERSION DATE, TERM, EARLY TERMINATION

A. As referenced in Article I(A), the applicable law establishes a date by which Project funds must be expended by Grantee, which is referred to throughout the remainder of this Agreement as the "Reversion Date." Upon being duly executed by both parties, this Agreement shall be effective as of the date of execution by the Department. It shall terminate on June 30, 2021 the Reversion Date unless Terminated Before Reversion Date ("Early Termination") pursuant to Article V herein.

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

ARTICLE V. EARLY TERMINATION

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

Early Termination includes:

(i) Termination due to completion of the Project before the Reversion Date; or

(ii) Termination due to complete expenditure of the Adjusted Appropriation Amount before the Reversion Date; or

(iii) Termination for violation of the terms of this Agreement; or

(iv) Termination for suspected mishandling of public funds, including but not limited to, fraud, waste, abuse, conflicts of interest.

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

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

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

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

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

ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS

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

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

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

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

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

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

D. **Corrective Action Plan in the Event of Suspension**

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

ARTICLE VII. AMENDMENT

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

ARTICLE VIII. REPORTS

A. Paper Periodic Reports

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

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

B. Paper Final Report

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

C. Paperless Reporting

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

D. Requests for Additional Information/Project Inspection

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

ARTICLE IX. REQUEST FOR PAYMENT PROCEDURES AND DEADLINES

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

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

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

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

B. Deadlines

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

(i) Immediately as they are received by the Grantee but at a minimum twenty (20) days from the end of the calendar quarter in which the expenditure was incurred or liability of the Grantee was incurred as evidenced by an unpaid invoice received by the Grantee from a third party contractor or vendor, if total unreimbursed expenditures or liabilities at calendar quarter end exceed $25,000; or

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

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

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

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

ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS; REPRESENTATIONS AND WARRANTIES

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

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

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

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

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

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

B. The Grantee hereby represents and warrants the following:

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

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

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

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

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

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

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

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

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

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

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

ARTICLE XII. IMPROPERLY REIMBURSED FUNDS

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

ARTICLE XIII. LIABILITY

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

ARTICLE XIV. SCOPE OF AGREEMENT

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

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

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

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

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

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

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

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

XVII. COMPLIANCE WITH UNIFORM FUNDING CRITERIA.

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

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

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

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

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

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

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

[THIS SPACE LEFT BLANK INTENTIONALLY]

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

GRANTEE

____
Signature of Official with Authority to Bind Grantee

By: ______________________________
(Type or Print Name)

Its: ______________________________
(Type or Print Title)

____
Date

AGING AND LONG-TERM SERVICES DEPARTMENT

By: ___________________________________ Date: _________________
ALTSD Cabinet Secretary

By: ___________________________________ Date: _________________
ALTSD Legal Counsel—Certifying Legal Sufficiency

By: ___________________________________ Date: _________________
ALTSD Chief Financial Officer

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

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

DATE: __________

Grantee:__________________ Grant Number:__________ Reporting Period:______ Grant Expiration Date: ________

Address:__________________________________ Preparer's Name & Phone Number: __________________
City State Zip

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

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

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

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

REQUEST FOR PAYMENT

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

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

VENDOR INVOICE DETAIL *(Attach extra sheet if needed)*

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

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

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

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

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

______________________________ ______________________________
Grantee Fiscal Officer Signature & Printed Name Grantee Representative Signature & Printed Name *(Preparer)*

SWORN TO AND SUBSCRIBED BEFORE ME THIS_____DAY OF_______ 201__
Notary Public ____________________
My Commission Expires ______________

STATE AGENCY USE ONLY

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

______________________________ ______________________________
ALTSD Fiscal Date ALTSD Capital Projects Bureau Date

EXHIBIT 2
STATE OF NEW MEXICO
CAPITAL GRANT PROJECT
NOTICE OF OBLIGATION TO REIMBURSE GRANTEE

DATE: ______________________________

TO: **Grantee Representative:** ______________________________

FROM: **Department Representative:** ______________________________

SUBJECT: **Notice of Obligation to Reimburse Grantee**

Project Number: ______________________________

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

Third Party Obligation (includes purchase orders and contract) #: ______________

Vendor or Contractor: ______________________________

Third Party Obligation Amount: ______________________________

Termination Date: ______________________________

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

Grant Amount adjusted for AIPP if applicable: ______________________

The Amount of this Notice of Obligation to Reimburse: ______________________

The Total Amount of all Previously Issued Notices of Obligation: ______________________

The Total Amount of all Notices of Obligation to Reimburse as of this Date: _____________

Department Representative: ______________________________

Title: ______________________________

Signature: ______________________________

Date: ______________________________

**EXHIBIT 3
ALTSD CAPITAL OUTLAY
SPECIAL GRANT CONDITIONS**

No special conditions are required for this grant.

EXHIBIT 4
ALTSD CAPITAL OUTLAY
PROJECT DESCRIPTION
SCOPE OF WORK (SOW)

Laws of 2016, Chp. 82, Section 10, Subsection A, Paragraph 41, sixty-eight thousand two hundred fifty dollars ($68,250) to purchase and equip vehicles for the Alamo senior center in Alamogordo in Otero county.

1. **Name of Grantee/ Fiscal Agent:** City of Alamogordo
2. **Project Title:** Alamo Senior Center Vehicles
3. **Grant Agreement Number:** A16A5041
4. **Background Narrative**: Alamo Senior Center transportation program uses our buses constantly to serve our seniors. The Center offers bus service to and from our Center directly to the senior's home five days a week. We have requested capital improvement funds to replace one of our buses that has over 100,000 miles and has developed an unhealthy problem with mold. The acquisition of a new bus will enable us to continue our busy transportation schedule, assisting our consumers who are no longer able to drive.
5. **Work Plan**: The project will begin as soon as a fully executed Grant Agreement contract is received. The capital outlay funds will be used to purchase one (1) new bus with a lift for wheelchairs. The new vehicle will be used to continue meet the capacity requirements of our transportation program.
6. **Budget Detail**:

Project Cost Activities	Other Funds	State Funds
Vehicle Purchase & Equip		$68,250
Total		**$68,250**

7. **Performance Measures**: The new bus will ensure the safe transportation of seniors to our center for meals and socialization, to stores for grocery shopping, and other destinations. The center's drivers and the city's vehicle maintenance department will conduct regular inspections and maintenance of the new bus so it will last 100,000 miles or 10 years.
8. **Results Expected**: The results expected are to reach seniors living in and around our city. These are seniors who are unable to drive and/or lack transportation. Our riders include those with limited mobility, with limited English proficiency, and low levels of income. Our program allows these consumers to maintain independence and to stay in their homes. The purchase of a new bus will result in the safe transportation of all clients.
9.

Time Frame/ Milestones: Upon full execution of the Grant Agreement the following tasks will commence to meet the time frame/milestones.	
RFP/Quotes Secured – CES or STATE PRICE AGREEMENTS	Month 1-2
Bid Closing	*N/A*
Bid Award to Contractor/Vendor	N/A
Purchase & Equip Vehicle	Month 2-6
Project Completion & Review; Project Close Out	Month 6-8
Submit Exhibit 1 – Monthly / Final Report Form & Request for Payment according to contractual requirements as set forth in Articles VIII & IX of the Grant Agreement	Month 1-8

10. Responsible Staff

Name: Peter McKown
Title: Manager, Alamo Senior Center
Address: 2201 Puerto Rico Ave, Alamogordo, NM 88310
Email: pmckown@ci.alamogordo.nm.us
Phone: 575-439-4150

NOTICE: The Grant Application, if approved for funding by Aging and Long-Term Services Department (ALTSD) and any attachments to the Grant Application are incorporated by reference into the scope of work. In the event of a conflict between any of the documents that are part of the Agreement, the ALTSD Cabinet Secretary, at the sole discretion of ALTSD, shall resolve that conflict.

AGENDA REPORT
CITY OF ALAMOGORDO
CITY COMMISSION

Meeting Date: 10/10/2017 **Report Date:** 10/04/2017 **Report No:** 9.

Submitted By: Debbie Osborne

Subject: Consider, and act upon, Resolution 2017-28, a Resolution authorizing publication of a Notice of Sale of $5,285,000 City of Alamogordo, NM General Obligation refunding bonds, Series 2017 and authorizing the City Commission, City Officers and City employees to take further action necessary in connection with the sale of the bonds. *(Julianne Hall, Finance Director)* (**Roll Call Vote Required)**

Fiscal Impact:
Amount Budgeted:
Fund:

Additional Fiscal Impact:

Recommendation: Approve Resolution 2017-28.

Background: At the September 26, 2017 Commission meeting the Commission approved first publication of Ordinance 1545. This Ordinance authorizes the issuance and sale of the City of Alamogordo, NM, General Obligation refunding bonds, Series 2017, for the purpose of defraying the cost of refunding, paying, discharging and liquidating the City of Alamogordo, NM General Obligations Bonds, Series 2009; providing for the issuance and sale of the bonds; providing for the payment of such bonds from ad valorem property taxes levied on all taxable property with the city, levied without limit as to rate or amount; providing for the form, terms, and condition of the bonds, the manner of their execution and the method of, and security for, payment; approving the sale of the bonds to the New Mexico Finance Authority and the form, execution and delivery of the bond purchase agreement; and providing for other details concerning the bonds.

EXCERPT FROM A REGULAR MEETING
OF THE CITY COMMISSION OF THE
CITY OF ALAMOGORDO, NEW MEXICO

The City Commission of the City of Alamogordo, New Mexico (the “City Commission” and the “City,” respectively), met in regular session in full conformity with law and the rules and regulations of the City Commission at the Alamogordo Municipal Offices, 1376 East Ninth Street, Alamogordo, New Mexico, being the regular meeting place of the City Commission, on the 10th day of October, 2017 at the hour of 6:30 p.m. Upon roll call, the following members were found:

PRESENT:	____________________________
	____________________________
	____________________________
	____________________________
	____________________________
	____________________________
	____________________________
ABSENT:	____________________________
	____________________________
	____________________________
ALSO PRESENT:	____________________________
	____________________________

Commissioner _______________ thereupon introduced and moved the adoption of the following resolution:

CITY OF ALAMOGORDO, NEW MEXICO

RESOLUTION NO. 2017-28

A RESOLUTION AUTHORIZING PUBLICATION OF A NOTICE OF SALE OF $5,285,000 CITY OF ALAMOGORDO, NEW MEXICO GENERAL OBLIGATION REFUNDING BONDS, SERIES 2017 AND AUTHORIZING THE CITY COMMISSION, CITY OFFICERS AND CITY EMPLOYEES TO TAKE FURTHER ACTION NECESSARY IN CONNECTION WITH THE SALE OF THE BONDS.

WHEREAS, the City on August 19, 2009 issued the City of Alamogordo, New Mexico General Obligation Bonds, Series 2009 (the "Refunded Series 2009 Bonds"), in the original principal amount of $7,420,000, of which there is presently outstanding a principal amount of $5,675,000; and

WHEREAS, the Refunded Series 2009 Bonds maturing on and after August 1, 2020 are subject to redemption at the option of the City on and after August 1, 2019 at 100% of the principal amount then outstanding, plus accrued interest to the date of redemption; and

WHEREAS, the Governing Body has determined to advance refund and defease the Refunded Series 2009 Bonds from the proceeds of the Series 2017 Bonds herein authorized and from other legally available sources and to pay costs of issuance related to the refunding of the Refunded Series 2009 Bonds (collectively, the "Refunding Project"); and

WHEREAS, as of the date hereof, there are no funds of the City that are, or are reasonably expected to be, allocated on a long-term basis, reserved or otherwise available pursuant to the budget of the City to finance the Refunding Project;

WHEREAS, after receipt of bids for purchase of the Bonds, the City Commission will consider for adoption an ordinance authorizing issuance of the Bonds in accordance with law.

NOW, THEREFORE, be it resolved by the City Commission of the City of Alamogordo:

Section 1. The Mayor of the City and the City Clerk are hereby authorized and directed to have published once, at least one week prior to the date of sale, a notice of sale of the Bonds in the form set forth below in Section 2 in the *Alamogordo Daily News*, a newspaper of general circulation in the City, and the Mayor of the City is hereby authorized and directed to give such other notice of the bond sale as she shall determine, including the publication of the notice in financial papers and periodicals and the distribution among investment bankers and others of a Preliminary Official Statement relating to the Bonds.

Section 2. The notice of sale of the Bonds shall be published in the following form:

(Form of Notice for Publication)

NOTICE OF BOND SALE AND PUBLIC MEETING

PUBLIC NOTICE IS HEREBY GIVEN that the City Commission of the City of Alamogordo, New Mexico (the "City Commission" and the "City," respectively), will receive and publicly open bids at the offices of the City, Alamogordo Municipal Offices, 1376 East Ninth Street, Alamogordo, New Mexico, at the hour of 10:00 a.m., prevailing Mountain Time, on the 24th day of October, 2017, for the purchase of City of Alamogordo, New Mexico General Obligation Refunding Bonds, Series 2017 (the "Bonds"). The City Commission will meet in regular session at 6:30 p.m. on October 24, 2017 at the Alamogordo Municipal Offices, 1376 East Ninth Street, in Alamogordo, New Mexico, to take action to award the Bonds.

The Bonds will be issued as fully registered Bonds and will mature on August 1 of each year commencing on August 1, 2018, and ending no later than August 1, 2029, in amounts to be determined by the City.

The Bonds shall constitute the City's general obligation bonds and shall be payable solely out of general (ad valorem) taxes which shall be levied against all taxable property in the City without limitation as to rate or amount.

The maximum net effective interest rate on the Bonds shall not exceed ten percent (10%) per annum. Discounts shall not be permitted as part of the sale price of a series of the Bonds, in whole, although discounts may be offered on any single maturity of a series of Bonds. Interest on each Bond shall be evidenced until maturity by only one interest rate.

Interest on the Bonds will be payable on February 1 and August 1 in each year while the Bonds are outstanding, beginning February 1, 2018. The Bonds will bear interest until maturity from the most recent date to which interest has been paid or provided for or, if no interest has been paid or provided for, from the date of the Bonds.

Each bid shall be deemed an irrevocable offer to purchase the Bonds on the terms provided therein and in the Official Notice of Bond Sale. Each bidder is required to submit an unconditional electronic bid for the Bonds.

Each bid must be submitted electronically through the facilities of GRANT STREET GROUP. THE CITY WILL NOT ACCEPT TELEPHONE, FACSIMILE OR HAND-DELIVERED BIDS. The City shall not be responsible for any malfunction or mistake made by, or as a result of the use of the facilities of, GRANT STREET GROUP, the use of such facilities being at the sole risk of the bidder.

This Notice is not a disclosure document, and it is not the Official Notice of Bond Sale. Prior to submitting a bid to the City for the Bonds, a full review should be made of the Official Notice of Bond Sale and the entire Preliminary Official Statement ("Preliminary Official Statement") for the Bonds. The offering of Bonds to potential investors is made only by means of the Preliminary Official Statement.

Copies of the Official Notice of Bond Sale, Preliminary Official Statement and the Official Bid Form may be obtained from the City's Financial Advisor, RBC Capital Markets, LLC, 6301 Uptown Blvd. NE, Suite 110, Albuquerque, New Mexico 87110, telephone (505) 872-5999. <u>All bids must comply with the terms of the Official Notice of Bond Sale</u>.

The validity and enforceability of the Bonds will be approved by Modrall, Sperling, Roehl, Harris & Sisk, P.A., 500 Fourth Street, NW, Albuquerque, New Mexico 87102, and a certified transcript of the legal proceedings will be furnished to the purchaser without charge.

DATED at Alamogordo, New Mexico this 10th day of October, 2017.

CITY OF ALAMOGORDO, NEW MEXICO

By___________________________________
Richard Boss, Mayor

ATTEST:

____
Rachel Hughs, City Clerk

(End of Form of Notice for Publication)

Section 3. The Official Notice of Bond Sale shall be in substantially the following form with such changes as are not inconsistent herewith and approved by the Mayor of the City:

(Form of Official Notice of Bond Sale)

OFFICIAL NOTICE OF BOND SALE
$5,285,000
CITY OF ALAMOGORDO, NEW MEXICO
GENERAL OBLIGATION REFUNDING BONDS
SERIES 2017

PUBLIC NOTICE IS HEREBY GIVEN that the City Commission of the City of Alamogordo, New Mexico (the "City Commission" and the "City," respectively), will receive and publicly open sealed or electronic transmission (at the option of the bidder) bids at the Alamogordo Municipal Offices, 1376 East Ninth Street, Alamogordo, New Mexico, at the hour of 10:00 a.m., prevailing Mountain Time, on the 24th day of October, 2017, for the purchase of City of Alamogordo, New Mexico General Obligation Refunding Bonds, Series 2017 (the "Bonds"). Bids for the purchase of the Bonds will be accepted through the Grant Street Group electronic bidding web site ("Grant Street Group") at www.grantstreet.com. No other method of submitting bids will be accepted. The date and time for submitting bids will be as follows:

Bid Date: October 24, 2017
Bid Time: Between 12:00 a.m. and 12:30 a.m. Eastern Time
(Between 10:00 a.m. and 10:30 a.m. Mountain Time)
Submit Bid to: www.grantstreet.com

Information related to this auction can be obtained from Grant Street Group Auction Support at (412) 391-5555 (x-370), attention John Carver.

To bid, bidders must have both (1) completed the registration form on the Grant Street Group website and (2) requested and received admission to the City's auction, as described under "TERMS OF SALE – Submission of Bids" below. The use of Grant Street Group shall be at the bidder's risk and expense, and the City shall have no liability with respect thereto.

Neither the City, Grant Street Group, nor Bond Counsel shall be responsible for, and each bidder expressly assumes the risk of, any incomplete, inaccurate, or untimely bid submitted by Internet transmission by such bidder, including, without limitation, by reason of garbled transmissions, mechanical failure, engaged telephone or telecommunications lines, or any other cause arising from delivery by Internet transmission. Additionally, the Grant Street Group time stamp will govern the receipt of all bids. The official bid clock does not automatically refresh. Bidders must refresh the auction page periodically to monitor the progression of the bid clock and to ensure that their bid will be submitted prior to the termination of the auction. All bids will be deemed to incorporate the provisions of this Official Notice of Bond Sale.

The bids will be publicly examined immediately thereafter in the City Manager's Office. Following verification, verbal notification of the award will be given to the successful bidder (the "Purchaser"), subject to ratification of the award by the City Commission at its regular meeting to be held at 6:30 p.m., on Tuesday, October 24, 2017.

The Preliminary Official Statement may be viewed and downloaded from www.grantstreet.com or a physical copy may be obtained by contacting Grant Street Group.

The City will make available to the winning bidder, within seven business days after the award of the Bonds, the Final Official Statement which is to be downloaded from www.grantstreet.com. One physical copy of the Final Official Statement also will be provided to the winning bidder at that time; provided, however, the winning bidder must cooperate in providing the information required to complete the Final Official Statement. Additional copies of the Final Official Statement may be provided at the expense of the winning bidder.

ADJUSTMENT OF PRINCIPAL AMOUNTS, MODIFICATION OR CLARIFICATION PRIOR TO EXAMINATION OF BIDS

The City's Finance Director (the "Director"), in consultation with the City's financial and bond advisors, in the Director's sole discretion and prior to the examination of bids, may (i) adjust the aggregate principal amount set forth herein or may adjust the principal amount of each series without increasing the aggregate principal amount of Bonds; (ii) adjust individual maturities, and/or (iii) modify or clarify any other term hereof, including the date on which bids for the Bonds will be received, by issuing a notification of the adjusted series, amounts, modification or clarification via Thomson Municipal News ("TM3") and/or BIDCOMP/PARITY and/or Bloomberg Financial Services no later than 8:00 a.m., prevailing Mountain Time, on the Bid Date.

ADJUSTMENTS TO PRINCIPAL AMOUNTS AFTER DETERMINATION OF BEST BID

The aggregate principal amount of the Bonds is subject to increase or reduction, and each scheduled maturity thereof is subject to increase or reduction, by the Director after the determination of the Best Bid (defined below). Such adjustments will be made within no more than two (2) hours after the end of the time of bid examination and will be in the sole discretion of the City. To cooperate with any adjustment in the principal amounts, the Purchaser is required to indicate by facsimile transmission to the City at (575) 439-4396 or such other number as may be indicated by the Director within one-half (1/2) hour after the end of the time of bid examination, the amount of any original issue discount or premium on any maturity of the Bonds, the initial offering price of each maturity, the cost of bond insurance, if any, and the amount received from the sale of the Bonds to the public that will be retained by the Purchaser as its compensation.

The Director, in consultation with the City's financial and bond advisors, may change the dollar amount bid by the Purchaser if the aggregate principal amount of the Bonds is adjusted as described below, but the interest rates specified by the Purchaser for all maturities will not change. The Director, in consultation with the City's financial and bond advisors, will make every effort to ensure that the percentage net compensation to the Purchaser (i.e., the percentage resulting from dividing (i) the aggregate difference between the offering price of the Bonds to the public and the price to be paid to the City, less any bond insurance premium to be paid by the Purchaser, by (ii) the principal amount of the Bonds) does not increase or decrease from what it would have been if no adjustment was made to principal amounts shown in the maturity schedule. The City will notify the Purchaser of the final principal amounts and the resulting adjusted prices no later than 12:00 p.m. prevailing Mountain Time on the day of the sale and award of the Bonds. EXCEPT AS SPECIFICALLY PROVIDED IN THIS NOTICE OF BOND SALE AND MEETING, THE PURCHASER MAY NOT WITHDRAW OR MODIFY ITS BID ONCE SUBMITTED TO THE CITY FOR ANY REASON, INCLUDING, WITHOUT LIMITATION, AS A RESULT OF ANY INCREASE OR DECREASE IN THE FINAL PRINCIPAL AMOUNTS AND THE AGGREGATE PURCHASE PRICE OF THE BONDS.

BOND PROVISIONS

SECURITY: The Bonds will be general obligations of the City payable as to both principal and interest from property taxes levied against all taxable property within the City, without limitation as to rate or amount, and the full faith and credit of the City will be pledged for payment of the Bonds.

RATINGS: The City has applied and will pay for ratings from Moody’s Investors Service, Inc.

PAYING AGENT AND REGISTRAR: The registrar (the "Registrar") and the paying agent (the "Paying Agent") for the Bonds will be the City's Finance Director.

GENERAL: The Bonds will be issued in one series, in fully registered form, dated the delivery date, numbered as determined by the Registrar, or as otherwise requested by the Purchaser, and issued in denominations of $5,000 or integral multiples of $5,000.

The Bonds will bear interest at the interest rate or rates stated in the Best Bid (described below). If a Bond is not paid at its maturity, the principal amount will continue to draw interest at the rate specified in the Bond until the principal amount is paid in full.

Interest on the Bonds will be payable on February 1 and August 1 in each year while the Bonds are outstanding, beginning February 1, 2018. The Bonds will bear interest until maturity from the most recent date to which interest has been paid or provided for or, if no interest has been paid or provided for, from the date of the Bonds. Unless adjustments are made, the Bonds will mature serially on August 1 in the following years and principal amounts:

Series 2017 Bonds

Years Maturing	Principal Amount
2018	$
2019	
2020	
2021	
2022	
2023	
2024	
2025	
2026	
2027	
2028	
2029	

INTEREST RATE, MINIMUM BID AND LIMITATIONS: The following matters and limitations regarding interest rates are applicable:

1. Interest on the Bonds will be payable on February 1 and August 1 in each year, beginning February 1, 2018, and will be computed on the basis of a 360-day year, consisting of twelve, 30-day months.

2. The maximum net effective interest rate on the Bonds shall not exceed ten percent (10%) per annum.

3. Each interest rate specified must not include fractions other than 1/8 or 1/20 and must be stated as a decimal.

4. All Bonds of a series having the same maturity shall bear the same rate of interest, but bonds of the same maturity of different series may bear different rates of interest. No Bond shall have more than one rate of interest. Neither coupons nor a zero rate of interest is permitted.

5. Each bid for Bonds must specify the expected reoffering price (the "Expected Reoffering Price") for each maturity of each series of the Bonds to the "Public." As used in this paragraph, "Public" does not include bond houses, brokers or similar persons or organizations acting in the capacity of underwriters, placement agents or wholesalers.

6. A zero interest rate may not be specified, and the rate of interest on any Bond may not exceed the rate of interest on any other Bond by more than 3.0% per annum.

7. Discounts shall not be permitted as part of the sale price of the Bonds, in whole, although discounts may be offered on any single maturity of Bonds. Subject to the limitations stated above, it is permissible to bid a different interest rate for each maturity date and series of the Bonds without limitation as to the number of rates specified.

BOOK-ENTRY: It is anticipated that the Bonds will be issued in book-entry form and deposited with a securities depository company (the "Depository") selected by the City with no physical distribution of Bond certificates to the public. Transfers of beneficial ownership of the Bonds will be effected on the records of participants (the "Participants") of the Depository and other nominees of beneficial owners of Bonds (the "Beneficial Owners") maintaining a relationship with the Participants (the "Indirect Participants"). As a condition to delivery of the Bonds, the Purchaser will be required, immediately after acceptance of delivery, to deposit the Bond certificates with the Depository on the date the Bonds are delivered, registered in the name of the Depository or its nominee. Principal and interest will be paid to the Depository or its nominee as registered owner of the Bonds. The transfer of principal and interest payments to the Beneficial Owners will be the responsibility of Participants. The City will not be responsible or liable for maintaining, supervising or reviewing the records maintained by the Depository, Participants or Indirect Participants. If (i) the Bonds are not eligible for the Depository services, (ii) the Depository determines to discontinue providing its services with respect to the Bonds, or (iii) the City determines that a continuation of the system of the book-entry transfers through the Depository is not in the best interest of the Beneficial Owners or the City, the City will either identify another qualified securities depository or Bond certificates will be delivered to Beneficial Owners or their nominees.

CUSIP NUMBERS: It is anticipated that CUSIP identification numbers will be printed on the Bonds, but neither the failure to print a CUSIP number on any Bond nor any error with respect to the numbers will constitute cause for failure or refusal by the Purchaser to accept delivery of and to pay for the Bonds in accordance with the terms of the bid and this Official Notice of Bond Sale. All expenses relating to placing the CUSIP numbers on the Bonds will be paid by the City, but the CUSIP Service Bureau charge for the assignment of those numbers will be the responsibility of and shall be paid by the Purchaser of the Bonds.

PAYMENT: Except as otherwise provided by the Depository, the principal of and premium, if any, on the Bonds will be payable upon presentation and surrender of the Bonds at the office of the Paying Agent on or after their respective maturity dates. Except as otherwise provided by the Depository, interest on the Bonds is payable by check or draft mailed to the registered owners of the Bonds, as shown on the registration books maintained by the Registrar at the address appearing in the registration books at the close of business on the 15th day of the calendar month next preceding each interest payment date (the "regular record date") or in such other manner as may be agreed upon by the Paying Agent and the registered owner. Any interest which is not timely paid or duly provided for will cease to be payable to the owners of the Bonds (or of one or more predecessor Bonds) as of the regular record date, but will be payable to the owners of the Bonds (or of one or more predecessor Bonds) as shown on the registration books of the Registrar at the close of business on a special record date for the payment of that overdue interest. The special record date will be fixed by the Registrar and Paying Agent whenever money becomes available for payment of the overdue interest and notice of the special record date will be given to owners not less than ten (10) days prior thereto.

PURPOSES: The City intends for the Bond proceeds will be used to advance refund and defease the City of Alamogordo, New Mexico General Obligation Bonds, Series 2009, presently outstanding a principal amount of $5,675,000.

SUBMISSION OF BIDS: All bids must be submitted only by electronic bidding on Grant Street Group at www.grantstreet.com. No other provider of bidding services and no other means of delivery (i.e., telephone, telefax or physical delivery) will be accepted. Bidding for the Bonds will begin at 12:00 a.m., New York Time (10:00 a.m. Alamogordo, New Mexico Time) as indicated above. The receipt of bids will end promptly at 12:30 a.m., New York time (10:30 a.m., Alamogordo, New Mexico Time), unless the bidding period is extended through the procedure commonly known as the "Two Minute Rule," which will be utilized or in effect for this auction.

To bid, bidders must first visit the Grant Street Group website where, if they have never registered with Grant Street Group, they can register and then request admission to bid on the Bonds. Bidders will be notified prior to the scheduled bidding time of their eligibility to bid. Only FINRA registered broker-dealers and dealer banks with DTC clearing arrangements will be eligible to bid. Bidders who have previously registered with Grant Street Group may call (412) 391-5555, x 370, attention John Carver, for their ID Number or password.

RULES OF GRANT STREET GROUP: Bidders must comply with, and all bids must be made in accordance with, the Rules of Grant Street Group in addition to the requirements of this Official Notice of Bond Sale. The Rules of Grant Street Group can be viewed on the Grant Street Group website and are incorporated herein by reference. In the event the Rules of Grant Street Group conflict with this Official Notice of Bond Sale, this Official Notice of Bond Sale will prevail.

INFORMATION REGARDING BIDS: Bidders may change and submit bids as many times as they wish during the bidding, provided, however, that each bid submitted subsequent to a bidder's initial bid must result in a lower true interest cost ("TIC") with respect to a bid when compared to the immediately preceding bid of such bidder. During the bidding, no bidder will see any other bidder's bid, but each bidder will be able to see its own ranking (i.e., "leader," "cover," "3rd," etc.).

A bid made through the facilities of Grant Street Group shall be deemed an irrevocable offer to purchase the Bonds on the terms provided in this Notice of Bond Sale, and the bid shall be binding upon the bidder. The City shall not be responsible for any malfunction or mistake made by, or as a result of the use of the facilities of, Grant Street Group, the use of such facilities being the sole risk of the prospective bidder.

For information purposes only, bidders are requested to state in their electronic bids the true interest cost to the City. All electronic bids shall be deemed to incorporate the provisions of this Notice of Bond Sale and the Required Bid Form.

GOOD FAITH DEPOSIT: The Purchaser will be required to provide a deposit of $105,700, which is equal to two percent (2%) of the preliminary issue size (the "Good Faith Deposit"), in immediately available funds wired to the City not later than 2:00 p.m., prevailing Mountain Time, on October 24, 2017. Wire information will be provided to the Purchaser by the City or the City's financial advisor upon bid award. The Good Faith Deposit will be deposited by the City in an account of the City (without interest thereon to the Purchaser) and will be applied against the purchase price of the Bonds. The Good Faith Deposit will be returned if the City does not accept the bid. If the bid is accepted and the Purchaser does not complete the purchase of the Bonds within thirty (30) days following the acceptance of its bid by the Commission or within ten (10) days after the Bonds are ready and are offered by the City for delivery, whichever is later, the Good Faith Deposit will be forfeited to the City for noncompliance with the bid. In that event, the Commission may accept the bid of the bidder making the next best bid for the Bonds, if that bidder elects to purchase the Bonds on that basis or, in the event of any failed purchase, or if all bids for Bonds are rejected, the Commission may reoffer the Bonds for public or private sale.

SALE RESERVATIONS: The Commission, in connection with the Bonds, reserves the privilege:

1. of waiving any irregularity or informality in any bid;
2. of rejecting any and all bids for the Bonds; and
3. of reoffering the Bonds for public or private sale.

BASIS OF AWARD: The Bonds, subject to the sale reservations, will be sold to the responsible bidder making the Best Bid for the Bonds (the “Best Bid”). Subject to the right of the City to reject any and all bids, the Best Bid for the Bonds will be the bid which states the lowest true interest cost determined by discounting semi-annually all future payments of principal and interest on the Bonds to the date of the Bonds, and to the price paid, based upon a 360-day year. In the event of any error in interest cost calculation in a bid, the interest rate and any premium set forth in the bid form will be considered as determining the correct true interest cost.

The winning bid will be indicated on Grant Street Group and the auction results, as posted on such website, will be subject to verification by the City. The City will verify the auction results immediately following the close of the bidding period, and notice of confirmation by the City of the winning bidder will be made by a posting on Grant Street Group stating "Auction Results Verified and Confirmed."

An award may be made by the City to any bidder in a principal amount less than the principal amount of the Bonds for which the bid is submitted. Further, in the event of an award by the City for a principal amount less than the principal amount the bidder submitted, any premium bid shall be ratably reduced. If two or more bids have the same true interest cost, the first bid submitted, as determined by reference to the time stamp displayed on Grant Street Group, shall be deemed to be the leading bid.

RATIFICATION OF AWARD: The award is subject to ratification by the City Commission at its regular meeting to be held on the date on which the bids are received. At the meeting, the Council will take action awarding the Bonds or rejecting all bids for the Bonds.

MANNER AND TIME OF DELIVERY: The Purchaser will not be required to accept delivery of the Bonds if the Bonds are not tendered for delivery within sixty (60) days from the date stated for opening bids. If the Bonds are not tendered within that period of time, the Good Faith Deposit (without accruing interest thereon) will be returned to the Purchaser upon its request. The Bonds will be made available for delivery by the City to the Purchaser as soon as reasonably possible after the date of the sale. The City anticipates delivering the Bonds to The Depository Trust Company in New York, New York, on or about November 30, 2017. The Purchaser will be given seventy-two (72) hours' notice of the time fixed by the City for tendering Bonds for delivery. At such time any initiative or referendum available with respect to the Bonds will have lapsed.

CONTINUING DISCLOSURE: In connection with the issuance of the Bonds, the City will deliver a continuing disclosure undertaking for purposes of Rule 15c2-12 of the Securities Exchange Act of 1934, as amended (the "Rule"), as described in the Official Statement for the Bonds (the “Official Statement”). For purposes of the Rule, the City is the only “obligated person” with respect to the Bonds and will agree, as described in the Official Statement, to provide or cause to be provided (i) certain annual financial information and operating data (the “Annual Information”) for the preceding fiscal year, (ii) the City’s audited financial statements, (iii) timely notice of the occurrence of certain material events with respect to the Bonds, and (iv) timely notice of any failure by the City to provide its Annual Information within the time specified in that agreement. See the more complete description of the agreement in the Preliminary Official Statement.

PAYMENT OF PURCHASE PRICE: The Purchaser will be required to make payment of the balance of the purchase price of the Bonds (after credit for the Purchaser's Good Faith Deposit) in immediately available funds at a bank or trust company in Alamogordo, New Mexico designated by the City, simultaneously with the delivery of the Bonds. The balance of the purchase price, including any premium, must be paid in the funds specified and not by any waiver of interest, nor by any other concession as a substitution for those funds.

INFORMATION FROM WINNING BIDDER: Before delivery of the Bonds, the Purchaser shall furnish to the City a written statement in form and substance acceptable to Bond Counsel (a) stating the initial reoffering price of each maturity of the Bonds to the general public; (b) certifying that a bona fide offering of the Bonds has been made to the public (excluding bond houses, brokers, and other intermediaries); (c) stating the prices at which at least 10% of each maturity of the Bonds were reasonably expected to be sold to the public (excluding bond houses, brokers, and other intermediaries) prior to the sale of any Bonds of each maturity at other prices; (d) certifying that the price at which each maturity of Bonds was sold did not exceed the fair market value of such maturity as of the sale date; and (e) certifying to such other things as shall be required by Bond Counsel.

LEGAL OPINION AND TRANSCRIPT: The validity and legality of the Bonds will be approved by the bond counsel to the City ("Bond Counsel"). A letter will be delivered by the disclosure counsel to the City ("Disclosure Counsel") addressed to the City and the Purchaser, to the effect that the firm has not independently verified the information contained in the Official Statement, but that during the course of the participation by said firm in the preparation of the Official Statement no information came to the attention of the firm to lead it to believe that the Official Statement (except the information concerning the Depository, any insurance, and the financial statements and other statistical and financial data contained in the Official Statement, as to which such firm will make no statement) as of the date of the delivery of the Bonds either contains an untrue statement of any material fact or omits to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading. The approving opinion of Bond Counsel, the letter of Disclosure Counsel, the Bonds and a complete transcript of the legal proceedings will be furnished to the Purchaser without charge.

TAX EXEMPT STATUS: Bond Counsel will also provide an opinion substantially in the form included in the Preliminary Official Statement to the effect that, under existing law, the interest on the Bonds (i) is excluded from gross income for federal income tax purposes and is not a specific preference item for purposes of the federal alternative minimum tax imposed on individuals and corporations, and (ii) is exempt from State of New Mexico income taxation. Bond Counsel will express no opinion as to any other tax consequences regarding the Bonds.

UNDERWRITING PERIOD: At the time of or prior to delivery of the Bonds, the Purchaser will be required to terminate its underwriting period or periods (as defined in the Rule). In the event that the Purchaser advises the City that its underwriting period has not been terminated at the time of delivery of the Bonds, the Purchaser shall terminate its underwriting period not later than five (5) days after the date of delivery of the Bonds, unless the City agrees to a longer period. The City will consider seriously any good faith request by the Purchaser for a longer period during which to underwrite the Bonds.

RIGHT TO MODIFY OR AMEND NOTICE OF SALE: The City reserves the right to modify or amend this Official Notice of Bond Sale, prior to the bid date. If any modifications occur, supplemental information with respect to the Bonds will be communicated by posting on the Grant Street Group website not later than 3:00 p.m., Alamogordo, New Mexico time on the business day preceding the day on which proposals may be submitted, and bidders shall bid upon the Bonds based upon the terms set forth in this Official Notice of Bond Sale, as so modified by such supplemental information.

POSTPONEMENT OF SALE: The City reserves the right to postpone the date and time established for receipt of bids. Any such postponement will be announced by posting on the Grant Street Group website prior to commencement of the bidding. If any date and time fixed for the receipt of bids and the sale of the Bonds is postponed, an alternative sale date and time will be announced at least one business day prior to such alternative sale date. On any such alternative sale date and time, any bidder may submit bids electronically as described above for the purchase of the Bonds in conformity in all respects with the provision of this Official Notice of Bond Sale, except for the date and time of sale and except for any changes announced by posting on Grant Street Group at the time the sale date and time are announced.

ADDITIONAL INFORMATION: Copies of this Official Notice of Bond Sale and the Preliminary Official Statement are available for viewing in electronic format at www.grantstreet.com or may be obtained upon request from the City's Financial Advisor, RBC Capital Markets, LLC, 6301 Uptown Blvd. NE, Suite 110, Albuquerque, New Mexico 87110, telephone (505) 872-5999.

DATED at Alamogordo, New Mexico this 10th day of October, 2017.

CITY OF ALAMOGORDO, NEW MEXICO

By__________________________________
Richard Boss, Mayor

ATTEST:

____
Rachel Hughs, City Clerk

(End of Form of Official Notice of Bond Sale)

Section 4. The City Commission and the appropriate officers and employees of the City be, and they hereby are, authorized and directed to take all action necessary or appropriate to effectuate the provisions of this resolution, including, but not limited to, determining the exact maturity schedule for the Bonds and submitting an application for a policy of municipal bond insurance on the Bonds to an entity or entities experienced in insuring municipal bonds. In order to obtain and preserve the exemption from federal income tax of interest on the Bonds, the City Commission further covenants it will take all actions that may be required of the City and the City Commission, and will not take any actions which would adversely affect such exemption, under the provisions of any federal tax law that applies to the Bonds, whether presently in effect or enacted subsequent to the date of issuance of the Bonds, and the City Commission hereby authorizes the Mayor of the City, the City Clerk, and other appropriate officers and employees to take such actions and give such certifications as may be appropriate for the purposes aforesaid.

PASSED AND ADOPTED this 10th day of October, 2017.

CITY OF ALAMOGORDO, NEW MEXICO

By__________________________________
Richard Boss, Mayor

[SEAL]

ATTEST:

____
Rachel Hughs, City Clerk

Commissioner ________ then seconded the adoption of the foregoing resolution introduced and moved for adoption by Commissioner ___________. The motion to adopt the resolution upon being put to a vote was passed and adopted on the following recorded vote:

Those Voting Aye:	___________________________________
	___________________________________
	___________________________________
	___________________________________
	___________________________________
	___________________________________
Those Voting Nay:	___________________________________
	___________________________________
Those Absent:	___________________________________
	___________________________________

After transaction of other business not related to the bond issue, upon motion duly made, seconded and carried, the meeting was adjourned.

CITY OF ALAMOGORDO, NEW MEXICO

By_________________________________
Richard Boss, Mayor

[SEAL]

ATTEST:

____
Rachel Hughs, City Clerk

AGENDA REPORT
CITY OF ALAMOGORDO
CITY COMMISSION

Meeting Date: 10/10/2017 **Report Date:** 10/06/2017 **Report No:** 10.

Submitted By:

Subject: Consider, and act upon the addition of speed tables or speed humps on Washington Avenue between 10th Street and Indian Wells. *(Brian Cesar, Assistant City Manager)*

Fiscal Impact:
Amount Budgeted:
Fund:

Additional Fiscal Impact:

Recommendation: Provide direction to staff.

Background: Staff was requested to provide information on speed tables or speed humps to potentially be incorporated into the next SMP which will include Washington Avenue from 10th Street to Indian Wells. A speed table or series of speed humps could be placed before the SMP but is not recommended.

Speed Table Description:
Long raised speed humps with a flat section in the middle and ramps on the ends; sometimes constructed with brick or other textured materials on the flat section
They are sometimes called flat top speed humps, trapezoidal humps, speed platforms, raised crosswalks, or raised crossings.

Applications:
Local and collector streets.
Main roads through small communities.
Typically long enough for the entire wheelbase of a passenger car to rest on top.
Work well in combination with textured crosswalks, curb extensions, and curb radius reductions.
Can include a crosswalk.

Design/Installation Issues:
Typically 22 feet in the direction of travel with 6 foot ramps on each end and a 10 foot flat section in the middle.
Most common height is between 3 and 4 inches.
Ramps are typically 6 feet long and are either parabolic or linear.
Careful design is needed to accommodate for drainage.

Potential Impacts:
No effect on access.
Speeds are reduced, but usually to a higher crossing speed than at speed humps (typically between 25 and 27 miles per hour).
Traffic volumes have been reduced on average by 12 percent depending on alternative routes available.
Increase pedestrian visibility and likelihood that driver yields to pedestrian.

Emergency Response Issues:
Typically preferred by fire departments over 12 to 14-foot speed humps.
Generally less than 3 seconds of delay per hump for fire trucks.

Typical Cost:
Approximately $7,500 for asphalt tables; higher for brickwork, stamped asphalt, concrete ramps and other enhancements sometimes used at pedestrian crossings.

Speed Hump/ Bump

Description:
Rounded raised areas of pavement typically 12 to 14 feet in length.
Often placed in a series (typically spaced 300 to 600 feet apart).
Sometimes called road humps or undulations.

Applications:
Residential streets.
Not typically used on major roads, bus routes, or primary emergency response routes.
Midblock placement, not at an intersection.
Not on grades greater than 8 percent.

Design/Installation Issues:
Typically 12 to 14 feet in length.
Hump heights range between 3 and 4 inches with trends toward 3 - 3 ½ inches maximum.
Difficult to construct precisely; may need to specify a construction tolerance (e.g. ± 1/8 inch) on height.
Often have signage (advance warning sign before first hump in series and warning sign or object marker at hump).
Typically have pavement marking (zigzag, shark's tooth, chevron or zebra).
Tapered edge near curb to allow gap for drainage.
Some have speed advisories.
Bicyclists prefer that it not cover or cross a bike lane.

Potential Impacts:
No effect on non-emergency access.
Speeds determined by height and spacing; speeds between humps have been observed to be reduced between 20 and 25 percent on average.
Typical crossing speeds of 19 mph have been measured for 3½ inch high, 12 foot humps and of 21 mph for 3 inch high, 14 foot humps; speeds have been observed to rise to 27 mph within 200 feet downstream.

Speeds typically increase approximately 0.5 mph midway between humps for each 100 feet of separation.
Studies indicate that traffic volumes have been reduced on average by 18 percent depending on alternative routes available.
Most communities limit height to 3-3½ inches, partly because of harsh ride over 4-inch high humps.
Possible increase in traffic noise from braking and acceleration of vehicles, particularly buses and trucks.

Emergency Response Issues:
Concern over jarring of emergency rescue vehicles.
Approximate delay of between 3 and 5 seconds per hump for fire trucks and up to 10 seconds for ambulance with patient.
Typical Cost:
Approximately $3,000 per hump.

Recommendation: Provide direction to staff.

AGENDA REPORT
CITY OF ALAMOGORDO
CITY COMMISSION

Meeting Date: 10/10/2017 **Report Date:** 10/03/2017 **Report No:** 11.

Submitted By: Petria Schreiber

Subject: Consider and act upon first publication of Ordinance No. 1546 Amending certain sections of the Code of Ordinances concerning purchasing. *(Petria Schreiber, CityAttorney and Barbra Pyeatt, Procurement Manager)* **(Roll Call Voted Required)**

Fiscal Impact:
Amount Budgeted:
Fund:

Additional Fiscal Impact:

Recommendation: Approve ordinance No. 1546 for first publication.

Background: The City wishes to bring its purchasing guidelines in line with what the State currently uses. It has been over 10 years since the City amended its purchasing guidelines.

ORDINANCE NO. 1546

AMENDING CERTAIN SECTIONS OF THE *CODE OF ORDINANCES* CONCERNING PURCHASING

WHEREAS, the City of Alamogordo recognizes that its purchasing guidelines differ from the guidelines set by the State of New Mexico;

WHEREAS, the City of Alamogordo wishes for its purchasing guidelines to be in line with the guidelines set by the State of New Mexico;

NOW, BE IT THEREFORE ORDAINED by the City Commission of the City of Alamogordo, New Mexico that the Article 2-13 of the *Code of Ordinances of the City of Alamogordo, New Mexico* is hereby amended to read as follows:

SECTION ONE

2-13-080. - Small purchase requirements.

The monetary limit of small purchases, the "small purchase order limit" shall be ~~ten~~ twenty thousand dollars ~~($10,000.00)~~ ($20,000.00). Purchases of ~~ten~~ twenty thousand dollars ~~($10,000.00)~~ ($20,000.00) or less may be made by the authorized user for the best obtainable price. Petty cash purchases of fifty dollars ($50.00) or less may be made without a purchase order at the best obtainable price by authorized individuals and within the regulations established by the city purchasing manager.

Purchases of one thousand dollars ($1,000.00) or less may be made by authorized individuals by use of field purchase orders (FPOs).

(1) FPOs shall only be used for the same-day purchase of in-stock goods. Services and construction are specifically excluded.
(2) FPOs shall only be used for purchases from vendors located within a fifteen-mile radius of the city. As an exception, authorized users located at Bonito Lake may purchase from the Villages of Ruidoso and Ruidoso Downs.
(3) Invoices resulting from FPO purchases in the vicinity of the city shall be submitted to the central purchasing office within one (1) business day following the purchase. Invoices resulting from FPO purchases in the vicinity of the Villages of Ruidoso and Ruidoso Downs shall be submitted to the central purchasing office within seven (7) business days following the purchase.

(Ord. No. 1185, § 8, 6-22-04; Ord. No. 1273, § 2, 6-13-06; Ord. No. 1304, § 2, 7-24-07)

SECTION TWO

2-13-090. - Purchases by written quotation.

Purchases of goods, services and construction may be made by the central purchasing office by requests for quotation, in accordance with the following provisions:

(1) A single purchase involving the expenditure of more than the limit set for "small purchase orders", as provided in section 2-13-080, small purchase requirements, but not more than

~~twenty~~ sixty thousand dollars ~~($20,000.00)~~ ($60,000.00), may be made after requesting at least three (3) written quotations. Purchases shall be made from the responsible offeror submitting the lowest responsive offer. If fewer than three (3) responsive offers are obtainable, the purchase may be made at the best documented obtainable price.

(2) Separate purchases of the same or similar goods or services from the same or different businesses at or about the same time shall be considered a single purchase for purposes of this section.

(Ord. No. 1185, § 9, 6-22-04; Ord. No. 1273, § 3, 6-13-06)

SECTION THREE

2-13-100. - Competitive sealed bids.

(a) All purchases of goods, services and construction in excess of ~~twenty~~ sixty thousand dollars ~~($20,000.00)~~ ($60,000.00) shall be made by competitive sealed bid except those purchases made pursuant to the following sections of the city purchasing ordinance:
   (1) Section 2-13-080, small purchase requirements.
   (2) Section 2-13-090, purchases by written quotation.
   (3) Section 2-13-110, competitive sealed proposals.
   (4) Section 2-13-140, sole source purchases.
   (5) Section 2-13-160, special purchase methods.

(b) After submission of a completed purchase request (requisition) to the purchasing office by the user, purchases by competitive sealed bid shall be made by an invitation for bids, in accordance with the provisions set out in section 2-13-220, notice of purchase. In addition, the following provisions shall apply:
   (1) Offers shall be publicly opened according to such procedures as may be adopted by the central purchasing manager.
   (2) Offers shall be evaluated based on the requirements set forth in the invitation for bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Other criteria may be developed and used depending on need, requirements of the user, or the nature of the bid.
   (3) The purchasing manager may accept a lower total offer from the awarded offeror to an invitation for bids, if said offer has otherwise qualified, and if there is no change in the original terms and condition of the invitation for bids.
   (4) Separate purchases of the same or similar goods, services or construction from the same or different businesses at or about the same time shall be considered a single purchase for purposes of this section.

(Ord. No. 1185, § 10, 6-22-04; Ord. No. 1273, § 4, 6-13-06)

SECTION FOUR

2-13-120. - Purchases of professional services.

(a) Any user in need of professional services, as defined in section 2-13-030, definitions, in an amount not exceeding ~~fifty~~ sixty thousand dollars ~~($50,000.00)~~ ($60,000.00), except for professional services of landscape architects and surveyors for public works projects, shall obtain the prior approval of the city manager and shall notify the city purchasing manager of this need.

(b) Any one (1) of three (3) methods for purchasing professional services under the terms of this section may be utilized:
   (1) Offers based on price and/or qualifications may be solicited;
   (2) Award may be based on a rotating basis from the list of registered qualified businesses in the purchasing file; or
   (3) Award may be based on the good faith judgment of the department director needing the services, with the approval of the city manager.

(c) The department director, city attorney, city manager, or purchasing manager are authorized to negotiate a contract for the services at a fair and reasonable price.

(d) If during this process, it is determined that the required professional services will cost more than ~~fifty~~ sixty thousand dollars ~~($50,000.00)~~ ($60,000.00), the procedures for requesting proposals shall be initiated by the purchasing manager. For all services except those of architects, engineers, landscape architects, and surveyors for public works projects, price may be a weighted factor in the evaluation.

(Ord. No. 1185, § 12, 6-22-04; Ord. No. 1273, § 6, 6-13-06; Ord. No. 1304, § 3, 7-24-07)

SECTION FIVE

2-13-130. - Qualification-based proposals.

Requests for qualification based proposals are required for services of architects or engineers for local public works projects involving an amount exceeding ~~fifty~~ sixty thousand dollars ~~($50,000.00)~~ ($60,000.00 or surveyors and landscape architects involving an amount exceeding ten thousand dollars ($10,000.00).

   (1) For each proposed public works project where design or other related work shall not be performed by city community development staff, a selection committee shall evaluate statements of qualifications and performance data submitted in regard to the particular project and may conduct interviews with and may require public presentation by businesses applying for selection regarding their qualifications, their approach to the project and their ability to furnish the required services.

   (2) The selection committee shall rank the businesses deemed to be the most highly qualified to perform the required services, after considering the following criteria together with any criteria, except price, established by using agency authorizing the project:
      a. Specialized design and technical competence of the business, including a joint venture or association, regarding the type of services required;
      b. Capacity and capability of the business to perform the work, including any specialized services, within the time limitations;
      c. Past record of performance on contracts with government agencies or private industry with respect to such factors as control of costs, quality of work and ability to meet schedules;
      d. Proximity to or familiarity with this area;
      ~~e. The amount of design work that will be produced by a New Mexico business within this state; and~~
      ~~f.~~ e. The volume of work done for the city which is not complete with respect to basic design or related services, with the objective of effecting an equitable distribution of

contracts among qualified businesses; provided, however, that the principal of selection of the most highly qualified business is not violated.

(3) The names of all businesses submitting proposals and the names of all businesses, if any, selected for interview shall be public information. After an award has been made, final ranking and evaluation scores for all proposals shall become public information. Businesses which have not been selected shall be notified in writing.

(4) The city purchasing manager and/or other city staff members shall negotiate a contract with the highest qualified business at compensation determined in writing to be fair and reasonable. Should negotiations with the business considered to be the most qualified prove to be unsuccessful, negotiations with that business shall be formally terminated. Negotiations shall then be undertaken with the second most qualified business. Failing accord with the second most qualified business, negotiations with that business shall be formally terminated. Negotiations shall then be undertaken with the third most qualified business. Should negotiations prove unsuccessful with any of the businesses selected by the committee, additional businesses shall be ranked in order of their qualifications and negotiations shall proceed in accordance with this section until a contract is signed with a qualified business or the procurement process is terminated and a new request for proposals is initiated.

(5) All contracts between the city and an architect or engineer for the construction of public works projects shall contain the provision that all designs, drawings, specifications, notes, and other work developed in the performance of the contract are the sole property of the city.

(Ord. No. 1185, § 13, 6-22-04; Ord. No. 1273, § 7, 6-13-06; Ord. No. 1304, § 4, 7-24-07)

SECTION SIX

2-13-160. - Special purchase methods.

(a) *Rapid procurement.* Purchases of perishable food products and other goods or services for any amount, where advertising and the solicitation of offers would entail unnecessary and detrimental delay and loss to the city, may be made by the central purchasing office at the best obtainable price in accordance with the oral or written quotation procedures set out in section 2-13-090, purchases by written quotation. Complete documentation of all proposed prices submitted by offerors must be maintained in the central purchasing office for public inspection.

(b) *~~Emergency~~ Urgent purchases.* In the event of an unforeseen and dangerous situation requiring immediate action to preserve the peace, health, or safety of people or property within the jurisdiction of the city or to prevent significant economic loss, the central purchasing office or a designee may purchase goods and services by order without competitive sealed bids, proposals, or quotations. The department making the ~~emergency~~ urgent purchase shall provide the purchasing manager with information needed to make a written determination of the basis for the ~~emergency~~ urgent procurement and for the selection of the particular contractor and shall be included in the procurement files. Such determinations shall include the following information:

(1) The contractor's name and address;
(2) The amount and term of the contract;
(3) A listing of the services, construction, or items of tangible personal property procured; and
(4) The justification for the procurement method.

(Ord. No. 1185, § 16, 6-22-04; Ord. No. 1273, § 8, 6-13-06)

SECTION SEVEN

2-13-200. - Multi-term contracts; specified period.

(a) A multi-term contract for items of tangible personal property, construction or services, in an amount under ~~fifty~~ sixty thousand dollars ~~($50,000.00)~~ ($60,000.00) per fiscal year, may be entered into for any period of time deemed to be in the best interests of the city not to exceed four (4) years; provided that the term of the contract and conditions of renewal or extension, if any, are included in the specifications and funds are available for the first fiscal period at the time of contracting. If the amount of the contract is ~~fifty~~ sixty thousand dollars ~~($50,000.00)~~ ($60,000.00) or more per fiscal year, the term shall not exceed eight (8) years, including all extensions and renewals, except that for any such contract entered into pursuant to the Public Building Energy Efficiency and Water Conservation Act (Public Facility Energy Efficiency and Water Conservation Act, Chapter 6, Article 23 NMSA 1978), the term shall not exceed ten (10) years, including all extensions and renewals. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefore.

(b) A multi-term contract for the services of trustees, escrow agents, registrars, paying agents, letter of credit issuers and other forms of credit enhancement and other similar services, bond attorneys, underwriters and financial advisors with regard to the issuance, sale and delivery of public securities, may be for the life of the securities or as long as the securities remain outstanding.

(Ord. No. 1185, § 20, 6-22-04; Ord. No. 1273, § 10, 6-13-06; Ord. No. 1304, § 6, 7-24-07)

SECTION EIGHT

2-13-260. - Approval of purchases/signature authority.

(a) The following purchases must be approved by the city commission:
(1) All purchases of goods or construction for amounts exceeding ~~twenty~~ sixty thousand dollars ~~($20,000.00)~~ ($60,000.00) except those purchases made within budget for projects previously approved by the commission and made through a government contract pursuant to section 2-13-150, procurement under existing contracts;
(2) All purchases of services for architects or engineers for public works projects in amounts exceeding ~~fifty~~ sixty thousand dollars ~~($50,000.00)~~ ($60,000.00); or landscape architects or surveying services exceeding ten thousand dollars ($10,000.00);
(3) All purchases of other professional services in amounts exceeding ~~fifty~~ sixty thousand dollars ~~($50,000.00)~~ ($60,000.00).

(b) *Signatory authority for executing city contracts.*
(1) *City manager.* The city manager is authorized to award and sign contracts for goods, services and construction without prior council approval in an amount not in excess of

~~fifty~~ sixty thousand dollars ~~($50,000.00)~~ ($60,000.00) provided that the services and funds were approved by the city commission as part of the annual department budget and any contract authorized by the city commission unless the commission directs some other officer or officers to sign on behalf of the city.

(2) *Department directors.* Department directors are authorized to award and sign contracts for goods, services and construction without prior city manager or commission approval in an amount not in excess of twenty thousand dollars ($20,000.00) provided that the goods, services and construction and funds were approved by the city commission as part of the annual department budget. This authority may not be delegated below the department director level.

(3) *City attorney.* The city attorney is authorized to award and sign contracts for all services for outside counsel and experts related directly to and necessary for prosecution and defense of pending litigation, and for services for outside counsel and experts necessary to address other pending or potential legal claims or legal issues so long as funds for outside counsel, experts and related legal services were approved by the city commission as part of the approved annual budget. The city attorney shall keep commission informed regarding any such expense that exceeds ~~twenty~~ sixty thousand dollars ~~($20,000.00)~~ ($60,000.00) on not less than a quarterly basis and shall seek budget updates, if needed, within a timely fashion.

(Ord. No. 1185, § 26, 6-22-04; Ord. No. 1273, § 15, 6-13-06; Ord. No. 1304, § 7, 7-24-07; Ord. No. 1488, § 1, 2-10-15; Ord. No. 1491 , § 2, 4-14-15)

DONE this _______ day of ______________, 2017.

CITY OF ALAMOGORDO, NEW MEXICO
a New Mexico municipal corporation

By: ___________________________________
Richard A. Boss, Mayor

ATTEST:

____
Rachel Hughs, City Clerk

APPROVED AS TO FORM:

____
Petria Schreiber, City Attorney

AGENDA REPORT
CITY OF ALAMOGORDO
CITY COMMISSION

Meeting Date: 10/10/2017 **Report Date:** 10/05/2017 **Report No:** 12.

Submitted By: Petria Schreiber

Subject: Consider and act upon Resolution No. 2017-27, A Resolution Adopting a Six Month Moratorium on New Off-Premise Billboards for the City of Alamogordo. *(Darron Williams, City Planner and Petria Schreiber, City Attorney)* **(Roll Call vote Required)**

Fiscal Impact:
Amount Budgeted:
Fund:

Additional Fiscal Impact:

Recommendation: Approve Resolution No. 2017-27.

Background: The City Commission recognizes the propagation of off-site commercial advertising, identified as billboards, significantly detracts from the City of Alamogordo's goal of enhanced aesthetics and improved image, and has rapidly growing concern with billboards and their potential for negative impact on public safety, for conflict with compatibility of surrounding land use, and for the need to protect the public investment in streets and highways.

RESOLUTION NO. 2017-27

A RESOLUTION ADOPTING A SIX MONTH MORATORIUM ON NEW OFF-PREMISE BILLBOARDS FOR THE CITY OF ALAMOGORDO

WHEREAS, the City Commission recognizes the propagation of off-site commercial advertising, identified as billboards, significantly detracts from the City of Alamogordo's goal of enhanced aesthetics and improved image; and,

WHEREAS, the City Commission has rapidly growing concern with billboards and their potential for negative impact on public safety, for conflict with compatibility of surrounding land use, and for the need to protect the public investment in streets and highways; and,

WHEREAS, the City of Alamogordo defines a billboard under this moratorium as any off-premise advertising done on an elevated sign, that which is mounted on a wood, composite, or metal structure equal to or greater than four (4) feet in height off the ground, that has a sign face equal to or greater than one hundred (100) square feet, including but not limited to digital display; and,

WHEREAS, the City defines an off-premise sign as any sign displaying a commercial message that pertains to a business, person, organization, activity, event, place, service, or product not principally located, or primarily manufactured, or sold on the premises on which the sign is located; and,

WHEREAS, this moratorium applies to new electronic billboards, as well as a moratorium on converting existing billboards into electronic signs.

WHEREAS, the City Commission finds it necessary to establish a halt on the placement of any new, off-premise advertising billboards to interrupt the aforementioned concerns; and,

WHEREAS, the penalty for non-compliance may be an administrative fee of five hundred dollars ($500) in accordance with Section 2-01-030(l) and may be liable for additional penalties according to Section 1-01-100 with a fine of not more than five hundred dollars ($500), imprisonment for up to ninety (90) days, or both; therefore,

BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF ALAMOGORDO NEW MEXICO that a moratorium is established, as of the recording of this signed ordinance, against placement of any new, off-site advertising billboards within city limits for a period of six (6) months.

DONE this ________ day of ___________, 2017.

CITY OF ALAMOGORDO, NEW MEXICO
a New Mexico municipal corporation

By:____________________________________
Richard A. Boss, Mayor

ATTEST:

APPROVED AS TO FORM:

____
Rachel Hughs, City Clerk

____
Petria Schreiber, City Attorney

AGENDA REPORT
CITY OF ALAMOGORDO
CITY COMMISSION

Meeting Date: 10/10/2017 **Report Date:** 10/05/2017 **Report No:** 13.

Submitted By: Dorothy Murphy

Subject: Consider and act upon the acquisition of the real property owned by Mr. George Gonzalez and located in the SE 1/4 NE 1/4 SE 1/4 of Section 7 in the amount of $31,000. *(Petria Schreiber, City Attorney)*

Fiscal Impact: $31,000
Amount Budgeted: $924,130.00
Fund: 044-9799-990-68-99 (PW1702)

Additional Fiscal Impact:

Recommendation: Approve Purchase Agreement in Lieu of Condemnation.

Background: It was determined that it was necessary to acquire this parcel in order to construct the project known as the Griggs Reservoir Outfall Structure Modifications & Storm Drain Improvements.

Staff recommends approval of the Purchase Agreement for this parcel in the total amount of $31,000.00.

PURCHASE AGREEMENT IN LIEU OF CONDEMNATION

This Purchase Agreement in Lieu of Condemnation is made on August 31, 2017, by and between the City of Alamogordo, a New Mexico municipal corporation ("City"), and George Gonzalez, a married man dealing in his sole and separate property, whose address is 1054 Aspen Grove Circle, Minden, NV 89423 ("Property Owner").

RECITALS

Whereas, the Property Owner is the owner of certain real property along the west side of N. Florida Avenue across from its 3-way intersection with 26th Street in Alamogordo, Otero County, New Mexico, and legally described as follows:

> A tract of land in the SE¼ NE¼ SE¼ of Section 7, Township 16 South, Range 10 East, NMPM, Alamogordo, Otero County, New Mexico (the "Real Property"); and

Whereas, the City has proposed a reconstruction project known as the Griggs Reservoir Outfall Structure Modifications & Storm Drain Improvements, Project No. PWB 2017-013; and

Whereas, the City desires to acquire the Real Property for the Griggs Reservoir Outfall Structure Modifications & Storm Drain Improvements; and

Whereas, the City is statutorily authorized pursuant to section 3-18-10.A(1) NMSA 1978, to condemn private property for public use for the purpose of laying out, opening and widening streets, alleys and highways or their approaches; and

Whereas, the parties to have negotiated certain conditions, memorialized herein, related to the condemnation of the Real Property that will: (1) preclude the need for filing a condemnation petition and all issues related thereto; (2) transfer ownership of the Real Property to the City to be used for the Project; and (3) provide just compensation, are required by law, to the Property Owners for the Real Property, all conditioned upon the parties compliance with the terms and conditions of this Agreement.

NOW, THEREFORE, the City and the Property Owner agree as follows:

1. The City will pay to the Property Owner, as just compensation in lieu of condemnation for the Real Property the sum of Thirty-one thousand dollars ($31,000.00) (the "Compensation"). Real estate taxes in the year of closing will not be prorated and the entire year's taxes shall be assumed by the Property Owner, to be paid when due. Delinquent real estate taxes payable in years prior to the year of closing and delinquent installments of special assessments certified for collection in years prior to the year of closing, together with penalty, interest and costs, shall be paid by the Property Owner not later than the actual closing date. There is no earnest money required for this Agreement. Both parties acknowledge that there is legally sufficient consideration for entering into this Agreement. The Compensation shall constitute full payment for the Real Property, including any and all

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claims for relocation payments, including but not limited to moving expenses and dislocation allowance, except as otherwise specifically provided for by this Agreement.

2. The Property Owner agrees to perform, and be bound to, the following:

(a) In exchange for the Compensation, the Property Owner shall convey the Real Property together with all of their right, title and interest in and to the Property to the City by warranty deed (the "Deed") on the Closing Date as hereinafter defined. The Property Owner represents and warrants that they hold marketable, fee title to the Property, that there are no encumbrances, subject to the provisions set forth at section 4 below and are able to convey the same in conformance herewith.

(b) The Property Owner agrees that they will not damage, dissipate, or commit waste on any portion of the Property between the date of execution of this Agreement and the Transfer Date, as hereinafter defined, except that the Property Owner may remove plants and/or related landscaping features and any fixtures and personal property from the Property, to the extent that such removal does not interfere with the City's intended use of the Property. For the purposes of this agreement, "fixtures" are items that are embedded in the land or attached to the building(s). "Personal Property" includes items that are not attached to the building(s) or embedded in the land. Subject to the foregoing, the Property Owner shall surrender the Property to the City on the Transfer Date in as good condition (normal wear and tear excepted) as exists on the date of this Agreement.

(c) The Property Owner represents and warrants that, to the best of their knowledge, there is no litigation pending or threatened against them or the Property that arises out of the ownership of the Property and that might materially and detrimentally affect (i) the use or operation of the Property for the City's intended use, or (ii) the ability of the Property Owner to perform their obligations under this Agreement, or (iii) the value of the Property, or (iv) the Property Owner' ability to convey marketable title to the Property.

(d) The Property Owner represents and warrants that they have received no notice alleging any default or breach on their part under any covenants, conditions, restrictions, rights of way or easements that may affect them in respect to the Property or that may affect the Property or any portion thereof and no such default or breach now exists.

(e) The Property Owner represents and warrants that they have no knowledge of the release of or presence of any hazardous materials on, In, from or onto the Property ("Hazardous Materials" meaning any hazardous or toxic substance, petroleum product or wastes that are regulated or subject to cleanup authority under any state, federal or local statute, rule, regulation or ordinance).

(f) If any of the above requirements are breached or are otherwise not met, the City shall be allowed to proceed, in its sole discretion, with filing and prosecution of the Action.

3. The parties hereby acknowledge that they have entered into this Agreement under the premise that the Real Property is necessary for a public use by the City. Subject to all the

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provisions of this Agreement, the closing of the transaction shall occur on or before October 31, 2017, (the "Closing Date") unless otherwise mutually agreed to by the parties in writing.

4. The Property Owner acknowledges that the Real Property is unencumbered and owns the property with a mortgage or deed of trust in favor of a lending institution securing certain obligations of the Property Owner and thereby giving these institutions interests in the Real Property (the "Encumbrances"). The Property Owner agrees to be exclusively responsible for all obligations under, or on the Encumbrances and hereby indemnify the City against any loss or damages the City may incur as a result of any default of the Encumbrances and any related promissory notes. Property Owner will provide either a release or satisfaction of mortgage for all Encumbrances that encumber the Real Property. The Property Owner shall be reimbursed for, or the City will pay, all reasonable expenses the Property Owner incurs in obtaining a release of the Encumbrances. Whenever feasible, the City shall pay these costs directly so that the Property Owner will not have to pay such costs and then seek reimbursement from the City.

5. In consideration of payment of the Compensation set forth at section 1 above, the Property Owner shall release the City from any and all other costs, expenses, claims or liabilities arising from, or that may arise from the conveyance of the Real Property to the City and from the City's construction, installation and operation of the Improvements.

6. In the event that either party believes that the other has not met or fulfilled any of the requirements of this Agreement, then upon delivery of written notice to the noncomplying party, said non-complying party shall have thirty days to cure any alleged non-compliance or breach of this Agreement. If after the expiration of said thirty day period, the party alleged to have breached this Agreement has failed to cure the alleged non-compliance, then either party may take any necessary action to enforce the terms and conditions of this Agreement, including writs of injunction, mandamus, or declaratory relief, and shall be entitled to any other relief provided at law or equity, including specific performance.

7. The individuals signing for the parties below affirm that they have all received the requisite approvals from the parties to this Agreement and have the authority to sign this Agreement.

8. **Lead-based paint and/or lead-based paint hazards.** If the improvements on the Real Estate subject to this Purchase Agreement were built before 1978, the City acknowledges receipt of a federal lead information pamphlet and the form entitled "Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards" and information, if any, possessed by the Property Owner concerning the presence of lead paint on the property as required by the Federal Residential Lead Based Paint Hazard Reduction Act. The City has knowingly and voluntarily waived the right to conduct a risk assessment or inspection for the presence of lead-based paint and lead-based paint hazards. *(Disclosure Statement attached hereto and made apart hereof by this reference.)*

9. Upon completion of the mutual obligations set forth herein, the parties forever waive any and all claims for damages or otherwise of any kind or nature known or unknown related to the subject matter of this Agreement.

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10. The parties recognize, acknowledge and agree that this Agreement is a mutual compromise of the claims that each party may have had against the other, that each party admits no liability of any sort, and that this amount is a settlement and compromise for the sole purpose of terminating any and all controversies between the parties hereto.

11. Each of the provisions of this Agreement has been reviewed and negotiated, and represents the combined work product of all parties hereto. No presumption or other rules of construction which would interpret the provisions of this Agreement in favor of or against the party preparing the same shall be applicable in connection with the construction or interpretation of any of the provisions of this Agreement.

12. This Agreement and the parties' rights hereunder shall be governed by and construed in accordance with the laws of the State of New Mexico, without recourse to any principle of Conflicts of Laws and the parties agree that the venue of any suits shall lie exclusively in Otero County, New Mexico.

13. No failure by any of the foregoing parties to insist upon the strict performance of any covenant, duty, agreement, or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach. Any party hereto, by notice, and only by notice as provided herein, may, but shall be under no obligation to, waive any of its rights or any conditions to its obligations hereunder, or any duty, obligation or covenant of any other party hereto. No waiver shall affect or alter this Agreement, and each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

14. This Agreement and its provisions are intended solely for the benefit of the parties hereto. No other person or entity is intended as a third-party beneficiary of any obligation or benefit of any of the parties hereunder. However, this Agreement shall inure to the benefit of and shall be binding upon the parties' respective successors and assigns.

15. Each party hereto acknowledges that such party has read this Agreement and understands its contents, that such party has had the opportunity to have this Agreement reviewed by an attorney of such party's choice, and that such party either has consulted with an attorney or has voluntarily chosen not to consult with an attorney before Signing this Agreement.

16. In case anyone or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as If such invalid, Illegal or unenforceable provision had never been contained herein; provided that any such revision does not obviate the parties substantial intent in entering into this Agreement.

17. The entire agreement between the parties hereto relating to this Settlement Agreement is contained herein and incorporates all written and oral understandings. Only a

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written instrument executed by the parties subsequent to the date hereof may amend this Agreement.

Executed this 31 day of August, 2017, for the Property Owner:

By: ______________________
George Gonzalez

Federal Taxpayer Identification Number: 561-29-5386

Executed this ____ day of ______________, 2017, for the City of Alamogordo:

By: ______________________
Richard A. Boss, Mayor

ATTEST:

____
Rachel Hughs, City Clerk

APPROVED AS TO FORM:

____
Petria Schreiber, City Attorney

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AGENDA REPORT
CITY OF ALAMOGORDO
CITY COMMISSION

Meeting Date: 10/10/2017 **Report Date:** 10/04/2017 **Report No:** 14.

Submitted By: Petria Schreiber

Subject: Consider and act upon first publication of Ordinance No. 1548, an ordinance amending Sections 2-14-040 and 2-14-050 of the Alamogordo Code of Ordinances regarding economic development. *(Petria, Schreiber, City Attorney)* **(Roll Call Vote Required)**

Fiscal Impact:
Amount Budgeted:
Fund:

Additional Fiscal Impact:

Recommendation: Approve ordinance No. 1548 for first publication.

Background: The City Commission of the City of Alamogordo wishes to encourage and foster local economic development in compliance with its local economic development act, and wishes for its ordinance regarding its local economic development act to mirror the State of New Mexico's LEDA statute.

ORDINANCE NO. 1548

AN ORDINANCE AMENDING SECTIONS 2-14-040 AND 2-14-050 OF THE ALAMOGORDO CODE OF ORDINANCES REGARDING ECONOMIC DEVELOPMENT

WHEREAS, the City Commission of the City of Alamogordo wishes to encourage and foster local economic development in compliance with its local economic development act; and

WHEREAS, the City Commission of the City of Alamogordo wishes for its ordinance to mirror the State of New Mexico's local economic development act statute;

NOW, BE IT THEREFORE ORDAINED by the City Commission of the City of Alamogordo, New Mexico that Sections 2-14-040 and 2-14-050 of the *Code of Ordinances of the City of Alamogordo, New Mexico* is hereby amended to read as follows:

2-14-040. - Economic development strategic plan.

Note: The terms "city," "Alamogordo" and "City of Alamogordo" referred to in this economic development strategic plan refer to the city government of that legal entity called the City of Alamogordo.

(a) *Economic development goals:* Having encouraged the support of the community and its leadership through public meetings and interviews, this economic development strategic plan declares the following to be desired goals:

(1) To diversify the local economy by the creation of additional jobs in existing business and the development of new business.

(2) To support the development of industrial/business park(s) that will be attractive to new and expanding business.

(3) To, when feasible and within the provisions of the New Mexico Local Economic Development Act, use public funds to assist in the development of new jobs.

(4) To only assist businesses that meet all applicable environmental rules and regulations, both state and national.

(5) To encourage cooperation between the public and private sectors as they assist in the creation of new jobs.

(6) To support and encourage actions that will foster the utilization of Holloman AFB and White Sands Missile Range at their current levels of employment and when possible work for the creation of additional jobs.

(7) To help develop within the community's resources the best possible vocational and other skill training to prepare the local populace to enter the work force.

(8) To help develop the arts, cultural and entertainment industries within Alamogordo.

(b) Types of businesses that meet the community's goals: Those that fit most or all of this criteria will be selected when considering giving assistance under the Local Economic Development

Act. This list is not necessarily all inclusive, and should an industry fall outside this preferred list, individual consideration will be granted.

Alamogordo considers the following types of businesses to be those that are preferred or meet the community goals:

(1) Industry that meets all environmental standards both state and federal.

(2) Industry that does not use large amount of water in its production processes. Exceptions may be made in instances where the water is mostly reprocessed rather than discharged.

(3) Industries that pay a wage that will help improve the local per capita income.

(4) Industries that can take advantage of the highly skilled personnel that are available as the result of discharge or retirement from area military installations.

(5) Qualifying office/service industries such as telemarketing or data processing that provide jobs attractive to high unemployment groups including second incomes for families.

(6) Industry that will help diversify the local labor market and lessen the reliance on federal government employment.

(7) Research and development, particularly those related to the aerospace industry.

(8) Light assembly or manufacturing industry that are labor intensive.

(c) *Criteria for community assistance:* Community assistance will be considered for those industries that meet the criteria of a "qualifying entity" as defined in the Local Economic Development Act Law of 1993, Chapter 297, ~~5-10-4~~ 5-10-3 as follows:

1. An industry for the manufacturing, processing, or assembling of agricultural or manufactured products;
2. A commercial enterprise for storing, warehousing, distributing, or selling products of agriculture, mining or industry, but, other than as provided in Paragraph (5), (6) or (9) of this subsection, not including any enterprise for sale of goods or commodities at retail or for distribution to the public of electricity, gas, water or telephone or other services commonly classified as public utilities;
3. A business, including a restaurant or lodging establishment, in which all or part of the activities of the business involves the supplying of services to the general public or to governmental agencies or to a specific industry or customer, but, other than as provided in Paragraph (5) or (9) of this subsection, not including businesses primarily engaged in the sale of goods or commodities at retail;
4. An Indian nation, tribe or pueblo or a federally chartered tribal corporation;
5. A telecommunications sales enterprise that makes the majority of its sales to persons outside New Mexico;
6. A facility for the direct sales by growers of agricultural products, commonly known as farmers’ markets;
7. A business that is the developer of a metropolitan redevelopment project;
8. A cultural facility; and

9. A retail business.

   a. “retail business” means a business that is primarily engaged in the sale of goods or commodities at retail and shall only be allowed if:

      i. A the population of the City of Alamogordo at the last census was ten thousand or less; or

      ii. The population of the City of Alamogordo at the last census was less than thirty-five thousand and the project is not funded with state government resources and would not directly compete with an existing business in the City which is engaged in the sale of the same or similar goods.

In deciding the eligibility for community assistance, the city commission may ~~contract~~ choose to work in conjunction with the county economic development council to be the city's agent in dealing with projects and formulating recommendations to the city commission.

(1) *Information required.* For an applicant to be considered for assistance the following may include but is not limited to the following:

   a. Company financial history.

   b. The number of jobs to be created.

   c. The types of business and jobs including a business plan.

   d. Compatibility with Alamogordo's economic development goals.

   e. Other resources available to the borrower.

   f. Financial and marketing projections.

   g. Other information deemed pertinent to the city.

(2) *Information verification.* The city will use due diligence to verify all facts about the business seeking assistance including but not limited to:

   a. Requiring financial statements and appropriate tax records to be made available by the business.

   b. Investigation to determine the validity of any claims to patent rights, trade secrets, etc.

   c. Verification of financial data including requesting data from banks and other financial institutions that may have had previous dealings with the business seeking assistance or its principals.

   d. Review of information pertaining to any other borrowing by the business or its principals that might affect the business's ability to repay debt or fulfill other obligations, if any, owed to the city.

   e. Review of the business's plans and marketing plans proposed by the borrower including, if deemed necessary, outside professional review of technical data.

(d) *Investment protection.* The city will provide adequate safeguards to insure that its rights and financial commitments are adequately protected and recoverable in the event of default. No investment will be made that is not in compliance with the Local Economic Development Act ~~including loans for working capital and the repayment of previous debts~~. Protection may include but is not limited to:

(1) Security provided the city may be in the form of a lien, mortgage or other indenture and the pledge of the qualifying business's financial and material participation and personal cooperation to guarantee the borrower's performance pursuant to the project's goals.

(2) Any investment in streets, utilities or other public works will be made in accordance with city policy that provides security for any city investment made pursuant to the attraction of a business under the Local Economic Development Act.

(3) Provision for performance review will be established to insure that the business is operating in accordance with its agreements with the city. This may include milestones, measurable goals and time limits on project development and completion. Provisions for performance review may include penalties for unsatisfactory performance.

(4) The contribution made by each party and its participation in the project will be clearly stated in the agreements. Contributions made by the qualifying entity must be of value and may be money, in-kind services, jobs, expanded tax base, property or other thing or service of value to the local economy.

(5) There will be separate accounts for all financial dealings.

(6) An annual independent audit of the fund/account shall be required.

(e) *Possible community assistance.* Community assistance under the Local Economic Development Act may include:

(1) The sale or lease of city-owned land or other property in return for pledges to provide new jobs of a value commensurate with discount from market value granted in any land/property sale or lease. Terms of said sale/lease may provide penalties including return of the property for failure to meet goals for the creation of jobs.

(2) Alamogordo will consider building and leasing or selling a facility in return for new jobs. The terms of such a lease/sale shall be commensurate with the number of new jobs created. This reduced lease/sale shall have provisions for adjustment of the lease/sale price in the event the lessee/borrower fails to meet the previously established employment goals.

(3) The minimum benefit to the community to qualify for assistance is the creation of new jobs that pay an hourly rate at least equal to the federal minimum wage or other standards that may be adopted.

(4) The community will assist the new business in obtaining vocational/educational training from local sources whenever possible. The community will also assist in obtaining matching funds if available under the New Mexico In-Plant Training Program.

(5) When appropriate information is presented and an application is made the city will issue industrial revenue bonds to assist in the location or expansion of a qualifying business. These bonds may include tax abatement when deemed appropriate.

(6) Under circumstances where the benefit to the community is not clear, an economic impact analysis may be requested by the city.

(7) Assistance under this Act shall not exceed the expenditures of monies exceeding five (5) percent of the city's general fund budget in any one year. Other assistance, such as the sale of already owned city land, will be considered on an individual basis.

(f) *Community expectations and benefits.* The city expects the economic development strategic plan to help direct the community towards goals of greater economic diversification and increased per capita income as the result of more and better jobs.

(g) *Project termination.* The city may by ordinance terminate this economic development strategic plan. It may also terminate projects developed under this plan provided the term of any existing contract must be satisfied. Any monies left in the account or funds for this project(s) shall be transferred to the general fund.

(Ord. No. 983, 8-13-96)

2-14-050. - Outline of tasks.

(a) Economic development plan/comprehensive plan.

(1) Must be approved by ordinance after public hearing.

(2) Contents of plan.

a. What are the desired economic development goals? Priorities and strategies for accomplishing.

b. What types of qualifying businesses are preferred or fit goals?

c. What criteria will be used to determine eligibility for aid?

d. What type of information will be required to determine that applicant is financially solvent and its commitment to the community?

e. How will application information be verified?

f. How will investment be protected or recouped in the event the project is unsuccessful?

g. Are there other resources available to aid project?

h. What does the community have to offer? Land, buildings, infrastructure.

i. What is expected from the project? Jobs, tax base expansion.

j. How will public resources be safeguarded? Recovery of investment if project unsuccessful.

(3) The economic development department is available to provide technical support and guidance in the development of an economic development plan.

(b) Application.

(1) Each qualifying entity desiring local aid must submit a written application.

(2) Each local government develops its own, application and criteria.

(3) Contents of application (not an exhaustive list):

a. Identifying information—Name, address, type of business, principal owners, stockholders, etc.

b. How entity meets statutory definition of "qualifying business."

c. Type of aid requested.

d. Business plan specifically addressing how locality will benefit—jobs, tax base expansion, etc.

e. How entity will protect local investment.

(c) *Project evaluation.*

(1) Each individual project must be approved by ordinance after public hearings.

(2) Locality must insure that:

a. Application meets requirements of economic development plan.

b. Applicant is financially and managerially stable.

c. Applicant has a commitment to the community.

d. A cost benefit analysis is done on the applicant's project.

e. Any other local requirements are met.

(d) *Project participation agreement.*

(1) Locality and qualifying entity must enter into project participation agreement.

(2) Agreement must contain:

a. Aid to be provided by the locality to the qualifying entity.

b. Contributions to be made by qualifying entity. ~~must be of value and may be money, in-kind services, jobs, expanded tax base, property or other thing or service of value to the local economy.~~

c. Protection of local investment—lien, mortgage, etc.

d. Schedule of project—Goals, time limits.

e. Provisions form performance review and penalties for unsatisfactory performance.

(e) *Project monies.*

(1) Must be kept in separate account.

(2) Annual independent audit of fund/account required.

(f) *Project termination.*

(1) Governing body may, by ordinance, terminate economic development plan and any or all projects.

(2) If project terminated, contract must be satisfied.

(3) Monies left in fund or account are transferred to general fund.

(Ord. No. 983, 8-13-96)

AGENDA REPORT
CITY OF ALAMOGORDO
CITY COMMISSION

Meeting Date: 10/10/2017 **Report Date:** 10/05/2017 **Report No:** 15.

Submitted By:

Subject: Consider, and act upon a revision to the FY18 Street Maintenance Project. *(Brian Cesar, Assistant City Manager)*

Fiscal Impact:
Amount Budgeted:
Fund:

Additional Fiscal Impact:

Recommendation: Provide direction to staff.

Background:

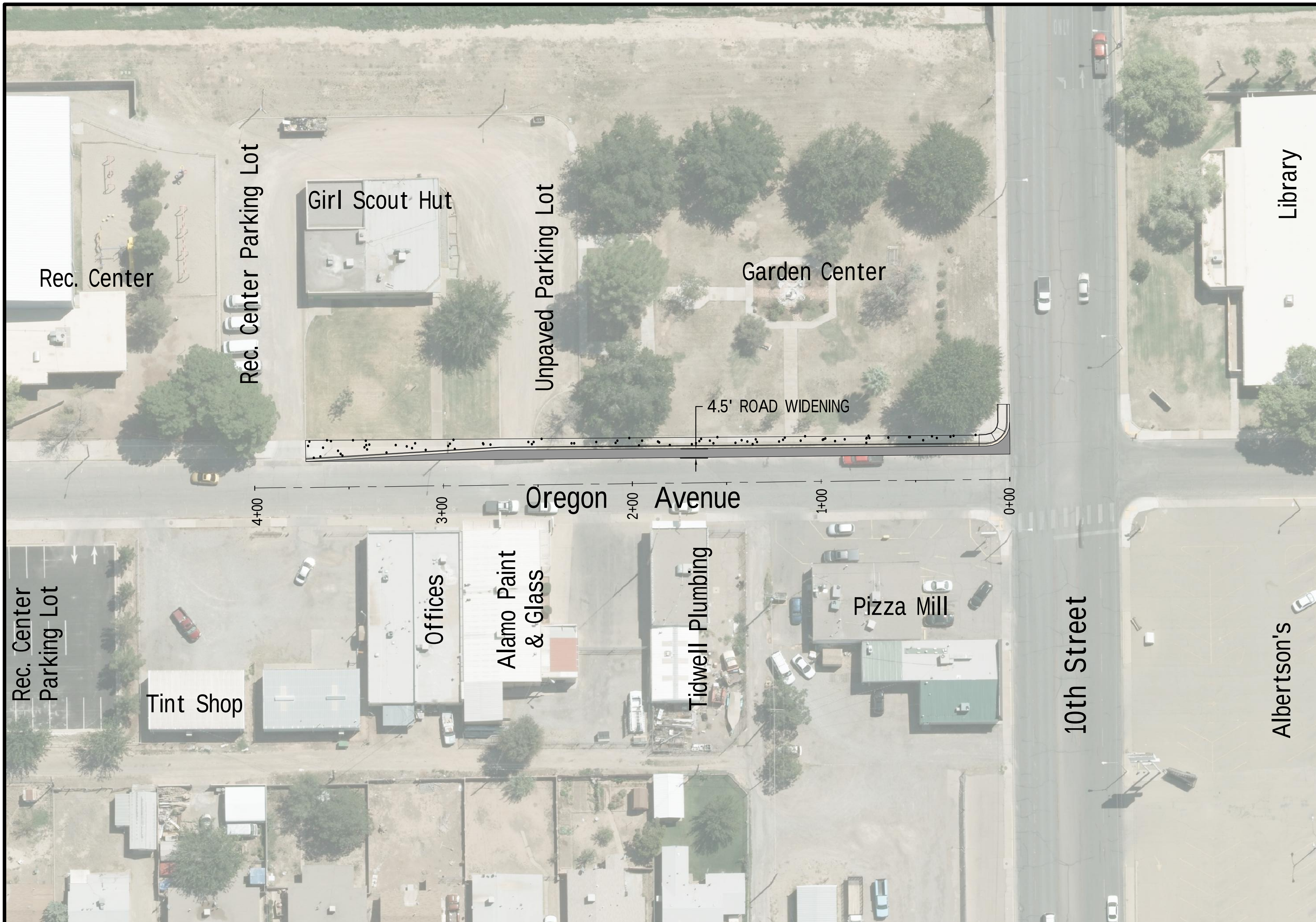
Staff was requested to evaluate congestion issues near the intersection of 10th Street and Oregon Avenue.

Design for Oregon Avenue is scheduled to begin next fiscal year, dependent on available funding. Additions to the planned improvements in the SMP may result in the movement of a planned section to the following fiscal year.

The following options are presented for consideration:

1. No action. Approx. Cost: $ 0
2. Restrict parking to one side of Oregon Ave. Approx. Cost: $ 250
3. Restrict parking on both sides of Oregon Ave. Approx. Cost: $ 500
4. Widening of Oregon Ave. from 10th St to the Rec Center. Approx. Cost: $ 54,000

Recommendation: Provide direction to staff.



PROPOSED OREGON AVENUE WIDENING FROM 10th STREET to RECREATION CENTER

QTY. (APPROX)	DESCRIPTION
1 EA	NEW ACCESSIBLE RAMP
370 LF	CURB/GUTTER REMOVAL/REPLACEMENT
250 SY	SIDEWALK REMOVAL/REPLACEMENT
150 SY	ROAD RECONSTRUCTION

AGENDA REPORT
CITY OF ALAMOGORDO
CITY COMMISSION

Meeting Date: 10/10/2017 **Report Date:** 10/06/2017 **Report No:** 16.

Submitted By: April Jones

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

Fiscal Impact:
Amount Budgeted:
Fund:

Additional Fiscal Impact:

Recommendation: Appoint to the Senior Volunteer Program Advisory Council.

Background:

Airport Zoning Board. Three (3) vacancies. Staff Liaison - Cheryl Otero-Baker *(Opening due to the expired term of Darron Williams and the resignation of Frank Nelson and Paul Vigneault.)* No nominations received.

Alamogordo Disability Council. Three (3) vacancies. Staff Liaison - ****No Staff Liaison appointed to this Council**** *(Openings due to the resignation of Viviane Ackall, and expired terms of Lori Adam and Rita Martinez)* No nominations received.

Alamogordo Promotion Board. One (1) vacancy- tourism related. Staff Liaison - Jan Wafful (Opening due to Kathleen Beall's resignation) No nominations received.

Community Development Advisory Committee. Six (6) vacancies. Staff Liaison - Cynde Sagenkahn *(Opening due to the expired term of Bruce Knee, Melanie Hall, and Gloria Vaughn; and the resignation of Eddie Kemp and Arthur Alterson)* No nominations received.

Housing Authority Advisory Board. One (1) vacancy. Staff Liaison - Evelyn Huff *(Opening due to the expiring term of Kandace Daugherty)* No nominations received.

Senior Volunteer Programs Advisory Council. Three (3) vacancies. Staff Liaison - Julie Baker *(Openings due to the expiring terms of Michael Groves, Annarelle McDonald and Stacey McDonald)*
The following individual is interested in being appointed:
Susan Hopkins - if appointed this will be her first term.

SENIOR VOLUNTEER PROGRAMS ADVISORY COUNCIL

RECEIVED
AUG 03 2017
CITY CLERK

CITY OF ALAMOGORDO
APPLICATION FOR
SENIOR ADVISORY COUNCIL

Name: Susan Hopkins Birth Date: 12/28/55

Home Phone: 575-214-2112 Cellular or ~~Work Phone~~: 575-202-2138

Home Address: 15 Turri Ave, Alamogordo, N.M. 88310

Do you live within City limits? in the county

Present Employer: Retired Job Title: ——

Board/committee you wish to serve on is: Senior Advisory Council for the Senior Volunteer Programs. Are you currently serving on any other City of Alamogordo boards? No

Are you related to anyone who is presently employed by the City of Alamogordo? No

If yes, their name and relationship to you: ______

Are you related to any Elected Official of the City of Alamogordo? No

If yes, their name and relationship to you: ______

Experience and education relating to the Board /Committee: A.A. in Business Mgmt, Ran Quality Councils for Boeing aircraft programs, worked with FAA on Quality issues, B.S Aviation Technology, Q.A Auditor for Compliance to Boeing standards

Please indicate your interest in serving on a City Board/Committee: To get more involved with the city of Alamogordo & help with activities associated with senior citizens

AF veteran stationed @ Holloman 75-79

Please return or mail to: City Clerk
City of Alamogordo
1376 E. Ninth Street
Alamogordo, New Mexico 88310