Alamogordo City Commission

NOTICE OF MEETING

Regular Meeting Agenda

December 19, 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

PUBLIC COMMENT

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

CITY MANAGER'S REPORT

REMARKS AND INQUIRIES BY THE CITY COMMISSION

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

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

1. Approve the minutes for the November 30, 2017 Special Meeting and the December 5, 2017 Regular meeting. *(Rachel Hughs, City Clerk)*

2. Approve the release of old liens that have passed the four-year statute of limitations on collection. *(Petria Schreiber, City Attorney)*

3. Approve the City Commission Regular Meeting Schedule for Calendar Year 2018. *(Rachel Hughs, City Clerk)*

4. Approve Resolution No. 2017-39 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 December 19, 2017. *(Kathy Gilsdorf, Budget Analyst)* **(Roll Call Vote required)**

5. Approve final publication of Ordinance No. 1553 to amend Ordinance No. 1515, which was adopted on May 24, 2016 regarding the execution and delivery of a loan agreement and intercept agreement by and between the City of Alamogordo, NM and the New Mexico Finance Authority. *(Julianne Hall, Finance Director)* **(Roll Call Vote Required)**

6. Approve City side leak abatement for 1113 Paradise Ave. in the amount of $5,072.92. *(Mark Threadgill, Customer Services Manager)*

ITEMS REMOVED FROM CONSENT AGENDA

UNFINISHED BUSINESS AND NEW BUSINESS

7. Consider and act upon LEDA Case Review, Najar Family Entertainment Center Project. *(Darron Williams, City Planner and Petria Schreiber, City Attorney*)

8. Consider and act upon final publication of Ordinance No.1550, an ordinance approving a Local Economic Development Project for secured financial assistance proposed by Downtown Venture Corporation and the attached Project Participation Agreement and Promissory Note. *(City Manager, Maggie Paluch, Petria Schreiber, City Attorney, Darron Williams, City Planner)* **(Roll Call Vote Required)**

9. Consider, act upon and approve the modification of the lease agreement between Downtown Venture Corporation and the City of Alamogordo. *(City Manager, Maggie Paluch, City Attorney, Petria Schreiber, City Planner, Darron Williams, and Assistant City Manger, Brian Cesar.*

10. Consider and act upon final publication of Ordinance No. 1544 amending and adding sections of Chapter 28 of the Alamogordo Code of Ordinances regarding water and sewer services. *(Mark Threadgill, Customer Service Manager)* **(Roll Call Vote Required)**

11. Consider, and act upon first Publication of Ordinance No. 1554, a Map amendment to the Official Zoning Map of The City Of Alamogordo to rezone the property from R-1 Single Family Dwelling District to C-1 Neighborhood Business District contingent upon permit issue for building and actual ground breaking of the church complex located on Scenic Dr. south of First St. *(Darron Williams, City Planner)* **(Roll Call Vote Required)**

12. Consider, and act upon, Application for Assignment of Airport Lease for Area E6-C at the Alamogordo-White Sands Regional Airport, from Douglas Brugman to Don Gressman. *(Petria Schreiber, City Attorney)*

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

EXECUTIVE SESSION (Roll Call Vote Required)

14. Adjourn into Executive Session in compliance with Section 10-15-1(H), NMSA 1978 (as amended), to discuss Limited Personnel Matters; Recent Resignations and Terminations. **(Roll Call Vote Required)**

ADJOURNMENT

AGENDA REPORT
CITY OF ALAMOGORDO
CITY COMMISSION

Meeting Date: 12/19/2017 **Report Date:** 12/15/2017 **Report No:** 1.

Submitted By: Rachel Hughs

Subject: Approve the minutes for the November 30, 2017 Special Meeting and the December 5, 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 SPECIAL MEETING MINUTES
7:00 P.M., COMMISSION CHAMBERS
November 30, 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

Mayor Boss called the meeting to order at 7:00 p.m. Roll Call was taken by the City Clerk. Clerk Hughs announced there was a quorum present.

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.

PUBLIC COMMENT

Public signed up for Item 1.

UNFINISHED BUSINESS

1. Consider and act upon, either Ordinance No. 1544, or Ordinance No. 1555, or Ordinance 1556 for first publication amending and/or adding sections of Chapter 28 of the Alamogordo Code of Ordinances regarding water and sewer services. *(Mark Threadgill, Customer Service Manager)* (Roll Call Vote Required)

Customer Service Manager Threadgill spoke on the three options for water and sewer services. He briefly described each Ordinance and briefly explained what they will do.

Commissioner Baldwin asked the Commission if they would like to hear from the public before they get into the Commission's discussion. The Commission agreed.

Paul Sanchez commented on the following:
Mr. Sanchez spoke about the Utilities department as a self sufficient department. He said all the money they earn through water bills, etcetera is their budget and that is how we fix the water mains and everything else. He is very concerned about the builders and the developers, in regards to these people developing property, and the landlords are renting property. He said we have a huge influx of people coming in with the F16 units. When these developers, these builders and these landlords provide good housing for residents that come in, that is an economic driver for our City. They are going to pay taxes, they are going to pay a regular water bill, they are also going to go shopping at Wal-Mart and that is going to keep people employed. So, no the water department is not going to make that money on the front end but he strongly feels that the City is going to make it on the back end when it comes to the GRT and people having fair housing. He thinks the utility department, the City side of it, has an extremely valid point, but as Commissioner Baldwin pointed out a couple of meeting ago, $144,000 when you look at the size of the budgets that we deal with, there are things that can be trimmed back in budget. There are also projects that can be rearranged, put off a little bit and things of that nature. He would have to lean on the consumption rate.

Marilyn Kite commented on the following:
Ms. Kite said if she heard Customer Service Manager Threadgill correctly, she is understanding that the ordinances we are referring to this evening have basically gone back to 2004 and we are starting completely over. Mayor Boss said not entirely. Ms. Kite asked questions about the transfer fee and the forms in Ordinance 1544.

Ken Driscoll commented on the following:
Mr. Driscoll said he was strictly against 1544. He said it looks like 1555 seems like the best option for him. He said he does not have a problem with impact fees or base rates or anything else. What he has a problem with is somebody turning something on in his name and charging him for something that he is not using. Customer Service Manager Threadgill explained if the proposed Ordinance 1555 is adopted by the City Commission, then we would basically go back to the pre 2004 Ordinance in practice.

Josh Rardin commented on the following:
Mr. Rardin said he received a bill in the mail today on another property he acquired, which has been vacant since the purchase. He has had 33 days of service on this property and not a single drop of water has been consumed, yet he received a bill for $85.78. He said Ordinance 1555 looks like it would be the best solution for us, the voters and taxpayers and stated like Mr. Sanchez said, on the other end the City will get it with the development, the rentals and the people coming in. He said about 4 weeks ago or two meetings back, on the consent agenda there was a consumption deal for the trash on the water bill. He said the Commission raised every residential water bill in Alamogordo by a dollar or a dollar fifty. He said the Commission should look at, if the City is hurting for money, in fund 81, raising rates by 40 or 50 cents isn’t going to kill everybody but it will generate roughly the same amount of money.

Commissioner Payne said we are saying that this 1555 will take us back to pre-2004, but that is only partially true, right, because we are not reinstating impact fees. She said all we are doing is getting rid of all the things that everybody wants us to get rid of without reinstating any of the things that were there in 2004. She asked if she was correct.

Customer Service Manager Threadgill said that is not entirely correct. He said he understands that there has been discussion that there were impact fees. He has not been able to find any reference to impact fees. We have always had SUG (streets, utilities and grading) fees for developers. In 1989 there were two “impact fees” adopted by the City Commission 28-03-130 and 28-03-140 system development fee and capital contribution fee. Both of those ordinances required that a fee be adopted by Resolution by the City Commission. At the time these ordinances were adopted, the City Commission had considerable discussion on what would be suitable, system development fees or capital contribution fees. They could not come to a decision at that time; they never adopted a Resolution establishing the fees. While the Ordinances have been on the books for the last twenty years, no fees have ever been assigned to them. He said yes we have the power to establish development fees, impact fees or whatever you want to call them but that has not been done since the Ordinances have been enacted in 1989. He said 1555 would, with the exception of the deposit part of it and the hydrant meter, take us back to 2004 when these Ordinances, first the Ordinance for a $250 fee, then the Ordinance for base rates would move us back to then saying if you had a vacant property, you moved out of your house, a rental property was vacant there was no charge. It just sat idle and there was no charge. It has nothing with impact fees or anything else.

Commissioner Payne asked what was it that caused that Commission to enact this base rate. Customer Service Manager Threadgill said back in 2004, then City Manager and staff came to the Commission and said we have to service all of these accounts, wither they are using water or not. We are responsible all the way up to and including the meter for every property that is out there. That involves a cost and we have to ensure that water is charged all the way because tomorrow you come in and you say that you want your water turned on, there has got to be water there. We have to maintain those lines, when we do maintenance projects, we replace them wither there is someone living at that location or not. He said this went to the Commission at that time; there were two options; base rates or a “connection/disconnection” fee. That was set at $250. That Ordinance originally passed. There was a letter sent out to every utility account that said if you do not want to pay base rates, then you return this letter and we will take you off any charges, but the minute you want water again or you need new service you will pay $250. He said it was pushed back from the Building Contractors Association at that time. About six weeks or two months after that Ordinance was passed, the City Manager came back to the Commission and said these have been in discussion with the Building Contractors Association; we are going to bring a new ordinance. The ordinance was we are going to charge base rate not this $250 connect/reconnect fee. That went through a number of meetings and a number of fine tuning issues on that, which ultimately resulted in the Ordinance that we have now.

Mayor Boss thanked Customer Service Manager Threadgill for the history of this water issue. He asked what about our budget. He said using that scenario, of course that is what impacts our budget the most significant of all of them, will a rate increase be necessary to maintain or provide service at the current levels, and perform the needed maintenance to keep the water lines in good condition and the hydrants. Customer Service Manager Threadgill answered yes at current levels. Customer Service Manager Threadgill said as you remember he brought to the Commission, a five year projection, revenues and expenditures, including the projects that are planned out through 2021 or 2022. All of those projections were predicated on the current Ordinance staying in effect. If you will recall all of those expenditures, all of those projects were planned out there were no rate increase included in that. If we go back to Ordinance 1555, he projects that we will have a drop in revenue for FY19 of a minimum of $350,000. He said it could be a little less, it could be more; the problem is these are not continuous charges. He said we take that kind of hit, $350,000 reduction in revenues, going forward to maintain the same level of service and hit those projects as a plan was presented to you. He said yes, there will be a rate increase somewhere in there, maybe two. He just could not say right now absolutely one way or another. Of course as Commissioner Baldwin pointed out, the other alternative is that we cut back on projects and maintenance. There are two sides to the coin, an expenditure side and a revenue side. It could be a mixture of both; it could be one or the other. The problem with cutting back, especially with projects and maintenance, some of the projects are going to be mandated by new regulation. Some of the projects that we have right now, they are as expensive as they are because we put off the maintenance for as long as we did. Mayor Boss said by delaying sometimes it costs you considerably more. Customer Service Manager Threadgill said Mayor Boss pointed out in his State of the City address, where they are doing the spring boxes in the canyons. That project had been put off for quite a few years. Now we had to go out and do it, I am sure that it is more expensive now then it was five years ago.

Commissioner Payne said she heard the rates would go up $1 a month, and asked if this is realistic. Customer Service Manager Threadgill said he couldn’t say if that is realistic or not. He said he can say that they are going to go up. Commissioner Payne said that doesn’t add up to her. Customer Service Manager Threadgill said if you have 12,000 accounts and at a dollar a month is $12 per year times 12,000 is $144,000 a year. He said if you are losing $350,000. Commissioner Payne said thank you that is why it did not add up. Customer Service Manager Threadgill said again, there are two sides to that coin, there is an expenditure side and there is a revenue side. Commissioner Payne said she gets it.

Mayor Pro-Tem Hernandez said they have showed the possible loss if we do one or the other. He asked prior to this Ordinance going into effect did we meet the requirements. He said we really haven’t been pushing this existing ordinance that we have right now. Customer Service Manager Threadgill said you are absolutely correct, it was for all in tense and purposes, it was just laying there for 12 years. Mayor Pro-Tem Hernandez asked if in those 12 years, have we’ve been meeting our requirements. He said I know that we’ve bought four vans out of that fund. Customer Service Manager Threadgill said we did buy three vans. Mayor Pro-Tem Hernandez said you can put the language however you want, but that van doesn’t get him water. Customer Service Manager Threadgill said actually it does. Mayor Pro-Tem Hernandez said it depends on how you want to look at it. Customer Service Manager Threadgill said it does not produce water, you are correct. Mayor Pro-Tem Hernandez said exactly, he understands what they do with them. There is some money there that could have gone to that system. He asked how we were functioning prior to this part of it. City Manager Paluch said she thinks the Assistant City Manager Cesar can answer this question quite detailed.

Assistant City Manager Cesar said going back to what Customer Service Manager Threadgill said, looking at $350,000 loss in revenue. He explained that we have our street maintenance program that is done every year. Traditionally, we set aside $800,000 for the pipeline replacement portion of that. He said Customer Service Manager Threadgill spoke about our regulatory issues that we have in water and wastewater; a number of Commissioners were seated when we had our wastewater treatment issue a number of years ago. He said the comments at that time were; why wasn't the city looking at this, why weren't we prepared. He said we have our reservoirs that have been neglected for a number of years. Each reservoir is going to cost at least one million dollars to rehab. We have the green reservoir scheduled for this year which came in at a little over $1.2 million. We have a lot of capital need. In the new year, the Comprehensive Plan is going to come before the Commission for approval, along with that we will be bringing a presentation for management growth. He said we want to see Alamogordo grow. He said there have been great strides over the years in upgrading our system, maintaining our system but there have been many years of neglect. He said we are still playing catch up; you can see that with the road system, the water system, the wastewater system. The capital investment hasn't been made to continue to upgrade our system, to maintain our system at the level that we need to maintain it. We are looking to replace our two water surface filter plants within the next two to five years. One of the plants we are looking at is over a $10 million expense. The Alamo filter plant we are looking at is in the neighborhood at $6 to $8 million. He said they have some very large ticket items that are right on the horizon. He said he is not saying that continuing base rates, that the $350,000 gets us there, but every little bit that we chip away at that revenue we have coming in, is delaying projects that we are going to have to do. When the new regulatory requirements come out, the City is not going to have a choice on wither or not we are going to build a new water filter plant. It is going to be mandated by the Environment Department. The same goes for the condition of our reservoirs. We have annual inspection by the Environment Department and they are not going to say we understand we'll give you another five years to do this. They are going to come in and we are going to have a ninety day compliance window to address the issues that they find. He said every little bit that you cut back on we are going to pass on one way or the other. If it is an increase in the consumption fee, we are going to have to make up the money somewhere.

Customer Service Manager Threadgill said if he could add onto the revenue side, in response to Mayor Pro-Tem Hernandez's question, one of the ways the City kept going on was that there were annual across the board rate increases from 2000 through 2015. We have not had an across the board rate increase July 1, 2015. That was one of the ways that we kept doing what we were doing.

Mayor Pro-Tem Hernandez asked how much is in Fund 81 right now. Customer Service Manager Threadgill said off the top of his head he could not say. Mayor Pro-Tem Hernandez asked more or less. Customer Service Manager Threadgill said several millions. Mayor Pro-Tem Hernandez asked what projects we have going on right now that are coming out of fund 81. Customer Service Manager Threadgill said he cannot tell him what is in the fund balance at this moment. Mayor Pro-Tem Hernandez asked how much dollar wise do we have coming out this budget year. Customer Service Manager Threadgill answered there is $8.23 million in capital projects, you've also got $10 million in the Desal project. He said we began the fiscal year with a $13.9 million carryover, and of course some of that is in the projects, part of that was the $10 million in the Desal, with revenues of approximately $10 million. We had a federal grant sitting out there which is primarily for the Bonito Lake for $3.3 million. He said total operating and maintenance budget of $6.5 million and you had projects of $18 million. All of that is not going to be spent this fiscal year because all of these projects cannot be completed in one year.

Commissioner Payne asked if it is still budgeted for it. Customer Service Manager Threadgill said it is still budgeted, what will happen is at the end of the year whatever is left over will be carried over into the next fiscal year and the project will continue. Commissioner Payne said its not money that is sitting out there and we don't know what to do with it. Customer Service Manager Threadgill answered no.

City Manager Paluch said as of November 7, 2017, including Budget Resolution number four, the adjusted ending cash balance in fund 81 is $1,214,267.

Mayor Pro-Tem Hernandez asked if there was only a million dollars left in there. City Manager Paluch said everything else is tied up in projects. Mayor Pro-Tem Hernandez asked if our annual revenue is $10 million. Customer Service Manager Threadgill answered roughly $10.2 or $10.3 million. City Manager Paluch said our total budgeted expenditures so far for fund 81 are $27,077,161. Mayor Boss thanked Customer Service Manager Threadgill and all the staff. He said he feels like that staff has done everything they were asked to do. He said the monkey is on our back and we need to decide what we are going to do here.

Mayor Pro-Tem Hernandez said whatever they do today can be fixed at a later date, if we need to. He said not that staff hasn't done their due diligence, but he is concerned about billing out something that has not being received. He said he has stated that very strongly and he still stands on that. If he sees them getting in trouble, he does not have a problem having to come back and say this is what we had to do. He said today seeing what we had and seeing what we've had, he would only be able to support Ordinance 1555.

Commissioner Baldwin said he actually sees Ordinance 1544 as a good collaboration between what is needed for the City and what is needed for the citizens. There are seven collaborations in that new change for 1544 and he does not disagree with Mayor Pro-Tem Hernandez. He said Mayor Pro-Tem Hernandez said it quite succinctly for 1555, but the perception is there is being billed for nothing. He said that is where he would disagree with Mayor Pro-Tem Hernandez, just in your perception of being billed for nothing. He said he believes that a service provided, wither or not being used, is being billed for something. He thinks that is why number five on Ordinance 1544 is a good concession there. He thinks whole heartedly that the full amount of $28 or whatever it came to with tax was too much and he thinks the $10 a month is a fair change for what was there. He said the fact is, we have addressed this before, the public has actually addressed it too, we are heading into a very positive time for Alamogordo, hopefully a very positive time for Alamogordo, and taking a step backward and cutting the budget would be a difficult thing to do or rearranging the budget to allow for short fall. We are providing a service wither that service is perceived or not. His perception is that it is there. He said it is not easy, and he understands this is a much debated subject for those in the audience who has been here since whenever we started this process. He said it is a lot to take in and Customer Service Manager Threadgill has done a really good job trying to educate everybody on how difficult the process is for the Water Billing. He is just very proud when Customer Service Manager Threadgill said that we've raised rates every year up until 2015, and although on paper that is true, technically it has only happened one time since 2012, since he has been on the Commission. He said we've really actually raised the water rates when we were working in reference to the different levels. We've kept the water rates actually very low for a long time and he would like to try and do that as long as we can until we absolutely have to raise those rates. He thinks this is fair share for a service provided that if you have a piece of property and it has a house on it, then you are getting a service wither you feel like you are getting a service or not. He has talked to his constituents, he has talked to other business owners and he has heard both sides, but believe it or not the overwhelming people when he actually sat down and told them what is happening, they can see that this is not a very desirable position to be in. He thinks the $10 modified rate, taking care of the contractors and taking care of the renters is a good collaboration between the citizens and the Commission.

Mayor Boss echoed Commissioner Baldwin statements and agreed with 1544 would be the way to go. He said the $10, he is not sure what the fee should be, but the $30 was way too much. He realized that when he compared that an actual water bill where there was water usage and he believes there is value when you have water available right across the sidewalk or in the sidewalk and you hook up your waterline, he thinks there is a value there wither you occupy that house or not.

Mayor Pro-Tem Hernandez said the times they raised the rates, it was one and a half percent which equates to about $0.44 cents. He wouldn't have a problem paying his $0.44 or $.50 whatever that is versus paying $30, $40, $700, $1,000 a month because he owns a couple of empty lots. He understands both sides of it completely. Commissioner Baldwin said it's just a perception of value; it is a perception of what you are getting. Mayor Pro-Tem Hernandez said absolutely. He said he has one empty lot right now which does not have a meter service to it; because the City took it out, because it had a leak and there was no house there so they just took it out instead of replacing it. When he actually built his house there was no service, they took it out. He said the service had already been paid for, and the City replaced it and he did not have to pay the $3000 or $4000 that it would have cost. He said he pays nothing to the gas company for keeping the service there. Utilities are there and he understands what Customer Service Manager Threadgill said, these are big companies, but they are in Alamogordo. This is Alamogordo it is not Florida, it's not New York, and it's not any of these big towns. We are a small town and we've done a lot of work. He remembers working on Canyon Road on the top of Canyon Place when those people had six or seven pounds of water pressure and we went in and installed new tanks. A lot of you probably don't even know that, you drive around and see these tanks and think they have been there forever, they haven't. There is one up on top, one in the middle and there is one down by the golf course. We spent a lot of money, again I don't see the difference in the $10 to everybody or $.50 here and there to ones that are actually using it.

Commissioner Payne agreed with Commissioner Baldwin and said she does not see it as a huge problem. It is certainly less than what they are paying now and there has to be a way to maintain the system. She said PNM and New Mexico Gas Company; those are large corporations with billions and billions of dollars. Look at our budget compared to theirs and we've got to have a way to maintain the system and she does agree with Commissioner Baldwin we are providing a service wither people agree with it or not. As far as landlords, if your house is only vacant for 15 days, you are only going to get charged for 15 days. You are going to get that half of the base rate basically or half of that $13. I don't think that it is that much money that from a business perspective. She said factor it into your rent or something. It is not that much money, but it is a lot of money to the City. She said $0.44 a month is not going to cut it, those numbers don't add up to me, that don't make any sense, that is not going to be enough money. She is envisioning people complaining because our water systems. They are already complaining that our water system, let's face it. We are in a no win situation here, we really are. It's one or the other, either we are going to be able to maintain this system or we are going to have a substandard system and we are not going to be able to keep up. She said something that was mentioned by Assistant City Manager Cesar that really concerned her about is that the environmental laws are changing, it is not the same as it was in 2004. She said that struck a chord with her because simple little things like, and it has nothing to do with water but it does have to do with environmental regulations, you can't even have a barbeque on a private church property without getting a permit anymore. Things like that with the Environmental Department and so when I heard that it struck a chord with me because I see it as getting worse, not better. She said we've got to have a way to maintain the system and she doesn't think that $10 a month is that much money. You still have the value of that land. She heard what Mayor Pro-Tem Hernandez said and she understands that they cannot sell it, but they still have that property and if things turn around like Mr. Sanchez said and our community continues to grow then perhaps there will be an opportunity to sell those pieces of property or build on them. There is all of those things that we need to think about, but the biggest thing is we are in a no win situation. She said if we do this, there is going to be the segment that gets upset with us, and if we don't do this, we are not going to be able to maintain our water system and there is going to be a whole other population that is going to get upset with us. She said when it comes down to it Ordinance 1544, she is 100 percent leaning that way because she thinks it is a good compromise.

Ms. Kite wanted to speak and was asked by Mayor Boss to either have a seat or be escorted out of the Chambers. Commissioner Baldwin asked her to bring her concern to the City Manager.

Commissioner Baldwin moved to approve Ordinance 1544.
Commissioner Payne seconded the motion.
Roll call vote was taken
Motion carried with a vote of 5-2-0.
Mayor Pro-Tem Hernandez and Commissioner Martin voted nay.

ADJOURNMENT

Commissioner Turnbull moved to adjourn at 7:54 p.m.
Mayor Pro-Tem Hernandez seconded the motion.
Motion carried with a vote of 7-0-0.

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Mayor Richard Boss

ATTEST:

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City Clerk Rachel Hughs

(Prepared by Eric Barraza, Deputy Clerk)
Approved at the Regular Meeting held on December 19, 2017.

CITY OF ALAMOGORDO, NEW MEXICO
CITY COMMISSION REGULAR MEETING MINUTES
6:30 P.M., COMMISSION CHAMBERS
December 5, 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. Commissioner Martin was as absent. City Clerk Hughs announced there was a quorum present. Invocation was given by Pastor Dustin Wilhite and the Pledge of Allegiance was led by Commissioner Payne.

APPROVAL OF AGENDA

Commissioner Turnbull moved to approve the agenda.
Commissioner Baldwin seconded the motion. Motion carried with a vote of 6-0-0.

PRESENTATIONS

1. Presentation on the City of Alamogordo's investments. ***(Larry Lundberg, Vice President, Moreton Capital Markets)***

Mr. Lundberg showed a presentation. He gave some background information about his Moreton Capital Markets team. He discussed what is allowed under New Mexico State Statutes for investments. He explained what a bond is and how a bond works. He explained how interest rates affect bonds and also discussed what moves interest rates. He discussed what is happening in the market and said they have heard that next year everyone else is anticipating there will be four more interest rate hikes. He said that is what Goldman Sachs and JP Morgan are calling for and others are calling for about three hikes. He said what that means is, we will start to earn more money on all of our investments here at the City. He showed their investment strategy. He said we want to put ourselves in a position that we constantly have money rolling off for; if the City needs it, and so the City can take advantage of the higher interest rates. He said right now the annual return on the City’s investments, which they help with, is just under two percent and that is in either U.S government agencies or FDIC CDs or New Mexico Municipal Bonds. The next interest that they are projecting is going to be about three quarters of a million dollars. (See Blue Book for Power Point).

PUBLIC COMMENT

None.

CITY MANAGER’S REPORT

City Manager Paluch made the following remarks:

1. She announced that one of our City of Alamogordo TV commercials entitled “Let Us Take You to the Moon and Back” for 2017 advertisement campaign was a finalist for the best broadcast for the New Mexico Hospitality Association Top Hat Award. She said the City received a plaque for being a finalist. She showed the commercial. She said this advertisement is running in a lot of different cities, mostly in the Texas area, so it is helping our tourism.
2. She said the Family Fun Center documents will officially be on the Commission meeting on December 19, 2017.

3. She said the No Parking signs have been installed and the stripping has been completed on the east side of Oregon Avenue off of 10th Street. She said hopefully this project will alleviate any of those traffic concerns that we had turning on to Oregon from 10th or vice versa.
4. She said we are adding six handicap parking spaces to City Hall. She said five spaces will in the front parking lot and one in the rear parking lot and the next phase will be the concrete work to the sidewalks.
5. She said staff has begun working on the FY 19 budget. It will be very similar to what you have seen last year with a few exceptions. She said new this year she has asked the Managers not only to provide a detailed explanation for additional personnel that they may be requesting, but also to justify current personnel within their department. Additionally, you will see the formal vehicle replacement program. We will be rolling that out in official format. She said you will see detailed Capital requests for current and future years. We are going to continue to plan ahead so that we don't get into a spot where we are putting out fires.
6. She said the Bonito Lake project is moving forward. She said Smithco has remobilized their remote office and their equipment at the Bonito Lake site. The pit has been excavated, lined and placement of a temporary fueling station is complete. Also, they have cleared and grubbed the area for the Coffer Dam replacement and the diversion pipeline.
7. She said the Public Works department was able to set the new electrical transformer for the permanent stage at Washington Park. They also continued running the conduit and the power to the stage. She said the City will be hanging a huge wreath on the back side of the stage facing First Street. The area is going to be extremely festive for the Christmas tree lighting on December 8, 2017 and the Mayor will be lighting the Christmas tree.
8. She said the Christmas parade is on Saturday December 9, 2017 at 5:00 p.m. she said it will start on Oregon Avenue and travel down 10th Street. This year she is pleased to announce, our Mayor, Police Chief and City Attorney will be judging the floats.
9. She said the resurgence of the adult basketball league has been a huge hit. The first evening of the league was on Wednesday November 29, 2017. There were six teams with approximately 60 players and there were over 70 spectators in attendance at the Recreation center. There is going to be 3 games every Wednesday until December 27, 2017 and the games are from 6:30 to 9:30 p.m. She asked everyone to please come out and see a game.
10. She gave a shout out to the Alamogordo Fire Department. She said they helped City staff decorate the Christmas tree outside the chambers. She thanked Fire Chief LeClair for lending his fire fighters to help decorate.
11. She said one of the reasons she loves living in this community is the holiday spirit is always alive here in Alamogordo. She said the hospital along with the help of Commissioner Hernandez donated turkeys to groups throughout town to help the needy and to provide a turkey dinner for Thanksgiving. She said Alamogordo Police Officers had encountered a homeless veteran from Vietnam, who has very severe dementia. She said he wound up here in the City of Alamogordo and he does not know how he got here, but apparently he is from Big Spring, Texas. Sergeant Scharmack and Lieutenant McColley contacted Love Inc. and Commissioner Payne. She said Love Inc. was able to buy a bus ticket for the homeless Veteran, but because we were worried that he would get off the bus somewhere, Love Inc. also purchased a bus ticket for his wife round trip. They were also put up in a hotel room. Sergeant Scharmack bought them breakfast out of his own pocket. Lieutenant McColley is buying them dinner and the happy story is that they are headed back to Big Spring, Texas. She thanked Gerald Champion Regional Medical Center, Commissioner Hernandez, Love Inc. and Commissioner Payne.

REMARKS AND INQUIRIES BY THE CITY COMMISSION

Mayor Pro-Tem Hernandez made the following comments:
He said he always preaches about asking people to come to the meetings. He said two of City Manager Paluch's stories actually have members here in the chambers that relate to them. He said one is Mr. Bob Patillo, who was actually a member of the adult basketball league and played quite often. He said the turkey give away is actually quite struggling when you come against this. He said they had 96 turkeys this year. He said to give them out is easy, but to find homes where people

actually need them is very difficult. He said Mr. Melvin Mills has helped him, pretty much, every year. He thanked Mr. Mills.

CONSENT AGENDA

2. Approve the minutes for the November 21, 2017 Regular meeting. *(Rachel Hughs, City Clerk)*

3. Approve the statements related to the Executive Session held on November 21, 2017. *(Rachel Hughs, City Clerk)*

4. Approve Resolution 2017-36 requesting the approval of the Housing Authority Resident Staff Member Occupancy Plan. *(Evelyn Huff, Housing Authority Manager)* (Roll Call Vote Required)

5. Approve the release of old liens that have passed the four-year statute of limitations on collection. *(Petria Schreiber, City Attorney)*

City Clerk Hughs announced Commissioner Martin came to the Commission meeting at 6:42 pm.

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

UNFINISHED BUSINESS

6. Consider and act upon first publication of Ordinance No. 1547. An ordinance repealing Appendix B (Employee Manual) of the City of Alamogordo Code of Ordinances, and replacing it with a new Employee Manual. *(Katie Josselyn, Human Resources Director and Maggie Paluch, City Manager)* (Roll Call Vote Required)

Human Resources Director Josselyn stated staff is bringing this manual back with a couple of changes. She said we got the idea that there were some uncertain feelings about transferring authority to the City Manager over the manual, so we changed the language back to what it was before where the Commission will have authority over the personnel manual. She said Commissioners Sikes had asked her to do an exercise to estimate what the cost of the new compensation plan would be had this manual been in place over the past year. She said it would have cost approximately $4,180. She said that is going to be subjective depending on what happens each year, if we have promotions, recruitments or whatever.

Mayor Boss said he is surprised we did change that to where it wasn't Human Resources and the City Manager to have discretion over that. He said this Commission has made a promise to the City Manager, not to micromanage, and he personally considers this micromanagement. He believes between Human Resources and the City Manager they have the power to hire and fire. He can't see why the Commission is going to see any details and approve any changes to the personnel manual. He said he does not understand why they are doing that.

City Manager Paluch said Human Resources Director Josselyn did research on what other communities are doing with their personnel manuals. She said we received several emails back. She said we would be the first community, of the communities that did respond that the manual would fall under the City Manager. However, all of the other communities have come across the same situation where the Commission didn't necessarily want to have to go back, for small items, to approve them. She said communities in the State of New Mexico, are also looking at putting this under the City Manager. She said maybe it is something that we do not want to do right now; we can do this later in the future. The main reason she did suggest this is for items that we don't really have control over; the Commission might not want to vote on those. She said to be honest with you; she really has no heartburn with keeping it with the Commission at all. She said right after the meeting, she just told Human Resources Director Josselyn it's easier to keep it the way it is at this point.

Commissioner Payne said she does not see it as micromanagement, she thinks that is being responsible. She thinks the way we are seeing it right now is that we are not giving City Manager Paluch the authority to change the personnel manual, but that is not really what you are asking us to do. She said what you are asking us to do is to give the City Manager authority to change the personnel manual, and it may not be necessarily be City Manager Paluch. If she was to be here 30 years we would feel real comfortable with it, but we have to keep in mind that it's whoever is there. She said she was very comfortable with her comments when they talked about it last, because she feels like there should be that separation. She said you are right, if there is a way to do it in the future, where we can make those things that are mandated by the State or the Federal government or those things that are automatic, then we can take those other things that fall under discretion or however you want to say it, then she would be all for that, but she thinks that we just need to keep that separated. She is pretty comfortable with that, she does not see that as micromanaging, she just sees that as keeping that separated.

Mayor Boss said maybe he is looking at it as a businessman, because that seems to be operational procedures. He said we are not operational, we are legislative. He thinks the Commission is going over the line when we do that. He said it is not a big deal, but he wanted to make that clear that he believes that the City Manager together with Human Resources should be responsible for that. He asked when the last time it was revised. Human Resources Director Josselyn answered 2004 were the last time they revised the whole book, but she could not recall when the last time it was completely repealed and rewritten. She said the one that was done in 2004 was a version of the one done in 1993. Mayor Boss said that is one reason he has confidence, because the two of you and staff have taken the burden of doing that. He wanted to go on the record to let the City Manager Paluch know that he feels like she could handle that very well.

Human Resources Director Josselyn showed the employee manual from back in 1990. She said we have come a long way. She also said the manual they are proposing will be electronic; there will not be the cumbersome, costly distribution of binders and paper. She thinks it will be much more efficient in keeping employees up to date with the most current version of our policies.

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

NEW BUSINESS

7. Approve the award of RFP 2017-007, On-Call Utility Services, to General Hydronics Utilities, LLC. *(Bob Johnson, Engineering Manager)*

Engineering Manager Johnson said this is an RFP the City had put out to request proposals for a wide variety of on-call utility services such as; valve, pipeline and fire hydrant replacement. He said they advertised the RFP on September 3, 2017 and received one proposal on October 5, 2017 from General Hydronics. He said they reviewed the proposal to ensure compliance with the terms and conditions of the RFP and it was deemed acceptable. He said if approved task orders would be based on an as needed basis. He said quite a few of the tasks within the RFP are pre-priced. He said the standard setup for this RFP is that the City furnishes the bulk of the materials. The scope of this project is primarily for the contractor to provide manpower and equipment.

Mayor Pro-Tem Hernandez asked what the maximum dollar amount on this is. Engineering Manager Johnson answered there is no maximum or minimum. Mayor Boss asked if he heard Engineering Manager Johnson say pricey. Engineering Manager Johnson said yes, the various line items are pre-priced such as how much it costs to install a foot of eight inch pipeline or a water meter of a certain size or a valve of a certain size. He said the cost per item or unit of issue is fixed, but there is no maximum or guaranteed minimum. Mayor Pro-Tem Hernandez said this goes back to his concerns with the Hopi Court project. He said at what point does it become not an emergency and because there is no maximum on this we could re-pipe a whole neighborhood and does that fall under the emergency basis under this contract. He said he talked to our procurement officer and she ensured him that they were making some changes. He said he did not have time between Friday and tonight, when this was put out, so he does not know what it says. There is not a whole lot of information here so he could not support this tonight, because of that dollar amount. He said again we are probably four months, five months after Hopi Court and he still doesn't know what happened there, dollar wise.

Mayor Boss asked Engineering Manager Johnson if he could come back with this and give a little more information on it. He answered yes. Mayor Boss asked if time was of the essence. Engineering Manager Johnson answered that is correct and said we have no known requirements at this time.

Commissioner Baldwin asked Engineering Manager Johnson if he had what has been the largest expenditure of this process has been to date. Engineering Manager Johnson said it is difficult to say without going back and reviewing the roughly fourteen task orders that we had under the previous contract. He said if he had to guess at this point he would say pipeline. Commissioner Baldwin asked for a dollar amount. Engineering Manager Johnson said he couldn't, right off the bat, tell him. Commissioner Baldwin asked for a ball park figure. Engineering Manager Johnson said $300,000, $400,000 over a three or four year time period. Mayor Boss asked if that was total expenditures. Engineering Manager answered that is total expenditures for pipeline. He said the initial two task orders issued were for fire hydrant replacements, but that was a programmed item and it was budgeted in advance to where the contractor had replaced 50 hydrants on task order one and another 50 hydrants on task order two. There have been some changes made to the scope of this project whereby performance and payment bonds are required if it is over $60,000, wage rates kick in and so on and so forth.

Mayor Pro-Tem Hernandez said his concerns have nothing to do with the contractor or the City, but again you had one proposal that was received. His opinion is that this is kind of an on-call emergency situation and so a lot of the out of town contractors won't bid this. If this was a pipeline or something that was worth their while to come to town, you could possibly get a better price. He said on an emergency basis he doesn't mind setting a fund up, but to go and spend a half of million dollars on a project and it has never gone through the Commission it is difficult for him to spend that kind of money. Mayor Boss asked Mayor Pro-Tem Hernandez if he was not talking specifically about this item, if he was talking about Hopi Trail. He answered just in general and said you are signing a blank check here. What happened with Hopi Trail was there was a loophole that they figured out that they could do it with. There is nothing illegal about it. He said it's just the way it was worded would allow them to do it without having to come through the Commission. Mayor Boss asked if that wasn't more of an emergency situation and said it appeared that way to me. He said we had a pregnant lady that lived there and she had to walk across yards, we had people that couldn't park in their parking lots and we had to clear parking lots for them. He said we had water lines on top of the street and across the yards. It seemed like that was an emergency. Mayor Pro-Tem Hernandez said that is where it's going to differ on who decides who says it's an emergency. We can hold a Special meeting, within two to three days notice, and make those approvals and those things are fine, but this is a blank check. Mayor Boss asked what the average time for a procurement like that is. He asked if we could have got it to a point to stop and then put it out to bid, how long would have that process have been. Engineering Manager Johnson answered between 90 and 120 days. Mayor Pro-Tem Hernandez said you could still use this part here. He said just let us know this is what we are going to do. Engineering Manager Johnson said this item is essentially another tool in the tool box for the staff. He said we had changes in the procurement ordinance that allows the staff to do certain things within certain dollar thresholds. He said this will supplement what City maintenance staff can't get to because of time and cost considerations, if and when it is needed. He said this is not a blank check. We are not going to turn General Hydronics loose on the next five million dollar street maintenance project that is not the purpose of this.

Assistant City Manager Cesar said if it makes the Commission more comfortable, any time that we have used this type of contract in the past, whether it has been General Hydronics or someone on our other on-call contracts, it is not a phone call and go do the work process. He said the City does have to go and meet with the company and layout the scope of work. He said normally we have to purchase materials and etcetera. It is not same day they are out there doing the work. If we use this on-call contract, we can bring this to Commission, but it does cut down on those 45 to 90 days that it takes to put something out to bid. If we had done that on Hopi Court, it would not have been a good thing.

Mayor Pro-Tem Hernandez said he believes the City Manager has a $50,000 threshold or we changed that to $60,000. He doesn't have a problem with something $60,000 below that is what we have given you, but just notification for anything over that. He is not saying we approve it or not approve it, but he thinks we as a Board should know that money is being spent, not just find out because it happened, it become invalid or it was in your report. He thought this is something that we should be notified if that is going out.

City Manager Paluch stated it was in Digest and asked Mayor Pro-Tem Hernandez if he would like this in a public meeting. Mayor Pro-Tem Hernandez said because that digest is more of a private between us, he thinks it should be in a public meeting. He said this is public money and we should be letting people know what we are spending it on. City Manager Paluch said she wanted to make one point clear that for any project, this is budgeted money; it is not coming from fund balance, so anything from fund balance would have to come before the Commission. She said this is money is already budgeted.

Mayor Boss asked Assistant City Manager Cesar if this is the way we have done this with one bid and then asked if this is the first time that we've only had one bid. He answered this is the second time this has gone out to bid. He said we had our initial three or four year term and this is another four year term. Prior to that, if we had something like Hopi Court or Cobblestone Road, we would have to call an Emergency meeting or Special meeting depending on the time frame. The last time that happened it was with the Corps project when we had the failures on White Sands down by the Sonic down to Vision Ford. We had to call, he believes, a Special meeting and brought the Commission in to approve the project. He said this speeds up the process, the Commission does not have to declare urgency or an emergency because we have gone out and followed our procurement process. For notification to the Commission or approval, if the $60,000 limit is what the Commission wants to go with, that is not a problem.

Mayor Pro-Tem Hernandez said he does not want to limit it at $60,000, he just thinks that the Commission should be notified if it goes over the threshold of what her authority is. City Manager Paluch said the purchasing authority, it is not her authority, is what you are saying. She said what happened at Hopi Court did not go against purchasing guidelines. Mayor Pro-Tem Hernandez said he understands that, he has had that conversation. He said it depends on how you look at it and who is looking at it. Assistant City Manager Cesar said we can bring it forward to Commission if the project is over $60,000, we can bring it for your approval or we can bring it just as an informational item.

Commissioner Payne asked if this was brought before the Commission before and when was the last time. She said four years ago, right. She asked if this was setup the same way and requesting the same thing. She asked if this has seemed to have worked except for Hopi Court. Mayor Pro-Tem Hernandez said there have been some changes in the procurement process. Commissioner Payne said she felt it was like kind of pulling teeth to get Hopi Court done, so she sees it differently. She was a little frustrated because she thought it should have been done quicker. She said because it is budgeted money she does not have as big of a problem with it because the Commission did have to approve the budget. Mayor Boss said we are in an unfortunate situation. He said we have to do this, we need this and we only have one bidder and that's the problem. He said staff does recommend that we approve the order.

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

Motion carried with a vote of 6-1-0. Mayor Pro-Tem Hernandez voted nay.

8. Consider, and act upon, Change Order No. 4, Public Works Bid No. 2017-001, to Smithco Construction, Inc. related to the 1MGD Brackish Water Treatment Facility project, in an amount not to exceed $147,705.01, including NMGRT. *(Bob Johnson, Engineering Manager)*

Engineering Manager Johnson said this change order consist of four items. The first item is additional work due to the conflict with the ROW water line. The conflict was not noted until excavation had begun. The second item is to increase the estimated quantity of bid item four from 18,500 tons to 21,000 tons of solid waste removal based on material removed to date and estimated to be removed as we move forward with the project. There is some additional work due to a substantial depth of 24 inch water line that was initially thought to be three feet deep and ended up being nine feet deep. The fourth item is a City requested item for trenching conduit and transformer pad construction for the primary electrical feed. He said the feed itself will be done by PNM, once the trenching and pad are in place.

Mayor Boss asked what our percentage of completion on that job is. Engineering Manager Johnson answered approximately 52 percent. Mayor Boss said we have spent almost $300,000 on 50 percent of it and asked how much do we have in reserve. Engineering Manager Johnson answered assuming this change order is approved tonight; we will have $178,751 and change remaining in contingency. He said with item two, as far as the buried solid waste removal to 21,000 tons, if this is approved this will give the City $1,100 of contingency. He said there is still some excavation to be done as far as the main water lines, some of the service lines as well as item four for the primary electrical feed. If any of this tonnage is remaining it will be returned to the City. Mayor Boss said his point was that we spent three quarters of our reserve and we are half done.

Mayor Boss asked Assistant City Manager Cesar to explain why more of that contingency was spent up front then otherwise should have been. He said during the design process, the only way to minimize is to really expand the engineering portion. He said in this project for the geotechnical work to identify solid waste, we spent approximately $100,000. He said to better quantify, we would have had to triple the number of borings. He said this would have taken that $100,000 to $300,000 and we still would have had to pay for the same amount of solid waste to be removed and disposed of at a landfill. He said when we look at a project like this or a street maintenance program, we can spend a lot more up front on the engineering trying to reduce those change orders, but there is not always a cost benefit to that. For replacing a utility line on Washington, we could dig up every connection, every service tap, verify line size, where Engineering Manager Johnson talked about the line where our plans say they are three to four feet deep and it turns out to be nine feet deep, that would have been another area that we would have had to have the engineering firm expose and still the cost to do the work is the same. We take somewhat of a risk by not exposing everything, but in minimizing that cost we are able to take that cost and put it into the project and get more work done. He said it does mean that we come to you as a body for the change orders, but in the long run with these projects we have seen that money is better spent on the project itself as opposed to exposing every piece of pipe.

Mayor Pro-Tem Hernandez asked Engineering Manager Johnson what the total increase in calendar days for the project. He answered this particular change order will increase the performance period by 52 days. Mayor Pro-Tem Hernandez said so it’s a total of every one of these. Engineering Manager Johnson answered yes sir, there are four items; the buried solid waste is 30 days and the other three items adds another 22 days. Mayor Boss asked if that is considered when you estimated the 52 percent complete. Engineering Manager Johnson answered yes; it is still 52 percent complete as of this morning.

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. 2017-015 to Western Builders, LLC, related to the Alamogordo WWTP: Effluent Pump Building project, in an amount not to exceed $267,084.00, including NMGRT. *(Bob Johnson, Engineering Manager)*

Engineering Manager Johnson explained the project. He said we did advertise this project twice on October 15 and 22, 2017 and we opened bids on the 16th with three responsive bidders and Western Builders out of Mesilla Park is the apparent low bidder for both the base bid and both bid alternates.

Commissioner Baldwin asked what led to the deterioration of the current structure. Engineering Manager Johnson answered age. He said it is well out of code and he has no idea how old this building is and it is one of the worst looking pre-engineered metal buildings that he has seen in about 30 years. Assistant City Manager Cesar added that both structures were built in 1991.

Mayor Pro-Tem Hernandez said that is not actually too old, but he knows a lot of this has to do with the chemical and the chemical balance of waste. He asked if that is about what we are looking at life span for the new metal building. Assistant City Manager Cesar answered 25 to 30 years and it is not the age of the building, but exactly what you said. It is an effluent pumping building; it is a waste water treatment plant so you have the gases and the chemicals. Engineering Manager Johnson said there is going to be some grading changes done to minimize any water run off that can affect the lower part of the structure, which he thinks contributed to the problem of the existing structure. Mayor Pro-Tem Hernandez said he was actually on this project when this was put on back then. He said even block buildings or anything else doesn't withstand that crap.

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

10. Consider and act upon first publication of Ordinance 1552, creating a Separate Violation for Failure to Comply with Municipal Court Orders. *(Molly Kicklighter, Assistant City Attorney)* (Roll Call Vote Required)

Assistant City Attorney Kicklighter said this is an ordinance that would authorize the Municipal Court to issue a criminal complaint summons upon a failure to comply with Court orders. She said don't let this make it seem as if that is exactly is happening right now, they are not actually issuing a complaint and summons when someone fails to comply with a Court Order. She said they move forward with the Courts contempt powers. She said the problem with the court contempt powers is that it can be complicated trying to figure out what is a direct contempt and what is an indirect contempt and it is something that you have to go back and look at every three to four years to figure out if somebody has complied with what the Court has asked them to do. She said our Court has very much been complying with the due process requirements of making sure that people who fail to comply such as: failing to pay their fines or failing to show up when and where they need to be there or failing to do their community service. She said Judge Lee and his staff do a really good job of making sure that people are aware of what is exactly required of them and then before he moves forward and imposes a sanction he gives them an opportunity to respond. She said we do not see that happen all over the State unfortunately. She said the Administrative Office of the Courts and the New Mexico Supreme Court have gotten involved in that and have basically revamped their rules and said before you can impose contempt powers you need to afford better due process. She said the suggestion has been; it would be safer and easier for everybody if we just made this a separate violation of law. She said if you have been in front of the Courts and you have agreed to appear at a certain place and time or you agreed to pay your fines by a certain amount of time or you have agreed to do your community service hours a certain amount of numbers by a certain amount of time and you fail to do so, then the Court will create a new charging document outlining what you have failed to do and you as the defendant will be given the opportunity to understand specifically what it is you have failed to do and answer to that. What this ordinance does is it heightens the due process protections of the citizens; it avoids misunderstandings of the contempt powers of the Courts.

Commissioner Payne asked if this was a petty misdemeanor violation. Assistant City Attorney Kicklighter said it would be that is correct. Commissioner Payne asked what is the sentence or penalty. Assistant City Attorney Kicklighter answered the way it is running right now; generally speaking, let's say it is failure to appear. She said the custom is to impose a $100 bench warrant fee. She said that goes in to the underlying cause, let's say for shoplifting and you came into Court and you plead no contest. She said as part of the penalty you were supposed to do your community service hours within a certain amount of time, you don't do it, so now you have to come back to Court and you are asked how do plead to the failure to do your community service hours and then the Court, assuming we don't need to prove out that this was failed to do, the Court will put about $100 fine. She said what will happen instead now is a new criminal complaint will go out. If someone comes in and pleads guilty or no contest to failing to do community service hours or failing to appear, the Judge has in his discretion, a fine up to $500 and up to 90 days in jail. She said the question Commissioner Payne asked opens up a whole other can of worms. She said realistically speaking does the Court have the authority to put someone in jail for this. She said yes absolutely, they always had it before under contempt; it is just that this clears up the procedure for so doing.

Mayor Pro-Tem Hernandez asked, if with this change could you come back prior to the end date and say that you need an extension because of this. Assistant City Attorney Kicklighter said absolutely, Judge Lee's staff has done a good job of making very clear in their paperwork if you have any trouble, come to us and let us know. The folks this is targeting are basically the people that have done nothing. Mayor Pro-Tem Hernandez said there comes a point where you have to put your foot down.

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

11. Consider and act upon Ordinance No. 1557 approving a local economic development project for secured financial assistance proposed by Precheck, Inc. *(Petria Schreiber, City Attorney)* (Roll Call Vote Required)

City Attorney Schreiber introduced Mr. Espiritu and Mr. Roper. Mr. Espiritu said Precheck has been in our community for about 12 years. He said currently they have about 182 jobs and they are seeking to add another 30 employees to the payroll over the next three years. These jobs will have a payroll of about $810,000 and their capital investment of the project is $250,000. He said the agreement with the State is $100,000 from the State LEDA fund and $50,000 from our fund to help them continue to build out their building to accommodate their people.

Mr. Roper explained how the money will be disbursed and what the money will be used for. He said there will be a final project review. He said this is something new that they started to do at the State of New Mexico Economic Development Department with our LEDA funds. Usually, up front we do an economic impact analysis saying this is the kind of economic impact this is going to have on the community, the schools, the County, and the State. This close out is going to be a way of saying what happened. This is going to give us some really good data to fall back on, as we move forward through the LEDA process.

Mr. Espiritu said there will be a bond that covers security over the project for the next three years and the agreements are already in place through the IGA with the State and the City for your blessing and of course the project participation agreement between Precheck and the City of Alamogordo for the distribution of funds. He said please note that it is a post payment, so it is after they create the jobs when they get reimbursement and not beforehand. Mayor Boss said this seems like the perfect project or fits the guidelines of the economic development fund to a tee.

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

Roll call vote was taken.
Motion carried with a vote of 7-0-0.

12. Consider and act upon Resolution No. 2017-37 to contribute the additional $203,600 to OCDEC regarding a PR Task Force Letter. *(Petria Schreiber, City Attorney)* (Roll Call Vote Required)

City Attorney Schreiber announced Mr. Ramsey and Mr. French are here to present this evening. Mr. Ramsey showed a power point presentation. He talked about branding and advertising Alamogordo. He said they are continuing to look for ways to continue to tell the story of Alamogordo. He also said how do we use the story of Alamogordo to make it better known and to make it a destination place for other businesses where they want grow and they can easily attract new bodies to move to Alamogordo. He then talked about the community experience, enhancement project goals, what they have done to date with the money that OCEDC has provided and briefly went over the next steps. (See Blue Book for power point).

Mr. French spoke about the money. He said the Commission has heard a lot of different figures thrown out and there are a couple of reasons for that. He said those different figures had different context. He said when we first started scoping this project out, we came out with a figure of $720,000 over a two or three year period and this was based on our experience of what it would take to accomplish the project. He said the next number is $100,000, which is the amount of money that OCEDC put up in private money to get this project kick started. He said the next number of $384,000, which is the amount of money that HK Advertising came in and scoped out a project for a one year commitment. The next number was $1.3 million dollars and this is when we took the $384,000 for one year and we added to it for things that our creative people are on our task force wanted to accomplish over a three year period. He said now we are back to how do we fund this. We had $100,000 and with the help of City Manager Paluch and City Attorney Schreiber they have identified the $203,000 that can be spent for this first year effort. He said this will bring them a total of about $304,000 that we are going to spend in the first twelve months on this project. He said we will start a conversation on how do we continue this effort so that we can rebrand the City of Alamogordo, overcome those negative stereotypes and bring more economic development opportunities to Alamogordo.

Mayor Boss asked City Manager Paluch to mention, for the public, where that $204,000 is coming from, the excess of the amounts that we could have given to OCEDC over a period of several years. She said you are correct, the money is coming from the difference that the City could have paid OCEDC going back to the inception of when the City started helping OCEDC with funding back in 2001. She said the City can give $50,000 or up to 10 percent of what is greater each year, based on what the GRT collects. She referred to a slide on the presentation of an analysis of the OCEDC payments broken out, based on each year. She said the total is the $203,600.93 is what could have been transferred to OCEDC from the local economic development tax.

Commissioner Payne said it is a little weird to her that the City is going back and basically retro paying money that prior Commissions way before this one voted on a set amount at that time. She said the other thing is that we want to be proactive. She asked if we are just going to revisit this every year or how is that going to work because our designated amount was $70,000. City Manager Paluch said Commissioner Payne brought up a very good point, OCDEC currently has a contract with the City of Alamogordo and that contract says $70,000 or $80,000 a year. She if there is an increase in that GRT tax, than yes there still could be money left on the table. She said it would be up to the Commission to determine if you want to renegotiate the terms of the contract with OCEDC to allow for that up to 10 percent or if you would like to revisit this at a later date. She said it is truly up to the Commission how you would like that contract to be structured and the time to discuss that would be during budget season.

Commissioner Baldwin said he was disappointed, not in staff, but in circumstances that we were not able to give you the $1.3 million. He said Commissioners and the City Manager have heard him say that he would give you all that is in there if he possibly could. He said to Commissioner Payne's comment, the process for the Commission now, and he believes what was just presented to us was, after this year, they'll probably have one million dollars basically that they are looking to fulfill their commitment and plan. He said it is going to be up to us to brainstorm potential ways for that to happen and City Manager Paluch said we'll revisit this come budget time. He said promotion is one of the things that we don't actually have in our budget and we've never really made it come to fruition yet, but if there is a time to do it in the budget process this is it. Commissioner Payne said it has to be in collaboration with OCEDC, it can't be completely up to the City. Mayor Boss said yes and the plan is to also have the local businesses contribute to this too, like they do to OCEDC now. Participate in this program as it continues on, am I correct.

Mr. Ramsey said he thinks absolutely. He thinks our long term goal for this is get everyone to have skin in the game, we think this works best as it is a public private partnership. To what percentage of that is a public private partnership, He doesn't think we have any of that set in stone, but thinks absolutely for the long term viability of the community, being public private partnership is in the best interest. We have a really great example just a few miles north of us with Los Lunas. A town of 10,000 people that have spent about $150,000 a year over the last few years and we've seen what they have been able to do at Facebook, right. It is pushing a billion dollars in economic infrastructure there in that community and we talked about the gross receipts. That is what we are talking about is how we can allocate money wisely to invest in this beautiful community that we have to tell our story to grow gross receipts. This isn't one of those things where we are trying to necessarily take money away, what we are trying to do is leverage growth to grow the entire pot and then continue to maybe be able to set aside a little bit to continue this process.

Commissioner Payne said she is absolutely in support of this; don't think that she is not. She said we just have to answer to people that are going to ask why are they spending all this money. She wanted to get everything out there and make sure that she can reconcile when she has to answer that. Mr. Ramsey said absolutely, we all have to be good stewards in above approach so we shouldn't be scared of any of those questions. He said a private and public partnership is in all of our ideas, the best way to move forward.

Mayor Pro-Tem Hernandez said he supports this 100 percent. He said this is one of those loopholes that he was talking about earlier. He said these are the things that we do and he does not have a problem with them, as long as it is brought forward and it is put in front of us and we can explain it and cover it. Mayor Boss said don't use the term loophole.

Mr. French said one thing that he left out; is to put this amount of money in context. He said $300,000 is a lot of money, but there are individual businesses in town that spend more than that on marketing every year. He asked what the right number is and said probably as much as we can afford is the right number. He said I would guess $400,000 to $500,000 a year is what we should be looking at as a community moving forward to get this going and to maintain it. He said like Mr. Ramsey said, the benefits will come through economic development.

Mayor Pro-Tem Hernandez said it takes money to make money and it takes a lot of effort from the community and the partners in this to make this happen because basically we are the ones that did this to ourselves and so it is up to us to take us out of it and come back to what we have the ability to do and have the town and the facilities to sell. He said $203,000 is actually cheap money on our part. He said he wished that we had more. Mayor Boss said there is no issue with going back and doing this, and asked if this is totally under our discretion. City Manager Paluch nodded yes.

City Manager Paluch said staff supports this 100 percent and we do recommend approval for it. Mayor Boss said he thinks everyone up here is with you 100 percent.

Mr. Espiritu said the OCEDC Board also supports this project in this manner

Mayor Pro-Tem Hernandez moved to approve.
Commissioner Baldwin seconded the motion.
Roll call vote was taken.
Motion carried with a vote of 6-0-1. Commissioner Martin recused from voting.

13. Consider, and act upon, Resolution No. 2017-38 Declaring that a vacancy exists in the Office of District 6 City Commissioner and calling for a Special Election to fill the vacancy. *(Rachel Hughs, City Clerk)* (Roll Call Vote Required)

Commissioner Martin said for those of you that know me, this did not come as a shock. She said this was not an easy decision but she is making it for her kids. She said that she has watched her business double in the last year and they get pushed to the side consistently. She wanted to thank everybody for being awesome. She said she loves you all. It wasn't easy, but she has to, she is treading water. She said tonight her kid had a basketball game and she got here as soon as she could and it is always like that. She said she is trying but she can't do it all, she is not superwoman. She thanked each and every Commissioner, staff and the community. She said we live in an amazing community and she is honored to have sat on the Commission while she did. Mayor Boss said we understand and we appreciate the time you have given.

Commissioner Sikes said she was really surprised when she heard that Commissioner Martin was leaving. She said she does not know her personally. She said that she sees what Commissioner Martin does and she does think that Commissioner Martin is superwoman. She said she is sorry to see her leave but she certainly understands what Commissioner Martin is doing.

City Manager Paluch said Commissioner Martin is always talking to staff; she is always researching and the amount of time and effort that she has put into this seat. She said if you know her, she does not do anything half way, she is either 100 percent or she doesn't do it at all. She said we are going to miss you.

Commissioner Baldwin moved to approve.
Mayor Pro-Tem Hernandez seconded the motion.
Roll call vote was taken.
Motion carried with a vote of 6-0-1. Commissioner Martin recused from voting.

14. Consider and act upon Resolution No. 2017-35 calling a Regular Election to be held on Tuesday, March 6, 2018 for the purpose of electing a Mayor at Large, two (2) District City Commissioners, and a Municipal Judge. *(Rachel Hughs, City Clerk)* (Roll Call Vote Required)

City Clerk Hughs said this was an election that is held every four years and these Commissioners, the Mayor and the Municipal Judge are due for election. She said the election will be held March 6, 2018.

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

15. Appointments to Boards and Committees. (Richard Boss, Mayor)
Mayor Boss said David Gonzales has tendered his resignation as Chairman to the White Sands Beautification Committee, which will be accepted. He appointed Christopher Hayman to Chairman of the White Sands Beautification Committee. No one was opposed.

Mayor Pro-Tem Hernandez moved to adjourn at 8:14 p.m.
Commissioner Baldwin 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 December 19, 2017.

AGENDA REPORT
CITY OF ALAMOGORDO
CITY COMMISSION

Meeting Date: 12/19/2017 **Report Date:** 12/13/2017 **Report No:** 2.

Submitted By: Petria Schreiber

Subject: Approve the release of old liens that have passed the four-year statute of limitations on collection. *(Petria Schreiber, City Attorney)*

Fiscal Impact:
Amount Budgeted:
Fund:

Additional Fiscal Impact:

Recommendation: Approve the Release of liens to be prepared and filed with the Otero County Clerk.

Background: The liens attached have passed the four-year statute of limitation on collection and must be released. There are a few liens that have been paid, but were never released.

December 19, 2017 City Commission Meeting
LIENS

Owner Name	L#	Lien Address	Lien Amt	Filed	Lien Type
Bernal, Miguel	1220	917 Brooks Ave.	$ 557.32	1/22/2013	weed
Bouie, Jesse	1233	115 Texas Ave.	$ 347.45	5/16/2013	weed
Cheung, Kwan	1217	123 Delaware Ave.	$ 304.40	1/22/2013	weed
Cole Family Trust	1247	1811 Hubbard Dr.	$ 424.98	3/10/2014	water
Dorwin, Cynthia	1256	1344 McKinley Ave.	$ 643.66	3/19/2014	water
Gutierrez, Raymond	1225	909 Bakers Plaace	$ 388.34	2/15/2013	weed
Hawkins, Edward	1210	1500 Ohio Ave.	$ 334.53	1/22/2013	weed
Lasalle, Charles	1236	1312 Seventh St	$ 467.99	5/16/2013	weed
Martin, Steven	1234	508 Maryland Ave	$ 446.46	5/16/2013	weed
Noriega, Santiago	1241	201 N. Florida Ave.	*Paid*	5/14/2013	weed
Palma, Elias	1211	1209 Wright Ave.	$ 315.16	1/22/2013	weed
Porter, Blaine	1252	2002 Bill Drive	$ 417.42	3/19/2014	water
Stacey, Rose	1257	1306 N. Scenic Dr.	$ 866.54	3/19/2014	water
Villa, Joseph	1219	1497 Lindberg Ave.	$ 394.80	1/22/2013	weed
Wheeler, Gregory	1231	993 Dora St.	$ 471.22	1/22/2013	weed
Wheeler, Gregory	1044	993 Dora St.	$ 550.00	8/27/2010	weed

AGENDA REPORT
CITY OF ALAMOGORDO
CITY COMMISSION

Meeting Date: 12/19/2017 **Report Date:** 12/13/2017 **Report No:** 3.

Submitted By: Rachel Hughs

Subject: Approve the City Commission Regular Meeting Schedule for Calendar Year 2018. *(Rachel Hughs, City Clerk)*

Fiscal Impact:
Amount Budgeted:
Fund:

Additional Fiscal Impact:

Recommendation: Approve the Schedule for Calendar Year 2018.

Background: Every year the City Commission adopts its deadline and meeting schedule for the upcoming year. A notice of the meeting dates will be published in the Alamogordo Daily News on Sunday, December 24, 2017, and again on Sunday, June 10, 2018. The notice will also be posted on the City's web page and remain posted until after the last meeting in December of 2018.

NOTE: The meetings in January will be held on the second and fifth Tuesday and the meetings for the months of November and December will be held on the first and third Tuesdays, rather than the second and fourth Tuesdays. The NMML Annual conference will be held August and will not be during a meeting week. Municipal Elections will be on March 6, 2018.

2018 City of Alamogordo Calendar

JANUARY

S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

FEBRUARY

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MARCH

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APRIL

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29	30					

MAY

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JUNE

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JULY

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29	30	31				

AUGUST

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SEPTEMBER

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OCTOBER

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NOVEMBER

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DECEMBER

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23	24	25	26	27	28	29
30	31					

Regular Comm Mtg

Holiday

Payday

Municipal Elections

2017 Pay Periods					
1	**12/18/17 - 12/31/17**	10	**04/23/18 - 05/06/18**	19	**08/27/18 - 09/09/18**
2	**01/01/18 - 01/14/18**	11	**05/07/18 - 05/20/18**	20	**09/10/18 - 09/23/18**
3	**01/15/18 - 01/28/18**	12	**05/21/18 - 06/03/18**	21	**09/24/18 - 10/07/18**
4	**01/29/18 - 02/11/18**	13	**06/04/18 - 06/17/18**	22	**10/08/18 - 10/21/18**
5	**02/12/18 - 02/25/18**	14	**06/18/18 - 07/01/18**	23	**10/22/18 - 11/04/18**
6	**02/26/18 - 03/11/18**	15	**07/02/18 - 07/15/18**	24	**11/05/18 - 11/18/18**
7	**03/12/18 - 03/25/18**	16	**07/16/18 - 07/29/18**	25	**11/19/18 - 12/02/18**
8	**03/26/18 - 04/08/18**	17	**07/30/18 - 08/12/18**	26	**12/03/18 - 12/16/178**
9	**04/09/18 - 04/22/18**	18	**08/13/18 - 08/26/18**		

CITY OF ALAMOGORDO
CITY COMMISSION REGULAR MEETING SCHEDULE FOR 2018

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

Deadline date for placing Items and attachments on the Agenda. (12:00 p.m.)	Date Agenda Packets available to the City Commission & public (5:00 p.m.)	Regular Meeting Date (6:30 p.m.)
January 2, 2018	January 5, 2018	January 9, 2018
January 23, 2018	January 26	**January 31, 2018
February 6	February 9	February 13, 2018
February 20	February 23	February 27, 2018
March 6	March 9	March 13, 2018
March 20	March 23	March 27, 2018
April 3	April 13	April 10, 2018
April 17	April 20	April 24, 2018
May 1	May 4	May 8, 2018
May 15	May 18	May 22, 2018
June 5	June 8	June 12, 2018
June 19	June 22	June 26, 2018
July 3	July 6	July 10, 2018
July 17	July 20	July 24, 2018
August 7	August 10	August 14, 2018
August 21	August 24	August 28, 2018
September 4	September 7	September 11, 2018
September 18	September 21	September 25, 2018
October 2	October 5	October 9, 2018
October 16	October 19	October 23, 2018
October 30	November 2	*November 6, 2018
November 13	November 16	*November 20, 2018
November 27	November 30	*December 4, 2018
December 11	December 14	*December 18, 2018

*First and Third weeks of the Month
** Fifth week of the Month

PASSED, APPROVED AND ADOPTED THIS 19th DAY OF DECEMBER, 2017.

Rachel Hughs, City Clerk

Richard Boss, Mayor

NOTICE OF PUBLIC MEETINGS
2018

In accordance with Section 10-15-1, NMSA 1978 (as amended), notice is hereby given that the Governing Body (City Commission) of the City of Alamogordo, New Mexico, will meet in regular session the second and fourth Tuesday of every month; however, in January the meetings will be held on the second and fifth Tuesday and during the months of November and December, the meetings will be held the first and third Tuesday of the month. The meetings will begin at 6:30 p.m. and will be held in the City Commission Chambers at City Hall located at 1376 E. Ninth Street, Alamogordo, New Mexico. Listed below are the Regular Meetings scheduled for 2018:

JAN. 9, 2018 **(Second Tuesday in January)**	**JAN. 30, 2018** **(Fifth Tuesday in January)**
FEB. 13, 2018	**FEB. 27, 2018**
MAR. 13, 2018	**MAR. 27, 2018**
APR. 10, 2018	**APR. 24, 2018**
MAY 8, 2018	**MAY 22, 2018**
JUNE 12, 2018	**JUNE 26, 2018**
JULY 10, 2018	**JULY 24, 2018**
AUG. 14, 2018	**AUG. 28, 2018**
SEPT. 11, 2018	**SEPT. 25, 2018**
OCT. 9, 2018	**OCT. 23, 2018**
NOV. 6, 2018 **(First Tuesday in November)**	**NOV. 20, 2018** **(Third Tuesday in November)**
DEC. 4, 2018 **(First Tuesday in December)**	**DEC. 18, 2018** **(Third Tuesday in December)**

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

I hereby certify that this notice was posted on the bulletin board located in the east/west lobby of City Hall and in the glass case located outside City Hall, 1376 E. Ninth Street, Alamogordo, NM. The notice was posted on December 20, 2017 and will remain posted until after the last meeting in December 2018. A notice of the meeting dates will be published in the Legal Section of the *Alamogordo Daily News* on Sunday, December 24, 2017 & June 10, 2018. The same notice will also be posted on the City's web page (http://ci.alamogordo.nm.us) in December of 2017 and will remain posted through the end of 2018.

______________________________.
Rachel Hughs, City Clerk

NOTICE IS HEREBY GIVEN THAT THE ALAMOGORDO CITY COMMISSION HAS ADOPTED ITS REGULAR MEETING SCHEDULE FOR 2018.

Notice is hereby given that the Governing Body (City Commission) of the City of Alamogordo, New Mexico, will meet in regular session the second and fourth Tuesday of every month; however, in January the meetings will be held on the second and fifth Tuesday and during the months of November and December, the meetings will be held the first and third Tuesday of the month, unless otherwise noted. The meetings will begin at 6:30 p.m. and be held in the City Commission Chambers at City Hall located at 1376 E. Ninth Street, Alamogordo, New Mexico. Listed below are the Regular Meetings scheduled for 2018:

Jan. 9, 2018 (Second Tuesday) & Jan. 30, 2018 (Fifth Tuesday)

Feb. 13, 2018 & Feb. 27, 2018

Mar. 13, 2018 & Mar. 27, 2018

Apr. 10, 2018 & Apr. 24, 2018

May 8, 2018 & May 22, 2018

June 12, 2018 & June 26, 2018

July 10, 2018 & July 24, 2018

Aug. 14, 2018 & Aug. 28, 2018

Sept. 11, 2018 & Sept. 25, 2018

Oct. 9, 2018 & Oct. 23, 2018

Nov. 6, 2018 (First Tuesday) & Nov. 20, 2018 (Third Tuesday)

Dec. 4, 2018 (First Tuesday) & Dec. 18, 2018 (Third Tuesday)

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

Approved by the City Commission on the 19th day of December, 2017.

By: Rachel Hughs, City Clerk

AGENDA REPORT
CITY OF ALAMOGORDO
CITY COMMISSION

Meeting Date: 12/19/2017 **Report Date:** 12/11/2017 **Report No:** 4.

Submitted By: Kathy Gilsdorf

Subject: Approve Resolution No. 2017-39 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 December 19, 2017. *(Kathy Gilsdorf, Budget Analyst)* **(Roll Call Vote required)**

Fiscal Impact:
Amount Budgeted:
Fund:

Additional Fiscal Impact:

Beginning Cash Balances $0
Revenues $13,170 Increase
Expenditures ($458,132) Decrease
Transfers In/Out $0
Net Impact $471,302 Increase

Recommendation: Approve Resolution 2017-39

Background: The City Commission adopted the Fiscal Year budget on May 23, 2017. The Department of Finance & Administration granted approval of the City of Alamogordo's Fiscal Year 2017-2018 Final Budget on August 30, 2017. Resolution 2017-39 amends the Budget to reflect a more true and accurate projection of the actual revenues and expenditures. A summary and explanation of revisions are attached for your review.

RESOLUTION NO. 2017-39

A RESOLUTION REQUESTING THE DEPARTMENT OF FINANCE AND ADMINISTRATION, STATE OF NEW MEXICO, APPROVE REVISED BUDGET FIGURES FOR CERTAIN LINE ITEMS IN THE CITY'S BUDGET FOR FISCAL YEAR 2017-2018.

WHEREAS, the City of Alamogordo, New Mexico wishes approval to change some of the budget line item figures of various funds; and

WHEREAS, the Department of Finance and Administration, State of New Mexico, gave its written approval to the City of Alamogordo, New Mexico's annual budget on August 30, 2017, for fiscal year 2017-2018; and

WHEREAS, the City of Alamogordo, New Mexico, has tabulated on the following pages the additional resources and expenditures for fiscal year 2017-2018.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF ALAMOGORDO, NEW MEXICO, that the City's annual budget for fiscal year 2017-2018 be and hereby is revised as of December 19, 2017 to reflect a more true and accurate projection of the actual revenues and expenditures for fiscal year 2017-2018 as shown on the following pages.

NOW, BE IT FURTHER RESOLVED BY THE GOVERNING BODY OF THE CITY OF ALAMOGORDO, NEW MEXICO, that the Department of Finance and Administration, State of New Mexico, be requested to give its written approval to the revised budget figures computed on December 19, 2017 as a more true and accurate projection of the actual revenues and expenditures for fiscal year 2017-2018.

PASSED, APPROVED AND ADOPTED by the Governing Body of the City of Alamogordo, New Mexico, at a Regular Meeting held this 19th day of December 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

1/12TH REQ RSRV
1,240,182
Fund Reserve Policy
487,127
Bal. Remaining
3,653,514

ALL FUNDS SUMMARY
BUDGET 2017-2018

FY18 BUDGET - RESOLUTION 2017-39 (#5) DECEMBER 19, 2017

FUND NO.	FY 2017-2018 FUND DESCRIPTION	UNAUDITED BEGINNING CASH BALANCE	ESTIMATED REVENUES	TRANSFERS IN	TRANSFERS OUT	NET CASH TRANSFERS	BUDGETED EXPENDITURES	ESTIMATED ENDING CASH BALANCE	LOCAL RESERVE REQUIREMENTS UNAVAILABLE FOR BUDGETING	ADJUSTED ENDING CASH BALANCE
11	GENERAL OPERATING FUND	9,237,045	17,009,481	1,367,803	6,846,152	(5,478,349)	15,368,656	5,399,521	1,727,309	3,672,212
	Revision #1	0	0	(500,000)	0	(500,000)	(500,000)	0		$0
	Revision #2	0	0	0	18,698	(18,698)	0	(18,698)		($18,698)
	Revision #3	0	3,200	0	0	0	3,200	0		$0
	Revision #4	0	3,795	0	0	0	3,795	0		$0
	Revision #6	0	1,255	0	0	0	1,255	0		$0
	Revision #9	0	1,450	0	0	0	1,450	0		$0
	Revision #10	0	3,827	0	0	0	3,827	0		$0
	Total Revised Fund 11	**9,237,045**	**17,023,008**	**867,803**	**6,864,850**	**(5,997,047)**	**14,882,183**	**5,380,823**	**1,727,309**	**3,653,514**
12	INTERNAL SERVICE FUND	0	450,889	2,900,860	0	2,900,860	3,337,235	14,514		$14,514
15	CORRECTIONS-JAIL	20,023	81,072	11,410	1,530	9,880	105,975	5,000		$5,000
16	LODGER'S TAX-PROMOTIONAL FUND	151,135	212,113	0	4,584	(4,584)	331,240	27,424		$27,424
17	POLICE COURT BOND	10,738	0	0	0	0	0	10,738		$10,738
19	COURT AUTOMATION FUND	24,415	81,688	0	29,303	(29,303)	65,462	11,338		$11,338
20	LODGER'S TAX-CITY	203,807	402,858	208,987	45,445	163,542	674,952	95,255		$95,255
	Revision #5	0	16	0	0	0	16	0		$0
	Total Revised Fund 20	**203,807**	**402,874**	**208,987**	**45,445**	**163,542**	**674,968**	**95,255**	**0**	**95,255**
21	D.A.R.E. DONATIONS FUND	21,698	4,102	0	0	0	13,309	12,491		$12,491
22	DESIGNATED GIFT FUND	25,432	0	0	25,432	(25,432)	0	0		$0
24	GRANT CAPITAL IMPROVEMENT	0	248,551	0	0	0	154,067	94,484		$94,484
	Revision #2	0	0	18,698	0	18,698	18,698	0		$0
	Total Revised Fund 24	**0**	**248,551**	**18,698**	**0**	**18,698**	**172,765**	**94,484**	**0**	**94,484**
27	MUNICIPAL COURT OPERATIONS	0	10,000	414,230	6,977	407,253	412,253	5,000		$5,000
28	POLICE CONTINGENCY	49,810	3,927	0	0	0	7,700	46,037		$46,037
31	CEMETERY-PERPETUAL CARE	808,115	20,666	0	0	0	0	831,105		$831,105
32	COMMUNITY SERVICES	1,775	768,401	3,825,699	519,875	3,305,824	4,071,957	4,043		$4,043
33	FIRE PROTECTION	558,188	460,218	0	0	0	938,187	80,219	45,056	$35,163
36	LAW ENFORCEMENT FUND	0	110,128	0	0	0	110,128	0		$0
	Revision #7	0	(600)	0	0	0	(600)	0		$0
	Total Revised Fund 36	**0**	**109,528**	**0**	**0**	**0**	**109,528**	**0**	**0**	**0**
37	STATE HIGHWAY FUND	120,241	37,617	0	752	(752)	28,200	128,906		$128,906
38	TRAFFIC SAFETY FUND	56,481	23,420	0	0	0	28,000	51,901		$51,901
39	STATE JUDICIAL	21,037	75,500	0	0	0	75,500	21,037		$21,037
40	AIRPORT IMPROVEMENT PROJECTS	12,763	0	0	0	0	0	12,763		$12,763
42	1984 GROSS RECEIPTS TAX	3,461,622	1,659,501	0	4,569,978	(4,569,978)	0	551,145	217,173	$333,972
44	TRANSPORTATION FUND	8,661	3,800,684	1,666,323	160,620	1,505,703	5,315,048	0		$0
48	NEW MEXICO C.D.B.G.	0	170,512	0	0	0	0	170,512		$170,512
49	1986 GROSS RECEIPTS TAX	9,568,712	1,714,883	0	10,022,074	(10,022,074)	572,945	688,576	268,113	$420,463
50	PROPERTY ACQUISITION	76,821	0	0	0	0	0	76,821		$76,821
53	GENERAL OBLIGATION	770,189	6,725,801	0	0	0	6,719,680	776,310		$776,310
54	REVERSE OSMOSIS PROJECT RSV	0	3,933,649	6,339,072	0	6,339,072	9,584,885	687,836		$687,836
56	99 GRT FLOOD CONTROL BOND PROJ	230,842	1,254	3,787,666	0	3,787,666	4,019,762	(0)		($0)
59	REVENUE BOND P & I FUND	151,687	334	3,768,928	0	3,768,928	2,667,611	1,253,338		$1,253,338
61	MUNICIPAL INFRASTRUCTURE .0625%	561,853	391,535	0	806,172	(806,172)	0	147,216		$147,216
63	COMMUNITY DEVELOPMENT	0	75,690	427,916	52,897	375,019	382,033	68,676		$68,676

1/12TH REQ RSRV
1,240,182
Fund Reserve Policy
487,127
Bal. Remaining
3,653,514

ALL FUNDS SUMMARY
BUDGET 2017-2018

FY18 BUDGET - RESOLUTION 2017-39 (#5) DECEMBER 19, 2017

FUND NO.	FY 2017-2018 FUND DESCRIPTION	UNAUDITED BEGINNING CASH BALANCE	ESTIMATED REVENUES	TRANSFERS IN	TRANSFERS OUT	NET CASH TRANSFERS	BUDGETED EXPENDITURES	ESTIMATED ENDING CASH BALANCE	LOCAL RESERVE REQUIREMENTS UNAVAILABLE FOR BUDGETING	ADJUSTED ENDING CASH BALANCE
69	1994 GROSS RECEIPTS	2,158,582	1,642,017	0	3,573,853	(3,573,853)	0	226,746	226,408	$338
71	ALAMO SENIOR CENTER	430	770,323	566,579	0	566,579	1,332,482	4,850		$4,850
74	ALAMO SENIOR CENTER GIFT	86,101	28,951	0	754	(754)	48,778	65,520		$65,520
75	RETIRED & SENIOR VOL. PROGRAM	100	249,393	36,566	19,593	16,973	261,466	5,000		$5,000
81	WATER/SEWER OPERATING	13,980,988	14,515,467	2,880,181	2,096,435	783,746	27,075,332	2,204,869	988,773	$1,216,096
82	98 JT WATER/SEWER BOND P&I	1,199,542	14,714	2,007,217	0	2,007,217	1,932,478	1,288,995	1,288,995	($0)
86	SOLID WASTE COLLECTION SYS.	471,060	2,063,153	110,000	126,980	(16,980)	2,033,970	483,263	320,293	$162,970
	Revision #11	0	0	0	0	0	10,000	(10,000)		($10,000)
	Total Revised Fund 86	**471,060**	**2,063,153**	**110,000**	**126,980**	**(16,980)**	**2,043,970**	**473,263**	**320,293**	**152,970**
88	BONITO CAMPGROUND	311,255	66,694	0	0	0	0	377,949		$377,949
89	ESGRT .0625%	2,062,446	399,387	0	375,000	(375,000)	312,538	1,774,295	230,180	$1,544,115
90	GOLF COURSE	0	1,422,400	245,313	51,151	194,162	1,611,562	5,000		$5,000
91	AIRPORT	113,788	853,039	288,332	33,625	254,707	1,151,639	69,895	35,858	$34,037
94	OTERO GREENTREE REG LANDFILL	4,617,378	1,212,861	0	1,720	(1,720)	3,325,908	2,502,611	1,558,302	$944,309
96	SELF-INSURED FUND	480,308	67,515	0	0	0	56,413	491,410		$491,410
98	PAYROLL CLEARING	207,283	0	0	0	0	0	207,283		$207,283
104	UTILITY DEPOSITS	729,273	0	0	0	0	0	729,273		$729,273
105	ECONOMIC DEVELOPMENT	6,956,909	914,557	0	500,000	(500,000)	2,430,846	4,940,620		$4,940,620
	Revision #1	0	0	0	(500,000)	500,000	0	500,000		$500,000
	Total Revised Fund 105	**6,956,909**	**914,557**	**0**	**0**	**0**	**2,430,846**	**5,440,620**	**0**	**5,440,620**
107	SELF INSURED/LIABILITY	1,057,436	4,865	140,640	448,484	(307,844)	490,000	264,457		$264,457
109	2004 GRT CAPITAL OUTLAY	11,924,451	3,351,562	0	1,122,820	(1,122,820)	12,117,379	2,035,814	559,361	$1,476,453
113	2009 G.O. BOND ACQ FUND	7,704	0	0	0	0	0	7,704		$7,704
114	SIDEWALKS REVOLVING LOANS	134,786	1,465	0	0	0	32,360	103,891		$103,891
115	CORP ESCROW ACCOUNT RESERVE	2,000,000	0	0	0	0	0	2,000,000		$2,000,000
116	REG WATER SUPPLY TRANS LN	2,886	0	0	0	0	0	2,886		$2,886
117	2011 JT W/S REF/IMP REVBD	7,053	0	0	0	0	0	7,053		$7,053
119	2012 GRT REF/IMP REVBD	3,239,079	21,970	448,484	0	448,484	3,540,787	168,746		$168,746
121	2015 GO BONDS-FUN CENTER	3,214,127	64,297	0	0	0	3,161,121	117,303		$117,303
122	2015 GO BONDS-STREETS	2,098,043	37,178	0	0	0	1,964,484	170,737		$170,737
901	HOUSING LOW RENT OPERATING	976,110	831,551	0	0	0	953,822	853,839	197,289	$656,550
	Revision #8	0	227	0	0	0	227	0		$0
	Total Revised Fund 901	**976,110**	**831,778**	**0**	**0**	**0**	**954,049**	**853,839**	**197,289**	**656,550**
903	HOUSING HOMEOWNERSHIP OPER	763,810	45,887	0	0	0	97,830	711,867	5,339	$706,528
904	HOUSING CAPITAL FUND PROJECTS	0	290,016	0	0	0	290,016	0		$0
	TOTALS FY2018	**84,954,018**	**67,356,906**	**30,960,904**	**30,960,904**	**0**	**118,747,864**	**33,565,384**	**9,913,340**	**35,990,329**
	Prior Resolution	84,954,018	67,343,736	31,442,206	31,442,206	0	119,205,996	33,094,082		
5	Preliminary FY18 Budget 2017-39	(0)	13,170	(481,302)	(481,302)	0	(458,132)	471,302		

Resolution # 2017-39   December 19, 2017

RECURRING/ NON-RECURRING	FUND NO.	LINE ITEM NO.	LINE ITEM DESCRIPTION	ORIGINAL BUDGET AMOUNT	INCREASE (DECREASE)	REVISED BUDGET AMOUNT
	<u>REVISION #1</u>					
	Budget Revision is requested to reverse the transfer from Fund 105 (Economic Development) investment interest and to close the project ED1802 DTVC (Downtown Venture Corp).					
	11	**GENERAL FUND**				
		Transfers In				
Non-Recurring	**ED1802**	011-0000-391.91-05	Transfer fr (105) Econ Dev	500,000	**(500,000)**	0
		Expenditures				
	ED1802	011-2400-419.57-34	Contract Services	500,000	**(500,000)**	0
	105	**ECONOMIC DEVELOPMENT**				
		Transfers Out				
		105-0000-491.18-11	Transfer to (11) General Fund	500,000	**(500,000)**	0
	<u>REVISION #2</u>					
	Budget Revision is requested to increase revenue and expenditures for the completion of the All Natural Hazard Mitigation Plan Grant. The Grant was awarded in FY15 and not carried over to subsequent years. The State has allowed the Fire Department to now spend the funds that was thought to be closed. Funds are requested to move from the General Fund (that can no longer have Grants) to Fund 24 (Grant					
	11	**GENERAL FUND**				
		Transfers Out				
Non-Recurring		011-0000-491.18-24	Transfer to (24) Grant Cap Imp	0	**18,698**	18,698
	24	**GRANT CAPITAL IMPROVEMENT**				
		Transfers In				
	PSMI12	024-0000-391.19-11	Transfer fr (11) General Fund	0	**18,698**	18,698
		Expenditures				
	PSMI12	024-0000-419.57-34	Contract Services	0	**18,698**	18,698
	<u>REVISION #3</u>					
	Budget Revision is requested to increase revenue and expenditures for donations received for Animal Control pet adoptions and injured animals.					
	11	**GENERAL FUND**				
		Revenues				
Non-Recurring	**PSACO1**	011-3804-314.13-36	Donations/Injured Animal	0	**1,000**	1,000
	PSACO2	011-3804-314.13-36	Donations/Pet Adoptions	0	**1,200**	1,200
	PSACO3	011-3804-314.13-36	Donations/Special Projects	0	**1,000**	1,000
			Total Revenues	0	**3,200**	3,200
		Expenditures				
	PSACO1	011-3804-429.33-26	Designated Materials	520	**1,000**	1,520
	PSACO2	011-3804-429.33-26	Designated Materials	550	**1,200**	1,750
	PSACO3	011-3804-429.33-26	Designated Materials	9,345	**1,000**	10,345
			Total Expenditures	10,415	**3,200**	13,615
	<u>REVISION #4</u>					
	Budget Revision is requested to increase revenue and expenditures for donations received for the K9 program.					
	11	**GENERAL FUND**				
		Revenues				
Non-Recurring	**APDK91**	011-4104-316.15-81	Equipment Services	0	**3,795**	3,795
		Expenditures				
	APDK91	011-4104-420.57-39	Animal Expense	8,237	**3,795**	12,032

REVISION #5

Budget Revision is requested to increase revenue and expenditures for sale of scrap to be used for supplies for the Civic Center.

Non-Recurring	**20**	**LODGER'S TAX-CITY SHARE**				
		Revenues				
		020-0000-316.15-05	Sale of Scrap	0	**16**	16
		Expenditures				
		020-0000-454.31-65	Civic Center Supplies	2,205	**16**	2,221

REVISION #6

Budget Revision is requested to increase revenue and expenditures for donated funds for the purchase of helmet lights for all firefighters.

	11	**GENERAL FUND**				
		Revenues				
Non-Recurring	**FD1803**	011-4204-314.13-36	Donations	0	**1,255**	1,255
		Expenditures				
	FD1803	011-4204-421.31-31	Equipment	0	**1,255**	1,255

REVISION #7

Budget Revision is requested to decrease revenues and expenditures for the reduced amount received from the Law Enforcement Grant.

	36	**LAW ENFORCEMENT FUND**				
		Revenues				
Non-Recurring		036-0000-317.16-08	Law Enforcement Grant	62,400	**(600)**	61,800
		Expenditures				
		036-0000-420.60-31	Law Enforcement Equipment	6,614	**2,858**	9,472
		036-4604-420.20-04	Community DWI Overtime	39,728	**(3,458)**	36,270
			Total Expenditures	46,342	**(600)**	45,742

REVISION #8

Budget Revision is requested to increase revenues and expenditures for miscellaneous revenue received from a yard sale of abandoned tenant property at PHA.

	901	**HOUSING LOW RENT OPERATING**				
		Revenues				
Non-Recurring	**HPYDSL**	901-0000-316.15-15	City Misc Reimb/Claims	0	**227**	227
		Expenditures				
	HPYDSL	901-0007-463.30-40	Office Supplies	0	**227**	227

REVISION #9

Budget Revision is requested to increase revenues and expenditures for donation funds received for the purchase of jackets.

	11	**GENERAL FUND**				
		Revenues				
Non-Recurring	**APDJAC**	011-4104-314.13-36	Donations	0	**1,450**	1,450
		Expenditures				
	APDJAC	011-4101-420.31-05	Uniforms	0	**1,450**	1,450

REVISION #10

Budget Revision is requested to increase revenues and expenditures from Miscellaneous Revenue received to replace the funds used for the unexpected HazMat clean-up spill/call which occurred 10/14/17. The trucking company reimbursed the city for man hours and materials.

	11	**GENERAL FUND**				
		Revenues				
Non-Recurring		011-4204-316.15-15	Miscellaneous Revenue	0	**3,827**	3,827
		Expenditures				
		011-4204-421.20-02	Operational	703,256	**1,059**	704,315
		011-4204-421.31-31	Equipment	9,050	**2,768**	11,818
			Total Expenditures	712,306	**3,827**	716,133

REVISION #11

Budget Revision is requested to increase expenditures for emergency repair to the backhoe that is located out at the Collection Center that had both hydraulic cylinders that work the stinger go out and have to be replaced. Funds are requested from fund balance.

	86	**SOLID WASTE COLLECTION SYSTEM**				
		Expenditures				
Non-Recurring	**CERCON**	086-1003-434.61-60	CER Equipment Replacement	0	**10,000**	10,000

REVENUES ON RESOLUTION

ITEM #	AMOUNT	TYPE
3	3,200	Animal Control donations
4	3,795	K9 donations
5	16	Sale of scrap
6	1,255	Helmet lights for firefighter
7	(600)	Grant deduction
8	227	PHA Yard Sale
9	1,450	Donations-jackets for police
10	3,827	Reimbursement from HazMat call
	13,170	

EXPENDITURES ON RESOLUTION

ITEM #	AMOUNT	TYPE
1	(500,000)	Reverse Downtown Ventures Corp Transfer
2	18,698	Natural Mitigation Grant
3	3,200	Animal Control donations
4	3,795	K9 donations
5	16	Sale of scrap
6	1,255	Helmet lights for firefighter
7	(600)	Grant deduction
8	227	PHA Yard Sale
9	1,450	Donations-jackets for police
10	3,827	Reimbursement from HazMat call
11	10,000	Repair backhoe for Convenience Center
	(458,132)	

AGENDA REPORT
CITY OF ALAMOGORDO
CITY COMMISSION

Meeting Date: 12/19/2017 **Report Date:** 12/15/2017 **Report No:** 5.

Submitted By: Debbie Osborne

Subject: Approve final publication of Ordinance No. 1553 to amend Ordinance No. 1515, which was adopted on May 24, 2016 regarding the execution and delivery of a loan agreement and intercept agreement by and between the City of Alamogordo, NM and the New Mexico Finance Authority. *(Julianne Hall, Finance Director)* **(Roll Call Vote Required)**

Fiscal Impact:
Amount Budgeted:
Fund:

Additional Fiscal Impact: No additional fiscal impact.

Recommendation: Approve Ordinance No. 1553 for final publication.

Background:

On September 12, 2017, the City Commission approved a list of Parks and Recreations projects for consideration to the NMFA Board for the rededication of funds originally received for the natatorium project NMFA Loan #3471-PP originally received for the natatorium project.

Ordinance No. 1515, adopted on May 24, 2016, authorized the execution and delivery of a loan agreement and intercept agreement by and between the City of Alamogordo, NM and the New Mexico Finance Authority, evidencing a special limited obligation of the governmental unit to pay a principal amount of $6,870,000, together with interest thereon, to finance the costs of public improvement projects, which included improvements to the governmental unit's natatorium, refunding outstanding bonds and paying a loan processing fee associated with the loan agreement.

Ordinance No. 1553 would amend ordinance No. 1515 to change, in part, the scope of project to include financing the costs to acquire, construct, purchase, equip, furnish, make additions to, renovate, rehabilitate beautify or otherwise improve public parks, public recreational buildings or other public recreational facilities or any combination of the foregoing and remove improvements to the governmental unit's natatorium as an authorized project; and ratify all actions heretofore taken.

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

The City Commission (the "Governing Body") of the City of Alamogordo, New Mexico, met in regular session in full conformity with the law and the rules and regulations of the Governing Body at Alamogordo Municipal Offices, 1376 East Ninth Street, Alamogordo, New Mexico, being the regular meeting place of the Governing Body, on the 19th day of December, 2017, at the hour of 6:30 p.m. Upon roll call, the following members were found to be present:

Present: ______________________________________

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Absent: ______________________________________

Also Present: ______________________________________

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

CITY OF ALAMOGORDO, NEW MEXICO
ORDINANCE NO. 1553

AMENDING ORDINANCE NO. 1515, ADOPTED ON MAY 24, 2016, WHICH AUTHORIZED THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT AND INTERCEPT AGREEMENT BY AND BETWEEN THE CITY OF ALAMOGORDO, NEW MEXICO (THE "GOVERNMENTAL UNIT") AND THE NEW MEXICO FINANCE AUTHORITY, EVIDENCING A SPECIAL LIMITED OBLIGATION OF THE GOVERNMENTAL UNIT TO PAY A PRINCIPAL AMOUNT OF SIX MILLION EIGHT HUNDRED SEVENTY THOUSAND DOLLARS ($6,870,000) TOGETHER WITH INTEREST THEREON, TO FINANCE THE COSTS OF PUBLIC IMPROVEMENT PROJECTS, WHICH INCLUDED IMPROVEMENTS TO THE GOVERNMENTAL UNIT'S NATATORIUM, REFUNDING OUTSTANDING BONDS AND PAYING A LOAN PROCESSING FEE ASSOCIATED WITH THE LOAN AGREEMENT; AMENDING ORDINANCE NO. 1515 TO CHANGE, IN PART, THE SCOPE OF PROJECT TO INCLUDE FINANCING THE COSTS TO ACQUIRE, CONSTRUCT, PURCHASE, EQUIP, FURNISH, MAKE ADDITIONS TO, RENOVATE, REHABILITATE BEAUTIFY OR OTHERWISE IMPROVE PUBLIC PARKS, PUBLIC RECREATIONAL BUILDINGS OR OTHER PUBLIC RECREATIONAL FACILITIES OR ANY COMBINATION OF THE FOREGOING AND REMOVE IMPROVEMENTS TO THE GOVERNMENTAL UNIT'S NATATORIUM AS AN AUTHORIZED PROJECT; AUTHORIZING AND APPROVING A FORM OF AMENDMENT TO LOAN AGREEMENT; AND RATIFYING ALL ACTIONS HERETORE TAKEN.

Capitalized terms used in the following recitals have the same meaning, except as amended herein, as defined in Section 1 of Governmental Unit Ordinance No. 1515, unless the context requires otherwise.

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

WHEREAS, the Governing Body previously adopted Ordinance No. 1515 on May 24, 2016, which authorized the Governmental Unit to enter into a Loan Agreement with the Finance Authority to finance the acquisition, construction, installation and improvement of public projects in the Governmental Unit, including but not limited to improvements to the Governmental Unit's natatorium; and

WHEREAS, pursuant to Sections 3-31-1 through 3-31-12 and Sections 6-21-1 et seq., NMSA 1978, as amended, the Governmental Unit and the Finance Authority entered into the Loan Agreement, payable from Pledged Revenues; and

WHEREAS, after more detailed planning, the Governmental Unit has determined that the original scope of the Project is not in the best interest of the Governmental Unit; and

WHEREAS, the Governing Body of the Governmental Unit has determined that it is in the best interests of the Governmental Unit and its residents to use the proceeds of the Loan, in part, to finance the costs to acquire, construct, purchase, equip, furnish, make additions to, renovate, rehabilitate beautify or otherwise improve public parks, public recreational buildings or other public recreational facilities or any combination of the foregoing, all within the Governmental Unit (the "New Project"), and to remove improvements to the Governmental Unit's natatorium as part of the authorized Project; and

WHEREAS, the Governmental Unit has requested an amendment to the Loan Agreement ("Amendment to Loan Agreement") allowing a portion of the loan proceeds to be used to fund the New Project; and

WHEREAS, on September 28, 2017, the Finance Authority approved the request of the Governmental Unit to amend the Loan Agreement to change the scope of the Project to the New Project; and

WHEREAS, there have been presented to the Governing Body, and there presently are on file with the City Clerk, this Ordinance and the form of the Amendment to Loan Agreement; and

WHEREAS, the Governing Body hereby determines that the New Project to be financed by the Loan is to be used for governmental purposes of the Governmental Unit and will not be used for purposes which would cause the Loan Agreement to be deemed a "private activity bond" as defined by the Internal Revenue Code of 1986, as amended; and

WHEREAS, the Governing Body intends by this Ordinance to authorize the execution and delivery of the Amendment to Loan Agreement in the amount and for the purposes set forth therein; and

WHEREAS, the Governing Body intends that all other provisions of Ordinance No. 1515 and the Loan Agreement remain effective.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF ALAMOGORDO, NEW MEXICO:

Section 1. Ratification. All action heretofore taken (not inconsistent with the provisions of this Ordinance) by the Governing Body and officers of the Governmental Unit directed toward the New Project, and the execution and delivery of the Amendment to Loan Agreement shall be, and the same hereby is, ratified, approved and confirmed.

Section 2. Authorization of the New Project and the Amendment to Loan Agreement. The New Project and the method of financing the New Project through execution and delivery of the Amendment to Loan Agreement are hereby authorized and ordered. The New Project is for the benefit and use of the Governmental Unit.

Section 3. Findings. The Governmental Unit hereby declares that it has considered all relevant information and data and hereby makes the following findings:

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

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

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

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

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

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

Section 4. Amendments to Ordinance No. 1515. The definition of "Improvement Project" in Section 1 of Governmental Unit Ordinance No. 1515 is hereby amended to remove improvements to the Governmental Unit's natatorium as an authorized Project and to add "acquire, construct, purchase, equip, furnish, make additions to, renovate, rehabilitate beautify or otherwise improve public parks, public recreational buildings or other public recreational facilities or any combination of the foregoing" as an authorized Project. All other provisions of Governmental Unit Ordinance No. 1515 remain effective and are not amended pursuant to this Ordinance.

Section 5. Authorization of Amendment to Loan Agreement. This Ordinance been adopted by the affirmative vote of at least a majority of all of the members of the Governing Body. For the purpose of protecting the public health, conserving the property, and protecting the general welfare and prosperity of the residents of the Governmental Unit and completing the Project, it is hereby declared necessary that the Governmental Unit, pursuant to the Act, execute and deliver the Amendment to Loan Agreement evidencing a change in scope of the Improvement Project, and the execution and delivery of the Amendment to Loan Agreement are hereby authorized. The Governmental Unit shall use a portion of the proceeds of the Loan to finance the New Project. The New Project will be owned by the Governmental Unit.

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

Section 7. Authorized Officers. Authorized Officers are hereby individually authorized and directed to execute and deliver any and all papers, instruments, opinions, affidavits and other documents and to do and cause to be done any and all acts and things necessary or proper for carrying out this Ordinance, the Amendment to Loan Agreement, and all other transactions contemplated hereby and thereby. Authorized Officers are hereby individually authorized to do all acts and things required of them by this Ordinance and the Amendment to Loan Agreement for the full, punctual and complete performance of all the terms, covenants and agreements contained in this Ordinance, the Loan Agreement, as amended, including, but not limited to, the execution and delivery of closing documents in connection with the execution and delivery of the Amendment to Loan Agreement, and the publication of the summary of this Ordinance set out in Section 12 of this Ordinance (with such changes, additions and deletions as may be necessary).

Section 8. Ordinance Irrepealable. After the Amendment to Loan Agreement has been executed and delivered, this Ordinance shall be and remain irrepealable until all obligations due under the Loan Agreement, as amended, shall be fully paid, canceled and discharged, as provided in the Loan Agreement, as amended.

Section 9. Severability Clause. If any section, paragraph, clause or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

Section 10. Repealer Clause. All bylaws, orders, resolutions and ordinances, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any bylaw, order, resolution or ordinance, or part thereof, heretofore repealed.

Section 11. Effective Date. Upon due adoption of this Ordinance, it shall be recorded in the book of the Governmental Unit kept for that purpose, authenticated by the signatures of the Mayor and Clerk of the Governmental Unit, and the title and general summary of the subject matter contained in this Ordinance (set out in Section 12 below) shall be published in a newspaper which is of general circulation in the Governmental Unit, and this Ordinance shall be in full force and effect thereafter, in accordance with law.

Section 12. General Summary for Publication. Pursuant to the general laws of the State, the title and a general summary of the subject matter contained in this Ordinance shall be published in substantially the following form:

City of Alamogordo, New Mexico
Notice of Adoption of Ordinance

Notice is hereby given of the title and of a general summary of the subject matter contained in Ordinance No. 1553 duly adopted and approved by the Governing Body of the City of Alamogordo, New Mexico, on December 19, 2017. A complete copy of the Ordinance is available for public inspection during the normal and regular business hours of the City Clerk, 1376 East Ninth Street, Alamogordo, New Mexico.

The title of the Ordinance is:

AMENDING ORDINANCE NO. 1515, ADOPTED ON MAY 24, 2016, WHICH AUTHORIZED THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT AND INTERCEPT AGREEMENT BY AND BETWEEN THE CITY OF ALAMOGORDO, NEW MEXICO (THE "GOVERNMENTAL UNIT") AND THE NEW MEXICO FINANCE AUTHORITY, EVIDENCING A SPECIAL LIMITED OBLIGATION OF THE GOVERNMENTAL UNIT TO PAY A PRINCIPAL AMOUNT OF SIX MILLION EIGHT HUNDRED SEVENTY THOUSAND DOLLARS ($6,870,000) TOGETHER WITH INTEREST THEREON, TO FINANCE THE COSTS OF PUBLIC IMPROVEMENT PROJECTS, WHICH INCLUDED IMPROVEMENTS TO THE GOVERNMENTAL UNIT'S NATATORIUM, REFUNDING OUTSTANDING BONDS AND PAYING A LOAN PROCESSING FEE ASSOCIATED WITH THE LOAN AGREEMENT; AMENDING ORDINANCE NO. 1515 TO CHANGE, IN PART, THE SCOPE OF PROJECT TO INCLUDE FINANCING THE COSTS TO ACQUIRE, CONSTRUCT, PURCHASE, EQUIP, FURNISH, MAKE ADDITIONS TO, RENOVATE, REHABILITATE BEAUTIFY OR OTHERWISE IMPROVE PUBLIC PARKS, PUBLIC RECREATIONAL BUILDINGS OR OTHER PUBLIC RECREATIONAL FACILITIES OR ANY COMBINATION OF THE FOREGOING AND REMOVE IMPROVEMENTS TO THE GOVERNMENTAL UNIT'S NATATORIUM AS AN AUTHORIZED PROJECT; AUTHORIZING AND APPROVING A FORM OF AMENDMENT TO LOAN AGREEMENT; AND RATIFYING ALL ACTIONS HERETORE TAKEN.

The title sets forth a general summary of the subject matter contained in the Ordinance. This notice constitutes compliance with Section 6-14-6, NMSA 1978.

[End of Form of Summary for Publication.]

PASSED, APPROVED AND ADOPTED THIS 19th DAY OF DECEMBER, 2017.

CITY OF ALAMOGORDO, NEW MEXICO

By________________________________
Mayor

[SEAL]

ATTEST:

By ____________________________
Clerk

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

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

Those Voting Aye: ____________________________________

____

____

____

____

____

____

Those Voting Nay: ____________________________________

Those Absent: ____________________________________

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

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

CITY OF ALAMOGORDO, NEW MEXICO

By ______________________________
Mayor

[SEAL]

ATTEST:

By_______________________________
Clerk

Y:\DOX\CLIENT\10623\0134\GENERAL\W3087918.DOC

AMENDMENT TO LOAN AGREEMENT

dated

January 26, 2018

by and between the

NEW MEXICO FINANCE AUTHORITY

and the

CITY OF ALAMOGORDO, NEW MEXICO

TO CHANGE SCOPE OF PROJECT RELATED TO
THE LOAN AGREEMENT DATED JULY 1, 2016

AMENDMENT TO LOAN AGREEMENT TO CHANGE SCOPE OF PROJECT
RELATED TO LOAN AGREEMENT
DATED JULY 1, 2016

THIS AMENDMENT TO LOAN AGREEMENT DATED JANUARY 26, 2018 TO CHANGE SCOPE OF PROJECT RELATED TO LOAN AGREEMENT DATED JULY 1, 2016 (this "Amendment to Loan Agreement") is entered into by and between the NEW MEXICO FINANCE AUTHORITY (the "Finance Authority"), and the CITY OF ALAMOGORDO, NEW MEXICO (the "Governmental Unit"), a political subdivision duly organized and existing under the laws of the State of New Mexico (the "State").

Capitalized terms used herein shall have the same meaning assigned to them in the Loan Agreement dated July 1, 2016, between the Finance Authority and the Governmental Unit (the "Loan Agreement") except as otherwise defined below.

W I T N E S S E T H:

WHEREAS, the Governing Body adopted Ordinance No. 1515 on May 24, 2016 (the "Ordinance") authorizing, approving and directing the Governmental Unit to execute the Loan Agreement to borrow $6,870,000 from the Finance Authority for the purpose of (i) refunding, refinancing and prepayment of the outstanding City of Alamogordo, New Mexico Gross Receipts Tax Refunding and Improvement Revenue Bonds, Series 2004, and (ii) acquisition, construction, installation and improvement of public projects in the Governmental Unit, including but not limited to flood control improvements and improvements to the Governmental Unit's natatorium (the "Original Project"); and

WHEREAS, pursuant to Sections 3-31-1 et seq. and Sections 6-21-1 et seq., NMSA 1978, as amended (the "Act"), the Governmental Unit and the Finance Authority entered into the Loan Agreement, payable from Pledged Revenues (the "Loan"); and

WHEREAS, there are approximately $3,630,974.08 of Proceeds remaining (the "Unspent Proceeds") as of the date of this Amendment to Loan Agreement; and

WHEREAS, the Governmental Unit has determined not to proceed with the natatorium portion of the Original Project and wishes to use that portion of the Unspent Proceeds, $2,014,639 (the "Unspent Natatorium Proceeds"), to finance the costs to acquire, construct, purchase, equip, furnish, make additions to, renovate, rehabilitate beautify or otherwise improve public parks, public recreational buildings or other public recreational facilities or any combination of the foregoing, all within the Governmental Unit (the "New Project"); and

WHEREAS, the Governmental Unit has determined that it would be in the best interest of its citizens to finance the New Project with the Unspent Natatorium Proceeds; and

WHEREAS, the Governmental Unit has adopted Ordinance No. 1553 on December 19, 2017 which authorizes this Amendment to Loan Agreement amending the Loan Agreement to provide funding for the New Project; and

WHEREAS, the Governing Body of the Governmental Unit intends that the provisions of the Loan Agreement shall govern the use and expenditure of the Unspent Proceeds, including all provisions relating to the payment of Loan Agreement Payments, the pledge of the Pledged Revenues, and all covenants, warranties and certifications contained in the documents relating to the Loan ("Loan No. 3471-PP Loan Documents").

NOW, THEREFORE, for and in consideration of the premises and the mutual promises and covenants herein contained, the parties hereto agree:

ARTICLE I
AMENDMENT TO LOAN AGREEMENT

Section 1.1 New Project. On and after the Amendment Closing Date, the Unspent Natatorium Proceeds of the Loan Agreement shall be used for the New Project instead of for the Original Project. The remaining Unspent Proceeds shall be used for the remaining portions of the Original Project.

Section 1.2 Amendment to Requisition Form. On and after the Amendment Closing Date, the Trustee shall disburse moneys from the Program Account in accordance with Section 6.2 of the Indenture upon receipt by the Trustee of a requisition substantially in the form of Exhibit "A" attached hereto signed by an Authorized Officer of the Governmental Unit.

ARTICLE II
APPLICABILITY OF LOAN NO. 3471-PP LOAN DOCUMENTS

Applicability of Loan No. 3471-PP Loan Documents. The Governmental Unit expressly agrees that all covenants, warranties and certifications contained in the Loan No. 3471-PP Loan Documents shall be effective in their entirety with respect to the Unspent Proceeds and that the Unspent Proceeds shall be used and expended within the terms of the Loan No. 3471-PP Loan Documents.

[Remainder of page left intentionally blank]

[Signature pages follow]

IN WITNESS WHEREOF, the Finance Authority, on behalf of itself, has executed this Amendment to Loan Agreement in its corporate name; and the Governmental Unit has caused this Amendment to Loan Agreement to be executed in its corporate name and the seal of the Governmental Unit affixed and attested by its duly authorized officers. All of the above are effective as of the date first above written.

NEW MEXICO FINANCE AUTHORITY

By ______________________________________
Robert P. Coalter, Chief Executive Officer

PREPARED FOR EXECUTION BY OFFICERS OF THE
NEW MEXICO FINANCE AUTHORITY:

Sutin, Thayer & Browne A Professional Corporation
As Bond Counsel

By: ______________________________________
Suzanne Wood Bruckner

APPROVED FOR EXECUTION BY OFFICERS OF THE
NEW MEXICO FINANCE AUTHORITY:

By:______________________________________
Daniel C. Opperman, General Counsel

CITY OF ALAMOGORDO, NEW MEXICO

By: ________________________________
Richard A. Boss, Mayor

[SEAL]

ATTEST:

By: ________________________________
Rachel Hughs, City Clerk

CONSENTED:

BOKF, NA

By ___________________________________
Its______________________________
Dated: ________________________________

4393935.doc

EXHIBIT "A"

FORM OF REQUISITION

RE: $6,870,000 Loan Agreement by and between the City of Alamogordo, New Mexico, and the Finance Authority (the "Loan Agreement").

TO: BOKF, NA
c/o New Mexico Finance Authority
207 Shelby Street
Santa Fe, New Mexico 87501
Attn: Accounting

You are hereby authorized to disburse from the Program Account – City of Alamogordo, New Mexico (2018 New Purpose – Capital Improvements Loan), with regard to the above-referenced Loan Agreement the following:

LOAN NO. 3471-PP

CLOSING DATE: July 1, 2016
NEW PURPOSE CLOSING DATE: January 26, 2018

REQUISITION NUMBER: ________________________

NAME AND ADDRESS OF PAYEE: ____

____

AMOUNT OF PAYMENT: $_______________________

PURPOSE OF PAYMENT: ____

Each obligation, item of cost or expense mentioned herein is for costs of the New Project, is due and payable, has not been the subject of any previous requisition and is a proper charge against the Program Account – City of Alamogordo, New Mexico (2018 New Purpose – Capital Improvements Loan).

All representations contained in the Loan Agreement and the related closing documents remain true and correct and the City of Alamogordo, New Mexico, is not in breach of any of the covenants contained therein.

If this is the final requisition, payment of costs of the New Project is complete or, if not complete, the City of Alamogordo shall and understands its obligation to complete the acquisition of the New Project from other legally available funds.

Capitalized terms used herein, are used as defined or used in the Loan Agreement and the Amended Agreement dated January 26, 2018.

DATED: _____________________

By: ______________________________________
Authorized Officer
Title: _____________________________________
(Print Name and Title)

AGENDA REPORT
CITY OF ALAMOGORDO
CITY COMMISSION

Meeting Date: 12/19/2017 **Report Date:** 12/13/2017 **Report No:** 6.

Submitted By: Mark Threadgill

Subject: Approve City side leak abatement for 1113 Paradise Ave. in the amount of $5,072.92. *(Mark Threadgill, Customer Services Manager)*

Fiscal Impact:
Amount Budgeted:
Fund:

Additional Fiscal Impact:

Recommendation: Staff recommends Commission approval of Leak Abatement.

Background: Customer had two leaks in city maintained riser requiring that the riser and curb stop be replaced. Leaks caused consumption on the customer side.

Courtesy Notice delivered to customer on 9/13/17 indicating continuous consumption at the address. Customer contacted Utility Maintenance on 09/26/17 reporting water coming from meter can. Utility Maintenance responded to effect repair.

City's Leak Abatement Policy requires Commission approval of Leak Abatement in excess of $2,500.00.

CITY OF ALAMOGORDO
UTILITY BILLING DEPARTMENT
FULL LEAK ADJUSTMENT WORKSHEET

DATE: **November 8, 2017**

Customer ID	Location ID	Cycle/Route	Comm/Res
54881	11520	04/40	Resi

Customer Name:
Moore, James

Billing Date:
10/18/2017

Service Address:
1113 Paradise Ave

Billing Period:
8/30/17-9/30/17

Average Consumption:	944
Average Bill:	28.58
Actual Billed Consumption:	64101
Actual Bill Amount:	4859.93

Total Billed:	$4,859.93
Minus Average	$28.58
Water Adjustment	$4,831.35
Sewer Adjustment	$0.00
Tax on Adjusted	$241.57
Total Adjusted	$5,072.92

Reason:
City leak caused consumption, please see attached work order

If you have any questions, please call Nichole Sierra @ ext 4261

Prepared by: Nikki McKinnon

UB Approval: Nichole Sierra

THIS LEAK ABATEMENT REQUIRES CITY COMMISSION APPROVAL

Finance Approval

11520
4/40

DEPARTMENT OF PUBLIC UTILITIES
Utility Maintenance Work Order

WO #

Address: 1113 PARADISE Date: 9-26-17

Called by / Per: Phone:

	Nature of Problem	Code	Crew	Date	Comments
	Water Main Break	001			Size:
	Water Break Service	01			Size:
✓	Leak in Meter Can	02	1492 1567 942	9-26-17	
	Line Locate	03			
✓	Curb Stop / Riser	05	1492 1567 942	9-26-17	NEW CURB-STOP
	Replace Meter	06			Size: Brand:
	Install Meter	07			NEW RISER
	Meter Can	08			
	Valve Box	10			
	Cement Prep	39			
	Cement Pour	11			
	Pull Forms	30			
	Welder Assistance	12			
	Saw Cut	14			
✓	Sink Hole	15	1492 1567 942	9-26-17	
✓	Barricade	16	1492 1567 942	9-26-17	
	Pressure Check	17			
	Water Quality	18			
	Backfill / Excavation	19			
✓	Water On/Off	20			
✓	Valve Exercise	21	1492 1567 942	9-26-17	
	Valve Install	22			Size:
	Repair Sewer Main	23			Size:
	Miscellaneous	24			
	Relocate Meter	27			
	Camel Truck	28			
	Replace Service Line	29			Size: 9/29/17
	Exposure	31			Sm
	Wet Tap	32			
	Hydrant Repair	33			
	Install Hydrant	34			
	Manhole Ring / Lid	36			
	Replace Meter Lid	37			
	Vermeer/Pothole	38			

New Mexico One Call — 811 From Cell Phone or 1-800-321-2537 — I. D. # 439-4244

CONFIRMATION #

FND LEAK ON RISER REPLACED

City Leak ☑ City Leak Caused Consumption Y ☑ N ☐ Customer Leak ☐ Cust Notified Y☐ N☐

UT470I07

CITY OF ALAMOGORDO, NEW MEXICO
Account History - Consumption and Actual Charges

10/18/17
14:29:23

Customer ID: 54881 Name: MOORE, JAMES
Location ID: 11520 Addr: 1113 PARADISE AVE
Cycle/route . : 04 40 Bill type . : CYCLE BILL
Bill date . . : 10/18/17 Prev balance: 1128.08 Charges : 5142.08
Due date . . : 11/02/17 Adj/Pmts . : .00 Bill amt: 6270.16

Type options, press Enter.
5=Display

Opt	Svc Type	Reading Type	Date	Actual Consumption	Demand Consumption	Days	Meter Number	Est Cd	Cmt Cd
_	WA	REG	9/30/17	64101.00	.00	31	00610960		

Opt	Svc	Comp	Description	Billed Consumption	Amount	Rate Group	S/W
_	WA	CON2	TIER 2	1500.00	35.25	AL/I/R	
_	WA	CON3	TIER 3	1000.00	36.50	AL/I/R	
_	WA	CON4	TIER 4	1000.00	53.00	AL/I/R	
_	WA	CON5	TIER 5	59101.00	4698.53	AL/I/R	
_	WA	CAP	CAPITAL SURCHARGE 81	.00	1.00	AL/I/R	

F3=Exit F6=Date F9=Summary F10=Budget charges F11=Consumption F12=Cancel

AGENDA REPORT
CITY OF ALAMOGORDO
CITY COMMISSION

Meeting Date: 12/19/2017 **Report Date:** 12/13/2017 **Report No:** 7.

Submitted By: Shelbe Abbott

Subject: Consider and act upon LEDA Case Review, Najar Family Entertainment Center Project. *(Darron Williams, City Planner and Petria Schreiber, City Attorney*)

Fiscal Impact:
Amount Budgeted:
Fund:

Additional Fiscal Impact:

Recommendation: Requesting that the City Commissioners deny the approval of this project.

Background: Presentation and discussion about Staff's "do not recommend" for the approval of this project.

City of Alamogordo

City Commission

LEDA Case Review:
Najar FEC Project

Petria Schreiber, City Attorney
Darron Williams, City Planner
December 19, 2017

Case: Najar FEC Project

Overview:

- Basin Entertainment Group (BEG)
  - Comprised of Randy Najar and Ken McGinnis
  - Requested to put in bid for management contract of FEC
  - First Contact made mid-Nov and LEDA Application provided
  - Initial application incomplete; solicited twice for additional information

Case: Najar FEC Project

LEDA Review Committee:

- Comprised of seven members of City Staff
  - Darron Williams - City Planner and City's LEDA Project Officer
  - Brian Cesar - Assistant City Manager
  - Julianne Hall - Finance Director
  - Petria Schreiber - City Attorney
  - Kitty Williams - Paralegal and Legal's LEDA expert
  - Jim LeClair - Fire Chief
  - Evelyn Huff- Housing Authority Manager

Case: Najar FEC Project

LEDA Review Committee:

- Consensus - Unanimous “Do Not Recommend”
  - Unsuitable Financial Documents/History
  - Business Plan and FEC vision not aligned with City’s requests/plan
  - Legal concerns: Negative Judgements valued in excess of $1M
  - Plan for restaurant is low end “burgers and dogs” and vending machines
  - Concerns with PPA security
  - Concerns with request for LEDA distribution to unqualified items
  - Concerns with lack of detail responses to direct questions-legal
    - Responded with several different answers and “contact my lawyer for more information”

Case: Najar FEC Project

Questions?

AGENDA REPORT
CITY OF ALAMOGORDO
CITY COMMISSION

Meeting Date: 12/19/2017 **Report Date:** 12/14/2017 **Report No:** 8.

Submitted By: Petria Schreiber

Subject: Consider and act upon final publication of Ordinance No.1550, an ordinance approving a Local Economic Development Project for secured financial assistance proposed by Downtown Venture Corporation and the attached Project Participation Agreement and Promissory Note. *(City Manager, Maggie Paluch, Petria Schreiber, City Attorney, Darron Williams, City Planner)* **(Roll Call Vote Required)**

Fiscal Impact: $1,500,000.00
Amount Budgeted: $1,500,000.00
Fund: 105-0407-450.60-00 Project #ED1803 Basin Lanes

Additional Fiscal Impact: $1,500,000.00
Amount Budgeted $ 1,500,000.00
Line Item 105-0407-450.60-00 Project #: ED1803 Basin Lanes PPA

Recommendation: Approve ordinance 1550 for final publication.

Background: This ordinance and the attached Project Participation Agreement and promissory note finalize the City's commitment of LEDA funds to Downtown Venture Corporation for at Basin Lanes.

ORDINANCE NO. 1550

APPROVING A LOCAL ECONOMIC DEVELOPMENT PROJECT FOR SECURED FINANCIAL ASSISTANCE PROPOSED BY DOWNTOWN VENTURE CORPORATION

BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF ALAMOGORDO, NEW MEXICO that the following is added to the municipal code:

Pursuant to the City of Alamogordo Economic Development Plan, Ordinance No. 983 and NMSA 1978 Section 5-10-1, et seq. (Local Economic Development Act, the "Act"), the proposed economic development project of Downtown Venture Corporation ("the Company") is approved for the purposes set forth in NMSA 1978 Section 5-10-1, et seq., and the City of Alamogordo is authorized to enter into a Project Participation Agreement ("the Agreement") with the Company as required by Section 10 of the Act, and in substantially the same form as attached hereto, the terms of which are incorporated herein.

The City Commission finds as follows:

1. The Company is an entity as defined in NMSA 1978, Section 5-10-3(G);

2. Under the Agreement, the Company will provide a substantive contribution for the proposed project as described in NMSA 1978 Section 5-10-10(B);

3. The Agreement complies with the requirements of the Act and Ordinance No. 983;

4. The benefit of the proposed project to the City of Alamogordo is repayment of the financial assistance through the creation of jobs and other benefits arising from employment and economic activity under the project which exceeds the cost to the City of providing to the Company the assistance specified in the agreement, and,

5. The Agreement complies with the requirement of Section 10 of the Act and is hereby adopted and approved.

BE IT FURTHER ORDAINED, that the Mayor of the City of Alamogordo, New Mexico is authorized and directed to do all things necessary to implement this ordinance that is lawfully adopted.

PASSED APPROVED AND ADOPTED 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

PROJECT PARTICIPATION AGREEMENT

THIS PROJECT PARTICIPATION AGREEMENT entered into this __ day of ___________, 2017, by and between the City of Alamogordo, a New Mexico municipal corporation (the "City") and Downtown Venture Corporation, a for profit California limited liability company registered with the New Mexico Secretary of State, whose business address is 3751 Mesa Village Drive, Alamogordo, NM 88310 (the "Qualifying Entity").

RECITALS

A. The purpose of this Agreement is to allow the Qualifying Entity to establish and operate a value added, family entertainment center in Otero County, New Mexico that will include a bowling alley, laser tag, an arcade, and a restaurant/bar. Completion of the Project as hereinafter described pursuant to the terms and conditions hereof is in the best interests of the City and the health, safety, and welfare of the residents and the taxpayers of the City of Alamogordo, and is in accord with the public purposes and provisions of applicable state and local laws.

B. By Ordinance No. 983, adopted August 13, 1996, the City has adopted an ordinance pursuant to the statutory authority conferred upon municipalities to allow public support of economic projects to foster, promote and enhance local economic development efforts (N.M. Stat. Ann. Section 5-10-1 through Section 5-10-13 1978). The Ordinance was adopted as part of the City's Economic Development Plan.

C. By Ordinance No. _____, adopted the ____ day of _____________, 2017 ("Approval Date"), the City has adopted an Ordinance which establishes that the Qualifying Entity meets the requirements of the Local Economic Development Act and that Qualifying Entity has provided information pertaining to its intent to make infrastructure improvements and purchase equipment needed to operate a family entertainment center located at 3751 Mesa Village Drive, Alamogordo, New Mexico. This operation and management will create a minimum of twenty (20) new jobs with an hourly wage of at least nine ($9.00) dollars per hour, and will thereafter maintain the twenty (20) jobs and create sufficient additional new jobs necessary to fulfill its obligation to repay the Economic Development Incentive during the term of this Agreement (the "Project"), all of which qualifies for assistance under the City's Economic Development Ordinance.

D. A material inducement to City to enter into this Agreement is the agreement by the Qualifying Entity to expand its business operations and initially create no less than twenty (20) new jobs, which must have an average hourly wage of at least nine dollars ($9.00) per hour, and thereafter maintain those jobs while creating additional new jobs in accordance with the provisions hereof, and the City would be unwilling to enter into this Agreement in the absence of an enforceable commitment by Qualifying Entity to create and thereafter maintain the jobs in accordance with the provisions of this Agreement.

E. Location of the Qualifying Entity's business operations in Otero County will provide additional jobs and substantially improve the economic conditions in accordance with the purposes and goals of the City's Economic Development Plan.

F. As a condition precedent to its receipt of public assistance, the Qualifying Entity is required to execute this Project Participation Agreement.

NOW THEREOF, the Parties agree as follows:

1. Authority. The City's execution of this Agreement is authorized by the Local Economic Development Act, NMSA 1978 §5-10-1 through §5-10-13 (2007) (LEDA), Ordinance No. 983, which established the Alamogordo Economic Development Strategic Plan that promotes economic development projects in the City of Alamogordo; and Ordinance No. 1550, which approved the Project. Qualifying Entity's execution and performance of this Agreement constitutes a valid and binding obligation of the Qualifying Entity in the event the Qualifying Entity proceeds with the Project. The Qualifying Entity and, if applicable, each member has full power and authority to execute, deliver and perform, as applicable, this Project Agreement, to make the obligations hereunder, to execute and deliver the Promissory Note and to grant to the City the security as hereinafter described.

2. Definitions. For all purposes of this Agreement, except as otherwise expressly provided or unless the context clearly requires otherwise, the following terms have the meanings assigned to them:

"Approval Date" means ___________________, 2017.

"Eligible Project Costs" means the costs and expenditures directly related to the various infrastructure upgrades that need to be accomplished in order to open and operate the 'family entertainment center'. Examples of eligible infrastructure upgrade costs include various construction change orders, purchases of systems and equipment to operate the fun center, and installation costs.

"Facility" shall mean the Qualified Entity's family entertainment center facilities located at 3751 Mesa Village Dr., Alamogordo, New Mexico, and legally described on the attached Exhibit "A".

"Job Credit" is calculated at one dollar ($1.00) credit for every one dollar ($1.00) paid for every job created that pays nine dollars ($9.00) per hour. Any job that pays less than nine dollars ($9.00) per hour will be credited at a rate of fifty cents ($0.50) for every one dollar ($1.00) paid. In order to receive any jobs credits, the Qualifying Entity must create and maintain a minimum of 20 jobs.

"Job Period" means every twelve (12) month period from the Approval Date through the Term of Agreement during which the Qualified Entity is obligated to create and maintain New Jobs.

"New Job" shall mean at least 2,080 hours of paid employment over 365 days. For example, 2 persons working 1,040 hours each over 365 days is one (1) New Job. One (1) person working 2,600 hours over 365 days is 1.25 New Jobs. The determination of New Jobs shall be made at the end of each Job Period and shall be based on whether over such entire period the Qualifying Entity provided such minimums. The annual minimum for jobs hours worked is, 41,600. Should the Qualifying Entity create additional jobs, those job will be credited towards hours worked for the job credit, and the outstanding balance will be reduced accordingly. Paid vacation or other paid times off will be included as hours worked in the New Job calculations.

"New Jobs Payroll" shall mean all monies paid annually to all persons holding New Jobs, whether paid by the hour, day, week, semi-monthly, monthly, or yearly, and includes, but is not limited to, overtime, bonuses, and piecework.

3. Qualifying Entity's Obligations. The Qualifying Entity acknowledges that a material inducement for City to accept the Qualifying Entity's proposal and enter into this Project Agreement was the Qualifying Entity's representation that it would, within the term of this Project Agreement expand its business through the opening and operating of a family entertainment center thereby creating sufficient New Jobs to permit City to recapture its investment in full during the term of this Project Agreement based on the value of each New Job created and maintained. Therefore, in furtherance of that representation, the Qualifying Entity specifically agrees and covenants that the following performance measures shall be met:

A. Purchase of Equipment and Installation of Infrastructure

i. The Qualifying Entity shall purchase and install in the family entertainment center the following items:

i. Arcade Card System

ii. Arcade Machines

iii. Redemption Products

iv. Additional kitchen equipment

v. Point of Sale system

vi. Security Camera system (with at least 30 cameras)

vii. Additional HVAC (heating, ventilation and air conditioning) system

viii. Additional furnishings for the party rooms and family area

ix. A beer tap system to be installed between the cooler and bar area

x. Audio and visual system to cover the entire family entertainment center

xi. Additional lighting to included LED lighting

xii. Additional signage to help promote the facility off site

ii. Qualifying Entity shall diligently pursue such installation to completion. In the event that Qualifying Entity is unable to obtain the necessary permits, or fails to commence the purchase and installation of the above mentioned items within one-hundred eighty (180) days of the Approval Date, this Agreement shall terminate and be of no further effect.

iii. Qualifying Entity shall make every effort to secure the highest quality materials while balancing the need to conservatively spend taxpayer dollars.

B. Employment Opportunities. The Qualifying Entity shall create and thereafter maintain during each Job Period at least twenty (20) Jobs with an hourly wage of at least nine ($9.00) dollars unless the Qualifying Entity "pays off" its obligation earlier by creating job in excess of the total required number as hereinafter described.

i. The Qualifying Entity shall further use its best efforts during the term of this Project Agreement to create additional New Jobs with an hourly wage of at least nine ($9.00) dollars so as to permit City to recapture its investment in full during the term of this Project Agreement. The Qualifying Entity agrees and expressly acknowledges that it will not earn sufficient Job Creation Credits to satisfy its obligations under the terms of this Project Agreement if it fails to create the number of New Jobs requirement of the twenty (20) New Jobs.

ii. The Qualifying Entity shall only be credited for the creation of jobs performed within Otero County, New Mexico, and will not receive credit for its Existing Employment Base.

C. Local Preferences. The Qualifying Entity shall use its best efforts to contract with local contractors to accomplish the installation of the utility infrastructure in order for the City to receive gross receipts tax revenue from the performance of installation services. During the term of this Agreement, the Qualifying Entity shall make available to the City upon request records verifying the use of local contractors and the making of local purchases. For purposes of this Agreement, a local contractor is a contractor meeting the requirements of section 2-13-180 of the Alamogordo City Code.

4. City Obligations. The City agrees to provide $1,500,000 of upfront Economic Development Incentives to the Qualifying Entity to assist in the purchase of the items described in Section 3(a)(i) for use in Otero County (the "Eligible Project Costs"). Subject to the terms and conditions set forth herein, the City will make advances to the Qualifying Entity from time to time during the Funding Period for the payment of Eligible Project Costs, which in the aggregate shall not exceed the amount of $1,500,000. The Qualifying Entity will be responsible for any additional costs or expenses related to the Project.

A. This Agreement shall not be construed as a commitment, issue or obligation of any specific funds other than those funds to be received by the City from its Municipal Infrastructure Gross Receipts Tax.

B. The functions and duties assumed by the City include only those described in this Agreement, and the City is not obligated to act except in accordance with the terms and conditions of this Agreement. The Qualifying Entity acknowledges that the City does not warrant any equipment, materials, or services purchased with the funds. The Qualifying Entity shall be obligated hereunder even if the equipment, materials, or services are defective or fail to conform to the warranties extended by the supplier. The obligations of the Qualifying Entity shall not be affected by any dispute the Qualifying Entity may have with any manufacturer, distributor, contractor or supplier. The Qualifying Entity will not assert any claim or defense which it may have against any manufacturer, distributor, supplier or contractor against the City. The City is under no duty to supervise or inspect the installation or construction contemplated by this Agreement. Any inspection or examination by the City is for the sole purpose of protecting the City's security and preserving the City's rights under this Agreement. No default of the Qualifying Entity will be waived by any inspection by the City. In no event will any inspection by the City be a representation that the installation or construction is free from defective materials or workmanship.

C. The City agrees to lease the Qualifying Entity the building located at 3751 Mesa Village

Dr, Alamogordo, NM 88310 at a reduced rate, in exchange for the Qualifying Entity's obligation to create and maintain at least 20 jobs per year, for the term of the lease.

5. Disbursement of Economic Development Incentive. Disbursement of the Economic Development Incentive shall be made upon the City's receipt and approval of a request for the disbursement and supporting documents. The supporting documents shall include itemized invoices from contractors and suppliers, and a report detailing the dollar amount and purpose of the Eligible Project Cost. The City, in its sole discretion, may withhold disbursements if the City determines that the Qualifying Entity has failed to comply with and/or is in default under the terms and conditions of this Agreement, or has failed to provide adequate documentation of the Eligible Project Cost. Qualifying Entity hereby authorizes and directs the City to pay a contractor or supplier of Eligible Project Costs directly upon receipt of invoices delivered to the City for an Eligible Project Cost. Qualifying Entity acknowledges that (i) any delivery to the City of an invoice by a contractor or supplier shall be deemed as a request for an advance of Economic Development Incentive by the Qualifying Entity, and (ii) each such advance constitutes an advancement by the City to Qualifying Entity pursuant to this Agreement as if the Qualifying Entity received the proceeds directly from the City.

6. Obligation to Repay the Economic Development Incentive. The Qualifying Entity understands and agrees that the failure of the Qualifying Entity to perform its obligations in accordance with the terms provided in Sections 3(A) and (B) of this Agreement will result in a forfeiture of the Economic Development Incentive. In the event of a forfeiture, or upon termination of this Agreement, the Qualifying Entity agrees to pay to the City the balance of the Economic Development Incentive not otherwise repaid through the creation of jobs. The Qualifying Entity's obligation to pay to the City the balance of the Economic Development Incentive not otherwise repaid is evidenced by a Promissory Note, a copy of which is attached hereto as Exhibit "B". In, the City may demand repayment of any remaining portion of the Economic Development Incentive provided to the Qualifying Entity not otherwise reduced pursuant to the terms of this Agreement.

7. Security/Collateral

A. Security Interest. To secure Qualifying Entity's obligations and liabilities under the Promissory Note, the City shall retain a purchase money security interest in and to all of the Qualifying Entity's right, title and interests in and to the items purchased under 3(A)(i) with the exception of the initial redemption products.

B. Such security interest shall be superior to any other security interests in the items listed in 3(A)(i). The Qualifying Entity shall not remove the items listed from Otero County without the City's written approval. Said security interest shall be duly recorded with the Otero County Clerk's Office in order to protect the City's interests in the event of default. This security interest shall not terminate until Qualifying Entity's obligations hereunder have been achieved in full. Upon satisfying its obligation, the Qualifying Entity may request City to release the security interest. Upon such request, City will file the appropriate termination of security interest within ten (10) business days of receipt by the City of the Qualifying Entity's written request.

8. **Insurance.** The Qualifying Entity, shall at its sole cost and expense, procure and maintain, with financially sound and reputable insurers authorized to do business in the State of New Mexico:

(i) insurance on the value of the improvements on a replacement basis with no limiting modification including the City as named insured party; and

(ii) an insurance policy which covers damage to, or the destruction of, the Facility on a replacement basis for the full insurable value covering all improvements on the Facility. The Qualifying Entity will furnish to the City, upon its written request, the insurance certificates with respect to such insurance. Should the Facility at any time become located in an area designated by the Director of the Federal Emergency Management Agency as a special flood hazard area, the Qualifying Entity agrees to obtain and maintain Federal Flood insurance for the full unpaid principal balance of the Promissory Note and any prior liens on the property securing the loan, up to the maximum policy limits set under the National Flood Insurance Programs, and to maintain such insurance for the term of this Agreement.

9. Evidence of Job Creation, Job Audit. A "Job Audit" will be performed by the City or its agent within 60 days after the end of each Job Period. The Qualifying Entity will provide to the City no later than 20 days after the job creation period a completed and certified Job Audit Certificate in substantially the form attached hereto as Exhibit "B". The Qualifying Entity shall make available the necessary records in order to allow the City to perform its Job Audit. The Qualifying Entity further agrees to provide the City such other documents and evidence that it may reasonably require to satisfy the accuracy and veracity of the information provided in the report. The Qualifying Entity will provide the City reasonable access (subject to the Qualifying Entity's security policies) to its records and facilities for the purpose of conducting on-site audits for compliance with this section. Such on-site audits shall be at reasonable times, upon not less than 10 days prior written notice to the Qualifying Entity. Within sixty (60) days after the close of a Job Creation Period, the City will determine whether during the relevant periods the Qualifying Entity has met its obligations to create jobs as required by this Agreement.

10. Job Credit. Provided the City has determined that the Qualifying Entity has complied with the terms and conditions of this Agreement, the City shall annually apply a Credit against the funds disbursed based on the number of actual New Jobs created in the preceding Job Period. For each new job created with an hourly rate at or in excess of $9.00 per hour, a credit shall be applied in an amount equal to the total wages paid during the Job Period. For each new job created with an hourly rate less than $9.00 an hour, a credit will be applied in an amount equal to $0.50 per dollar of total wagers paid during the job period.

For example: If the Qualifying Entity creates 25 jobs all with an hourly wage of $9.00 per hour, for a total annual payroll of $468,000, then a total of $468,000 would be credited. However, if the Qualifying Entity creates 25 new jobs that pay $8.00 an hour, for a total annual payroll of $416,000, a job credit of only $208,000 would apply. (Receiving a credit of .50 for every job under $9.00)

11. Pro-rated Credit. In the event the Qualifying Entity fails meet its annual creation/maintenance obligation for any Job Period, the Qualifying Entity shall receive a pro- rated credit. The amount of the pro-rated credit shall be calculated using the above described formula.

By way of example, if in Job Period # 4 the Qualifying Entity only created and/or maintained 15 New Job Hours for which it paid a New Jobs Payroll of $280,000 the Qualifying Entity would receive an Annual Job Credit of $280,000.

12. Additional Credit. The Qualifying Entity may receive Additional Credit for any New Job created or maintained during a Job Period in excess of its New Job creation/maintenance obligation under paragraph 3(b) for that particular Job Period. The amount of the pro-rated credit shall be calculated using the above described formula.

13. Term. The term of this Agreement shall commence on the Approval Date and continue for five (5) years unless terminated sooner as provided herein. If the term of the Promissory Note is extended for any reason, then the term of this Agreement shall automatically be extended so that the agreements are of the same duration.

14. Obligation to Perform. The failure of the City to insist, in any one or more instances, upon performance of any of the terms or covenants of this Agreement shall not be construed as a waiver or relinquishment of the City's right to the future performance of any such terms and covenants, and the obligations of the Qualifying Entity with respect to such future performance shall continue in full force and effect.

15. Termination and Recovery of Incentive.

- Events of Default. The following events shall constitute events of default under this Agreement:
  - Failure of the Qualifying Entity to fulfill, in whole or in part, any obligation required by this Agreement.
  - Cessation by the Qualifying Entity of its operation of the family entertainment center located at 3751 Mesa Village Dr. in Alamogordo, NM or reduction of those operations in Otero County to a level below the performance measures set forth in paragraph 3(b) of this Agreement.
  - Filing by the Qualifying Entity of a petition, case, proceeding, or other action against the City as a debtor under any debtor relief law or seeking appointment of a receiver, trustee, custodian, or liquidator of the Qualifying Entity.
  - The abandonment by the Qualifying Entity of all or a portion of the Facility.
  - The discovery by the City that any representation, warranty, or covenant made by the Qualifying Entity in connection with this Agreement was or has become false, materially misleading, erroneous, or breached in any material respect.
  - The Qualifying Entity assigns, sells, hypothecates, or transfers a majority interest in its business entity, whether in a single

transaction or a series of transactions. (If the Qualifying Entity desires to assign, sell, hypothecate, or transfer a majority interest in its business entity, whether in a single transaction or a series of transactions, before expiration of this Agreement, the City retains the right to reject any and all assignments, sales, hypothecations, or transfers of any interest in the Qualifying Entity's business entity until, in the sole discretion of the City, adequate assurances are given that the assignee, buyer, hypothecatee, or transferee is a qualifying entity under the Alamogordo Economic Development Plan and that terms of this Agreement will be satisfied by the assignee, buyer, hypothecatee, or transferee.)

- Qualifying Entity's Response to Default. Upon the occurrence of an event of default by the Qualifying Entity specified in this Agreement, the City shall notify the Qualifying Entity in writing that an event of default has occurred under this Agreement. Within thirty (30) days of the receipt of such notice, the Qualifying Entity shall:
  - Cause the default to be cured; or
  - Furnish a written response indicating:
    - the factors which caused or contributed, in whole or in part, to the occurrence of default;
    - The measures the Qualifying Entity has undertaken to avoid the reoccurrence of default in the future;
    - Whether any performance measure not achieved can still be achieved in a timeframe acceptable to the City; and
    - What further action the Qualifying Entity plans to take to achieve the performance measure in a timeframe acceptable to the City.
- City Response to Default. The City staff shall review the response furnished by the Qualifying Entity and within thirty (30) days from the receipt of such response, recommend to the City Commission whether to modify or terminate this Project Participation Agreement. The Qualifying Entity shall have an opportunity to make a presentation to the City Commission at any meeting where such recommendation will be acted upon. The decision of the City Commission will be final and binding. Other than the opportunity for the Qualifying Entity to make a presentation to the City Commission, in the event of default nothing herein shall be construed to limit in any way the power and authority of the City Commission to terminate this Agreement and to demand immediate repayment of the Economic Incentive, including all interest both accrued and deferred; and to foreclose upon, collect, and recover all collateral pledged by the Qualifying Entity as security for the Promissory Note if repayment is not made;

16. Effect of Termination. Except for any obligations that accrue prior to such termination or except as otherwise provided in this Agreement, which obligations shall survive the termination of this Agreement, other rights, responsibilities and liabilities of the parties under this Agreement shall be extinguished upon the applicable date of termination of this Project Participation Agreement.

17. Facility Closure Clawback. Should the Qualifying Entity cease operation of the Project (i.e., cease its operations from the Facility) before the economic development incentive is repaid pursuant to the terms of this agreement, the Qualifying Entity shall, within ninety (90) days of the cessation of operations, pay to the City, in cash, an amount equal to the balance left unpaid on the economic development incentives. Any clawbacks not paid when due shall bear interest at the rate of prime plus 2% per annum from the due date until paid. Should the facility close because of mutual agreement, a natural disaster, or through a closure at no fault of the Qualifying Entity, the Qualifying Entity shall be released from all further obligations under this agreement. However, a lack of sales or revenue and participation from the community shall be foreseeable and not a reason for the Qualifying Entity to escape the clawback provision of this Agreement.

18. No Joint Venture. It is acknowledged and agreed by the parties that the terms of this Agreement are not intended to and shall not be deemed to create a partnership or joint venture among the parties. Neither party shall have any authority to act on behalf of the other party under any circumstances of this Agreement.

19. Appropriations. The performance by the City of any of the terms, covenants, or conditions in this Agreement that the City is obligated to perform shall be subject to the availability of appropriated funds that may be lawfully used for such purpose.

20. Miscellaneous Provisions:

(a) If any legal action should be necessary for the enforcement of this Project Agreement or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provision of this Agreement, the City shall be entitled to recover its reasonable attorney fees and/or other costs incurred in that action or proceeding in addition to any other relief which the City may be entitled to under the law.

(b) The parties agree that in the event of any dispute, venue for such dispute shall be laid and established in the District court of Otero County, New Mexico and no other.

(c) City and the Qualifying Entity will do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement, and to aid and assist each other in carrying out such terms and provisions.

IN WITNESS WHEREOF, the Parties hereto have entered into this Agreement as of the day and year first written

DONE this _______ day of ________________, 2017.

CITY OF ALAMOGORDO, NEW MEXICO
a New Mexico municipal corporation

By:___________________________________
Margaret Paluch, City Manager

DOWNTOWN VENTURE CORPORATION

By:__________________________________
Jay Chun, President

ATTEST:

____
Rachel Hughs, City Clerk

APPROVED AS TO FORM:

____
Petria Schreiber, City Attorney

OTERO COUNTY ASSESSOR'S OFFICE

Property Profile

Active

Account:	R023586	Tax Year:	2017	Account Type:	G
Mill Levy	32.385000	Version:	01/17/2017	Area ID:	01_NR
Estimated Tax:	$0.00	Parcel:	01N4054092181338	Previous ID:	01-15201

Owners Name and Mailing Address

ALAMOGORDO CITY OF
1376 E 9TH ST
ALAMOGORDO, NM 88310

Property Location

Situs: 3751 MESA VILLAGE DR
City, State, Zip: ALAMOGORDO, NM 88310
Neighborhood: C48

Legal Description

Subd: MESA VILLAGE UNIT 1 REPLAT A Lot: 4A

Assessment Information

2017 Tax Year	Full Value	Assessed Value	Gross Sq Ft	Acres	Taxable
Land:	395,253	131,751		3.416	
Improvements:					
Exemptions:		0			
Total:	395,253	131,751		3.416	131,751

2016 Tax Year	Full Value	Assessed Value	Gross Sq Ft	Acres	Taxable
Land:	395,253	131,751		3.416	
Improvements:					
Exemptions:					
Total:	395,253	131,751			131,751

Public Remarks

Photograph

Building Sketch

EXHIBIT
tabbies
A

Book - Page	Reception #	Grantor	Grantee	Date
	201409301	HERITAGE GROUP LLC	CITY OF ALAMOGORDO	12/23/2014
B: 0128 P: 0161	01280161			
B: 0169 P: 0402	01690402			
B: 0305 P: 0388	03050388			
B: 0309 P: 0553	03090553			
B: 0990 P: 0323	09900323			
B: 1012 P: 0634	10120634			
B: 1089 P: 0645	10890645			
B: 0065 P: 0003	00650003			
B: 0065 P: 0080	00650080			
B: 2007 P: 05103	200705103			

WARRANTY DEED

The Hertiage Group LLC

________________, for consideration paid, grants to

City of Alamogordo

whose address is ,

________________,

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

Tract A, Mesa Village, Unit 1, Replat A, ALAMOGORDO, OTERO COUNTY, NEW MEXICO.

Subject to patent reservations, restrictions, and easements of record and taxes for the current year and subsequent years.

with warranty covenants.

WITNESS my hand and seal this 5 day of October, 2016

Randal L Rabon

Representative Capacity:

State of New Mexico)
) SS.
County of Otero)

This instrument was acknowledged before me on the 5th day of October, 2016, by

.

My commission expires: 7-28-18

Notary Public

(Seal)

Expires 7-28-18

Court of appeals
PROMISSORY NOTE

Date:______________________ Amount: $1,500,000.00

RECITALS

Downtown Venture Corporation, a for profit California corporation registered with the New Mexico Secretary of State (the "Borrower"), will borrow One Million and Five Hundred Thousand Dollars and 0/100ths ($1,500,00.00) Dollars from the City of Alamogordo, New Mexico, ("Lender" or "City"), to be paid within five years under the terms and conditions of this Promissory Note, to be secured by a security agreement.

This Promissory Note is executed by Borrower in furtherance of a Project Participation Agreement entered into between Borrower and the City pursuant to Ordinance No. 983, adopted August 13, 1996, in accordance with the requirements of the Local Economic Development Act, Section 5-10-1, et seq., NMSA 1978, as amended, which Project Participation Agreement is attached hereto as Exhibit A and made an integral part of this Promissory Note.

TERMS

PROMISE TO PAY

For value received, Borrower promises to pay to the City, in one lump sum payment, One Million and Five Hundred Thousand Dollars and 0/100ths ($1,500,000) Dollars, in cash, check or money order, with interest as herein provided, not later than five years from the date of this Promissory Note.

INTEREST

Interest shall accrue on this Promissory Note as of the date the same is executed, which date shall be concurrent with the date the proceeds are delivered to Borrower, at the rate of three percent (3%) per annum, with a final maturity date for principal and interest five years from the date hereof.

OBLIGATION EXTINGUISHED IF PPA FULFILLED

It is understood that the proceeds which are the subject of this Promissory Note, are made for the purchase by Borrower of certain items of tangible personal property as described in the Project Participation Agreement which is Exhibit A hereto, and that if Borrower fulfills its obligations to the City under said Project Participation Agreement, the obligation hereunder will be extinguished and the proceeds will be deemed paid in full, and this Note will be canceled and the security interest released.

FAILURE TO FULFILL OBLIGATONS UNDER PPA

It is understood that if Borrower fails to fulfill its obligations under the Project Participation Agreement which is Exhibit A hereto, Borrower will be in default of said Project Participation Agreement, and in default under and by this Promissory Note, whereupon the following terms and conditions shall be exercised by the City, and shall control payment of the amount due under this Promissory Note:

1. The City shall give Borrower written notice of its default of and under the Project Participation Agreement, advising Borrower of the default and demanding that said default be cured and remedied within ninety (90) days of said written notice, which shall be delivered to Borrower personally or by certified mail, return receipt requested.

2. Upon Borrower's failure to cure and remedy the default within the time specified, the entire principal and interest due under this Promissory Note shall immediately be due and payable to City, and upon failure of Borrower to pay the same, the City may enforce its security interest in, and execute upon, the leasehold improvements, as evidenced and protected in favor of the City by the Security Agreement which is executed contemporaneously herewith; and the City may otherwise collect this Note and enforce its rights hereunder, by any other remedy, legal or equitable, available under law.

3. If the City is required to enforce payment as provided herein, the City shall be entitled to collect from Borrower, all reasonable costs and expenses of collection, including attorney fees.

4. Presentment and dishonor, and any other technical requirements for demand for payment under this Note, are hereby waived by Borrower.

5. Notice of default under this Note, and all other notices required or to be made hereunder, shall be made by written notice to any one of the Borrowers individually, as identified in the Recitals clause hereinabove, by certified mail to 3751 Mesa Village Dr, Alamogordo, NM 88310, or by personal delivery.

SECURITY AGREEMENT

It is expressly understood that this Promissory Note shall be secured by a security interest in the form of a Security Agreement giving to the City the absolute right to execute its security interest in, and execute upon, the leasehold improvements described in the Security Agreement, and upon its filing in the office of the Otero County Clerk, shall constitute a perfected security interest in said property, with priority over any and all other creditors or lien holders, as provided in the New Mexico Uniform Commercial Code, Section 55-9-103, et seq., NMSA 1978, as amended.

IN WITNESS WHEREOF, Borrower, Downtown Venture Corporation, has executed this Promissory Note as of the day and year first above written.

DONE this _______ day of _______________, 2017.

CITY OF ALAMOGORDO, NEW MEXICO
a New Mexico municipal corporation

By:_________________________________
Margaret Paluch, City Manager

DOWNTOWN VENTURE CORPORATION

By:________________________________
Jay Chun, President

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

The foregoing Promissory Note was acknowledged before me this ____ day of _______, 2017, by Jay Chun, Chief Executive Officer of Downtown Venture Corporation, a for profit California corporation registered with the New Mexico Secretary of State, on behalf of said corporation.

____
Notary Public

My Commission Expires:

(S E A L)

ATTEST: APPROVED AS TO FORM:

____________________________ _________________________________
Rachel Hughs, City Clerk Petria Schreiber, City Attorney

AGENDA REPORT
CITY OF ALAMOGORDO
CITY COMMISSION

Meeting Date: 12/19/2017 **Report Date:** 12/15/2017 **Report No:** 9.

Submitted By: Petria Schreiber

Subject: Consider, act upon and approve the modification of the lease agreement between Downtown Venture Corporation and the City of Alamogordo. *(City Manager, Maggie Paluch, City Attorney, Petria Schreiber, City Planner, Darron Williams, and Assistant City Manger, Brian Cesar.*

Fiscal Impact:
Amount Budgeted:
Fund:

Additional Fiscal Impact:

Recommendation: City staff recommends that we modify the original vote taken on October 26, 2017 and move forward with this updated document only.

Background: At the meeting on October 26, 2017 the commission voted to pass several documents pertaining to the Family Fun Center and its management. However, as noted in the minutes, the commission also directed staff to renegotiate several terms of the agreements and to re-present them when completed. These modified documents represent the changes that the Commission asked for and what agreements the City was able to reach with Mr. Chun.

LEASE, MAINTENANCE AND OPERATIONS AGREEMENT

THIS LEASE AGREEMENT, is made and entered into as of the date set forth in the Basic Lease Information (this lease agreement, together with all amendments and supplements hereto, this "Lease"), by and between the City of Alamogordo, a New Mexico municipal corporation, having an address at 1376 East 9th Street, Alamogordo, New Mexico 88310 (the "Landlord"), and Downtown Venture Corporation, a limited liability corporation, having an address at 3751 Mesa Village Dr, Alamogordo, NM 88310 (together with any successor or assign permitted by this Lease, hereinafter collectively called the "Tenant").

1. DEFINITIONS

Capitalized terms used herein shall have the following meanings for all purposes of this Lease and shall be equally applicable to both the singular and plural forms of the terms herein defined.

"Bowling Equipment" means all pin setting machines (pinsetters/pinspotters), ball returns, settees, scoring systems (including front desk systems), lanes, lane cleaning machines, bumpers, approaches, foul lights, gutters, and masking units located at the Facility, including any Site, from time to time.

"Business Days" or "Business Day" means any day excluding Saturday, Sunday and any day which is a legal holiday under the laws of the State of New Mexico or is a day on which banking institutions located in such state are closed.

"Capital Reserve Account" is an interest-bearing account managed by the landlord into which all "rent" moneys are paid by tenant. The express purpose of this account is to pay, in part or in whole, the costs of Capital Improvements, significant repairs, or extraordinary maintenance.

"Casualty" means any damage or destruction caused to the Facility by any reason, including fire.

"Claims" shall mean Liens (including lien removal and bonding costs), liabilities, obligations, damages, losses, demands, penalties, assessments, payments, fees of Mortgagee, fines, claims, actions, suits, judgments, settlements, costs, expenses and disbursements (including legal fees incurred and expenses and costs of investigation and environmental remedial action) of any kind and nature whatsoever.

"Commencement Date" is the date that all parties have signed this agreement.

"Grand Opening" for lease purposes, is the date which begin accumulation of "rent" moneys.

"Excluded Taxes" means any income or franchise taxes based upon, measured by, or calculated with respect to net income or profits (but not including any franchise tax based upon gross receipts with respect to the Rent), inheritance, estate, succession, transfer or any similar taxes.

"Extraordinary Maintenance" as part of and use under "Capital Reserve Account" is solely intended to offset in whole, or in part, the landlord's costs of "extraordinary" maintenance of the building, grounds, or equipment deemed landlord's responsibility. This is above and beyond what is considered as "normal" maintenance and upkeep under tenant's responsibilities.

"Improvements" means all buildings, structures, improvements, equipment, heating, ventilation, air conditioning, plumbing, electrical, mechanical, utility and life safety systems, cribbing, and all fixtures therein (including parking areas, and driveways) now or hereafter located on the Land, other than and specifically excluding Tenant's Personal Property and any Bowling Equipment owned by tenant. To the extent Landlord acquires title to any Bowling Equipment, the term "Improvements" shall include such Bowling Equipment located at the Facility.

Lease Expiration Date: _______________, 20___, which is the last day of the _____________ full calendar month following the Commencement Date, unless extended pursuant to paragraph 4(b) of the Lease.

"Land" means the title and interest of Landlord in and to the real estate described on Exhibit A hereto, and to the extent any such real estate shall include by law, then any land lying in the bed of any existing dedicated street, road or alley adjoining thereto, all strips and gores adjoining thereto, and all rights, ways, easements, privileges and appurtenances thereunto belonging, including all of Landlord's right, title, and interest in and to all other property rights, tangible or otherwise, arising out of or connected with Landlord's ownership thereof, but none of the Improvements thereon.

"Tenant's Personal Property" means all personal property of Tenant in or on the Facility, affixed or not, which is not necessary for the operation of the Improvements, including, without limitation the following: bowling balls; bowling shoes; ball racks; pins; x-treme bowling systems; bowling tools; spare parts; bowling cleaning machines; vending and amusement game machines; billiard tables; ATM and credit card machines; copiers; computers; telephone systems; point-of-sale systems; audio and visual entertainment equipment; satellites and related equipment; alarm systems and related equipment; Tenant's trade fixtures, equipment, supplies, consumables, and inventories, including, without limitation, tables, chairs, desks, filing cabinets, ovens, refrigerators, freezers, stoves, food preparation equipment, kitchen utensils, glassware, inventory of food, beverages, liquor, and paper goods; liquor licenses; signs; signage; advertising and marketing materials and equipment; trademarks and trade names (including, without limitation, any sign, symbol, or mark containing the name of "AMF" or Tenant's logo, each as now or hereafter existing), patents, goodwill, and related intangible property; records of confidential or proprietary information including, but not limited to, financial information, operating manuals, employee records, league records, and customer lists; and any other equipment ancillary to a Permitted Use, but specifically excluding the Bowling Equipment.

"Completion Date" means the first day of the first month following the earliest date upon which (i) the Facility has been substantially completed in accordance with the plans approved by the Landlord and Tenant and a certificate of occupancy issued and (ii) possession of the Facility shall have been delivered to Tenant.

"FF&E" means all furniture, furnishings, trade fixtures, apparatus and equipment, including without limitation maintenance vehicles and equipment, cash registers, scoreboards, interior signage, sports equipment, benches, kitchen equipment, appliances, office equipment, computers, copy machines, facsimile machines, telephone systems (not including pay telephones) and other personal property used in or held in storage for use in the operation of the Facility, other than Operating Inventory. FF&E includes both (i) fixtures and related items of furniture, furnishings and equipment to be purchased and installed by the contractor selected to construct the Facility Improvements as part of the construction contract and (ii) furniture, furnishings and equipment to be purchased by the Landlord separately from the construction contract.

"Full Operating Year" means the 12 month period during the Term starting July 1 and continuing through June 30 of the following calendar year.

"Operating Inventory" means consumable items used or held in storage for use in the operation of the Facility, including; retail pro shop merchandise, food and beverage inventory, kitchen supplies, paper and plastic ware, bathroom supplies, paper towels, fuel, cleaning materials, fertilizers, pesticides, seed, maintenance parts and supplies, office supplies and other similar items.

"Operating Year" means either a Full Operating Year or a Partial Operating Year.

"Partial Operating Quarter" means any calendar quarter in which the Completion Date falls on any day other than the first day of such calendar quarter.

"Partial Operating Year" means any calendar year in which the Completion Date falls on any day other than July 1 or any calendar year in which the Term ends on any day other than June 30.

"Sound Practice" means managing and operating the Facility in a manner calculated to increase Gross Revenues subject to maximizing profits, on a long-term basis and consistent with Sound Standards and safe, conservative and sound financial management and operating practices.

"Sound Standards" means operate and maintain the Facility in a manner (i) equal to normal and fair business practice); (ii) using commercially reasonable efforts to maximize the safety of participants and spectators using the Facility and minimize liability to the Landlord arising from the operation and maintenance of the Facility; and (iii) intended to enhance the quality of experience for all patrons attending events at the Facility make the Facility an attractive venue to promote and book events.

2. DEMISE OF FACILITY, TENANT'S EQUIPMENT, BOWLING EQUIPMENT, LANDLORD WAIVER

2.1 Landlord hereby demises and leases to Tenant and Tenant hereby leases and rents from Landlord the Facility, IN ITS "AS IS" CONDITION, SUBJECT TO THE EXISTING STATE OF TITLE (WITHOUT EXPRESS OR IMPLIED WARRANTY OF LANDLORD WITH RESPECT TO THE CONDITION, QUALITY, REPAIR OR FITNESS OF THE FACILITY FOR A PARTICULAR USE OR TITLE THERETO, ALL SUCH WARRANTIES BEING HEREBY DISCLAIMED BY LANDLORD AND WAIVED AND RENOUNCED BY TENANT). The "Facility" consists of collectively, Landlord's interest in the Land, the Improvements, together with any easements, rights, and appurtenances in connection therewith or belonging to said Land and Improvements. The foregoing disclaimer in this paragraph has been negotiated by Landlord and Tenant, each being represented by independent counsel, and is intended as a complete negation of any representation or warranty by Landlord, express or implied, with respect to the condition, quality, repair, or fitness of the Facility for a particular use, or title thereto.

2.2 The "Facility" includes the Land and Improvements located at 3751 Mesa Village Dr, Alamogordo, NM 88310. The Land and Improvements at all such locations collectively constitute the Facility.

2.3 Landlord does further shall lease to Tenant, and Tenant leases from Landlord, governmental liquor license #_______ for the purpose of fulfilling its contractual obligation under this Agreement for the operation of the Facility for lease duration only.

3. USE

3.1 Tenant shall, subject to applicable zoning restrictions and any recorded covenants or restrictions in the public records upon the Commencement Date, use and occupy the Facility only as a bowling center, with ancillary uses including dining establishments, banquet facilities, game rooms, amusement arcade, karaoke, darts room, laser tag, pro shops, including live music entertainment and other ancillary entertainment uses, uses permitted pursuant to the next succeeding sentence, and other lawful purposes which are incidental thereto (including beverage service, including the sale of alcohol) (collectively, the "Permitted Use"). The foregoing restriction on use shall not apply to any minor sublease for a portion of the Facility if such sublease is supporting or ancillary to the Permitted Use. Tenant shall not use, suffer or permit the Facility, or any portion thereof, to be used by Tenant, any third party or the public, as such, without restriction or in such manner as might adversely affect Landlord's title to or interest in the Facility, or in such manner as might make possible a claim or claims of adverse possession by the public, as such, or third Persons, or of implied dedication of the Facility, or any portion thereof.

3.2 So long as no Event of Default under this Lease shall have occurred and be continuing, Tenant shall not be disturbed in its possession of the Facility by Landlord except for such access to the Facility as specifically provided for and subject to the terms and conditions of this Lease. This covenant shall be construed as a covenant running with the Facility and is not a personal covenant of Landlord. So long as no Event of Default under this Lease shall have occurred and be continuing, Landlord's use of any portion of the Facility shall not interfere, in any material respect, with any or all of (i) Tenant's rights to occupy and use the Facility (in the manner and for the purposes contemplated hereunder), (ii) Tenant's right to utilize the vehicular parking areas located on the Facility, and (iii) Tenant's right of access, ingress and egress to and from the Facility.

4. TERM

4.1 **Primary Term.** The primary term of this Lease (the "Primary Term") shall be for a period of fifteen (15) years, beginning on the Commencement Date and ending on the Lease Expiration Date.

4.2 **Option Term.** Provided Tenant is not in default of this Agreement, Tenant is hereby given the option(s) to extend the Primary Term of this Agreement for two separate option periods of ten (10) years each with original based terms stated in 5.1.1 (each, an "Extended Term") following the expiration of the Initial Term (the Initial Term and the Extended Term(s) are collectively referred to herein as the 'Term"). The City shall have the right to review and approve the extension of this Agreement into the option periods, which approval shall not be unreasonably withheld or conditioned. The option periods must be exercised successively, to run from the end of the Primary Term, and shall be exercised only by giving notice of exercise of the option ("Option Notice") to City at least four months before the expiration of the Primary Term or the first Extended Term, as applicable. If Tenant, following notice and the expiration of all applicable opportunity to cure periods, is in default hereunder, it may not give an Option Notice and this Agreement shall expire at the end of the then-current Term.

5. RENT; SECURITY DEPOSIT; REVENUES; CAPITAL IMPROVEMENTS, MAINTENANCE AND REPAIRS

5.1 **Lease Amount.** Tenant shall pay the City an amount for the privilege of occupying the Facility (the "Lease Amount") according to the calculation procedure and schedule of payment set forth below:

5.1.1 **<u>Lease Amount Calculation</u>**. The Lease Amount shall be at a rate of two thousand dollars ($2000) per month or twenty four thousand dollars ($24,000) per year. The estimated fair market lease value of the building is approximately $36,000 per year. The twelve thousand ($12,000) additional rent dollars shall come from the creation and maintenance of one job at the facility which pays at least $12,000 per year. Tenant shall provide proof of at least one job per year to the City to receive the rent credit of $12,000 per year, for the entire term of the lease. If Tenant refuses to provide the City with such proof, or does not have one job that pays at least $12,000 per year, then Tenant shall be considered in default of this agreement, and rent will be raised to $36,000 annually. Landlord will deposit lease payments into an interest-bearing account, identified as Capital Reserve Account, for the purposes of capital improvements, major repairs, and extraordinary maintenance.

5.1.2 **<u>Lease Amount Payment</u>.** The Lease Amount shall be calculated annually; however Tenant shall pay the Lease Amount to the City in quarterly estimates, with an annual reconciliation amount equal to the difference between the quarterly estimates and the actual, calculated Lease

Amount. Tenant shall pay to the City quarterly in arrears with respect to each calendar quarter during the Term. Tenant shall pay to the City annually in arrears any Lease Amount due for that Operating Year less prior Estimated Payments. Each annual payment shall be due within 90 days after the end of the Operating Year. In the event this Agreement is terminated prior to the end of the Term hereof, Tenant shall pay the City, not later than 30 days after the early termination date, any portion of the Lease Amount due on the date of such early termination.

5.1.3 **Liquidated Damages.** If Tenant fails to operate the Facility or breaches the terms of this Agreement at any time prior to the natural expiration of the Agreement, Tenant hereby agrees that, upon its default hereunder and expiration of the cure period set forth below, it shall pay the City, as liquidated damages, within 30 days of receipt of the City's written demand therefore, 100% of the amount that would have been due to the City as Lease Amount according to the calculation set forth above as of the date of the City's written demand. If tenant elects to exercise paragraph 7.2 of this agreement to terminate the lease within first (7) years of this lease, Tenant will only be liable for Personal Guarantee of balance of the $500,000 operations loan amount, and the six-months lease termination notice period as defined in paragraph 7.2.

5.2. **Net Profit and Facility Expenses.** Subject to payment of all amounts due City under this Agreement and to the payment of Facility Expenses, Tenant shall be entitled to all income, revenues and profits from the Facility during the Term. After the Commencement Date, Tenant shall bear and pay all of the following ("Facility Expenses"): all routine and ordinary maintenance and repairs to the Facility required to preserve it in good working repair during their projected useful life, including (A) any costs incurred by or imposed on Tenant in the performance of its obligations under this Agreement, (B) all fees payable to City under this Agreement, and (C) any cost expressly identified as a Facility Expense in this Agreement, but expressly excluding (1) any cost allocated to the City under this Agreement and (2) any financing cost incurred by the City.

5.3. **Financials**

5.3.1 **Sales Recording and Records.** All records will be kept at the facility. The semi-annual P&L statement and the balance sheet to be furnished to the City as provided herein shall be prepared in accordance with generally accepted accounting principles (either cash or accrual basis). Tenant shall also be responsible for maintaining and reporting any documents or reports needed in accordance with the Project Participation Agreement.

5.3.2 **Semi-Annual P&L Statements and Balance Sheets**

(a) Semi-Annual Financial Reports. Tenant shall furnish the City with a Semi-Annual P&L Statement and Balance Sheet certified as correct by an authorized member or Officer of Tenant. This Report is due 45 days after the end of each reporting period during the Term, Such terms normally end July 1st and January 1st.

(b) Annual Financial Reports. Within 90 days following the end of each Operating Year commencing with respect to the first Full Operating Year, Tenant shall furnish the City with an Annual P&L Statement and an Annual Balance Sheet certified as correct by an authorized member or officer of Tenant.

(c) Form and Content. Each Semi-annual P&L Statement and Annual P&L Statement shall be in the form of generally accepted financial statements. The Parties may change the form of the P&L Statements from time to time by mutual agreement. The P&L Statements and the Balance Sheets shall be prepared on a cash or accrual basis, as determined by Tenant, provided the method chosen for a particular Operating Year shall be consistently used throughout such Operating Year and subject to the requirements of Section 5.3 with respect to the Annual P&L Statement and the Balance Sheet.

5.3.3 **Examination Rights**.

(a) Examination of Books. Tenant shall, for a period of seven years following the delivery of each Annual P&L Statement, including the seven year period following the end of the Term, keep and maintain, safe and intact, all of the records, books and accounts required under this Section, and shall from time to time, upon request, make these records available to the City, the City's auditor, representative or agent for examination at any reasonable time on five days advance written notice. Tenant's books and records shall be made available for inspection by the City or its representative at the Facility. The City shall also have the right to make abstracts from the records, to make copies of any or all of the records and to examine and make copies of any or all contracts, leases, licenses and concession agreements. In addition, on request of the City or the City's representatives, Tenant shall furnish copies of Tenant's state and local gross receipts tax returns.

(b) City Staff Inspections. City staff shall have the right, from time to time to visit and inspect the operations of the Facility to confirm compliance with this Agreement.

5.4 **Capital Improvements, Repairs and Maintenance.**

5.4.1 **Capital Reserve Account.** Commencing on the Commencement Date and continuing thereafter on each anniversary thereof until the Lease Expiration Date, City shall deposit $24,000 for the previous operating year into a separate interest bearing account established solely for the purpose of holding funds for use in making Capital Repairs or Improvements (the "Capital Reserve Account"). All interest shall be added to the Capital Reserve Account. Notwithstanding anything to the contrary contained herein, Tenant's maintenance, repair and replacement obligations under this Lease shall in no way be limited by the amount of funds from time to time held in the Capital Reserve Account.

5.4.2 **Repairs and Maintenance. "**Routine and Ordinary Repair or Replacement" means any maintenance and repair expense that individually is less than ($ 12,000). All such maintenance or repair expenses shall be a Facility Expense. A Capital Improvement means any repair or improvement that is individually in excess of ($ 12,000). All Capital Improvements, repairs, or maintenance projects shall require the City's prior authorization and, to the extent funds are available, are to be paid out of the Capital Reserve Account. At all times on and after the Commencement Date, to and including the date of the termination of the Term, by lapse of time or otherwise, the Tenant shall maintain the Facility in good repair and condition and in conformity with all requirements and shall make or cause to be made all Minor Repairs and Replacements. In making any such repairs, all work done by the Tenant, or on its account, shall be of first class quality in both materials and workmanship. In the event that the Tenant refuses or neglects to make any repairs required by this Agreement, or if Landlord is required to make any repairs necessitated by the negligent acts or omissions of the Tenant, its employees, agents, servants, or licensees, Landlord shall have the right, but shall not be obligated, to make such repairs on behalf of or for the account of the Tenant upon prior written notice to Tenant. In the event that Landlord shall make such repairs, such work shall be paid for by the Tenant upon receipt of a statement therefore in the amount of Landlord's costs plus an amount for overhead as shall be determined from time to time by Landlord or by offset to amounts owed by Landlord to the Tenant. Nothing herein contained shall prevent Landlord from determining that the failure of the Tenant to comply with the terms of this provision constitutes a material breach of this Agreement permitting Landlord to terminate this Agreement. Any amount unpaid shall accrue interest at the then existing Prime Rate plus five percent (5%) from the date incurred.

Maintenance for the facility parking lot will be the responsibility of the Tenant for the first two (2) years of the lease, except for the parking lot lighting, and thereafter shall revert back to the City.

5.4.3 **Capital Improvements.** Tenant and Landlord agree that all rent monies collected by Landlord from Tenant shall be deposited into an account known as the Capital Reserve Account. Landlord shall have control over these monies to make capital improvements to the building. Prior to April 1st of each Operating Year, Tenant shall submit a written request to the City Manager or authorized designee, of any Capital Improvement projects to be included in the City's annual capital improvement projects budget. Landlord agrees to meet with Tenant and discuss the feasibility and need for the requested capital improvements, but reserves the right to deny the requested improvements without explanation. However, the Landlord cannot deny an improvement that must be made in order to keep and preserve the essential functions of the building. The cost of all City-approved Major Improvements shall be charged against the Capital Reserve Account. In the event that the cost of a Capital Improvement project exceeds the amount in the Capital Reserve Account, the shortfall shall be paid by the Landlord. Upon the sale of the building to the Tenant, all amounts then on deposit in the Capital Reserve Account shall be paid over by the Landlord to the Tenant.

5.4.4 **Material Improvements.** If Tenant elects to make any changes to the building itself including erecting new walls, taking down walls, or any other construction, Tenant must first get permission in writing from the Landlord. Tenant must also provide architectural or engineered plans for such design as requested and at Tenant's expense. Any improvements that are beneficial changes to the property that are made by or for the benefit of the Tenant may not be removed once they are in place, without the express written consent of the Landlord.

5.4.5 **Credit for Improvements.** If Tenant elects to purchase the business at any time during the duration of this lease, Landlord shall give Tenant a credit on the purchase price of the current appraised value of improvements that Tenant made from means other than LEDA monies.

6. TAXES

6.1 Tenant agrees that it is solely responsible for complying with all Local, State and Federal laws regarding taxation, including but not limited to, Gross Receipts Tax (GRT), and any and all employment taxes that may be due from time to time. Property Tax is a responsibility of the Landlord.

7. TERMINATION PROCEDURE; RIGHT OF FIRST REFUSAL

7.1 Tenant shall pay when due, and save Landlord harmless from and against, any and all costs, charges and expenses attributable to the Facility, including each fine, fee, penalty, charge (including governmental charges), assessments, sewer rent, Impositions, insurance premiums as may be required under this Lease, utility expenses, costs, expenses and obligations of every kind and nature whatsoever, general and special, ordinary and extraordinary, foreseen and unforeseen, the payment for which Landlord or Tenant is, or shall become liable by reason of any rights or interest of Landlord or Tenant in, to or under the Facility or this Lease or in any manner relating to the ownership, leasing, operation, management, maintenance, repair, rebuilding, use or occupation of the Facility, or of any portion thereof; provided, however, that nothing herein contained shall be construed as imposing upon Tenant any obligation to pay any Excluded Taxes of Landlord arising out of, or levied in connection with, this Lease or Landlord's right or interest in the Facility or the Rent.

7.2 At any time during the first seven (7) years of this lease, Tenant may, in writing, advise the Landlord that they wish to terminate the lease. Tenant is required to give the Landlord six (6) months notice before terminating the lease, and will be required to keep the business open and operational, with continued lease payments, during those last six (6) months at the same standards set forth elsewhere in this agreement. At the time that notice is given, Tenant must immediately make available its financial statements and books to the City, and must allow City to inspect and advertise the business for lease or sale.

7.3 Landlord agrees that during the pendency of Tenants lease, Landlord will not advertise the building for sale, nor will Landlord actively look for any prospective buyers. Landlord agrees to not sell the building to any prospective buyer during the pendency of the lease. At any time if Tenant elects to buy the building and or at the expiration of the lease, tenant will have the first opportunity to buy the building at fair market value as determined by an appraisal at any time during the lease. At the end of the lease, should the Tenant decline to purchase the building, the City is free to sell the building to any qualified buyer, as deemed fit by the City. At the time of the sale of the building or property, Tenant will continue to remain as a tenant unless removed due to default clause stated in this agreement.

7.4 Trade fixtures and improvements. Tenant agrees that building, at time of lease, is fully operational, i.e. the building contains kitchen equipment, bowling equipment, and laser tag equipment, plus associated furniture that allow for the operation of those aforementioned areas. If Tenant elects to terminate the lease, or vacate the premises, Tenant agrees to restore the premises to substantially the same condition (i.e. with functioning equipment and furniture) as it was given. Landlord reserves the right to find noncompliance and ask for a cure within 30 days of the premises being vacated. Should Tenant fail to cure, Landlord reserves all rights within Local, State and Federal laws.

7.5 Right of first refusal on added equipment. Tenant agrees that at any time during this lease, should Tenant give Landlord a termination notice, that Landlord has the right of first refusal to purchase all added equipment owned by Tenant that is not a permanent fixture in the building. Tenant agrees that Landlord will be given the opportunity with prices set at current appraised fair market value.

8. SERVICES

8.1 Commencing upon the Commencement Date and continuing through the Term, Landlord grants to Tenant the exclusive right to occupy, maintain and operate the Facility pursuant to this Agreement, and Tenant covenants and agrees to maintain and operate the Facility according to Sound Standards and Sound Practice and pursuant to the terms and conditions set forth in this Agreement.

8.2 Tenant shall during the Term, at Tenant's sole cost and expense, be responsible for supplying the Facility with electricity, heating, ventilating and air conditioning, water, natural gas, lighting, replacement for all lights (except for the parking lot lighting), restroom supplies, telephone service, window washing, security service, janitor, pest control and disposal services (including, if applicable, hazardous and biological waste disposal), and such other services as Tenant determines to furnish to the Facility. Landlord shall not be in default hereunder or be liable for any damage or loss directly or indirectly resulting from, nor shall the Lease Amount or Additional Rent be abated or a constructive or other eviction be deemed to have occurred by reason of, the installation, use or interruption of use of any equipment in connection with the furnishing of any of the foregoing services, any failure to furnish or delay in furnishing any such services, whether such failure or delay is caused by accident or any condition beyond the control of Landlord or Tenant or by the making of repairs or improvements to the Facility, or any limitation, curtailment, rationing or restriction on use of water, electricity, gas or any form of energy serving the Facility, whether such results from mandatory governmental restriction or voluntary compliance with governmental guidelines. Tenant shall pay the full cost of all of the foregoing services and all other utilities and services supplied to the Facility as Additional Rent.

8.3 **Operation Services.** Tenant shall have the right and responsibility to: (i) determine, establish, and implement the policies, standards, fees and schedules for the operation and maintenance of the Facility and all matters affecting customer relations; (ii) hire, train, and supervise all Facility employees; (iii) supervise and direct advertising, sales and business promotion; and (iv) establish accounting and payroll procedures and functions. Without in any way limiting Tenant's right and responsibility to operate the Facility in accordance with the terms of this Agreement, Tenant shall perform the following operations and maintenance services, or cause the same to be performed for the Facility. Unless specifically set forth otherwise in this Agreement, all expenditures of Tenant and costs and expenses incurred by Tenant in performing these services shall be Facility Expenses:

8.3.1. League, tournament, open and private bowling activities to be offered at the Facility.

8.3.2. Consummate arrangements with concessionaires, licensees, tournament promoters, contractors or other intended users of the Facility.

8.3.3. Enter into contracts for the furnishing of utilities and maintenance and other services to the Facility.

8.3.4. Incur such expenses as shall reasonably be determined to be necessary for the proper operation of the Facility, including without limitation rental expenses for leased FF&E as necessary.

8.3.5. Maintain a level of Operating Inventory deemed appropriate by Tenant for supplying the needs of the Facility and its customers.

8.3.6. Use commercially reasonable efforts to do, or cause to be done, all such acts in and about the Facility as shall be reasonably necessary to comply with all requirements of each insurance policy applicable to the Facility (the "Insurance Requirements").

8.3.7. Use commercially reasonable efforts to market the Facility and maximize Gross Revenues, consistent with Sound Practice.

8.3.8. Purchase additional FF&E as necessary to operate and maintain the Facility in a first-class manner.

8.3.9. Pay initial activation charges or connection fees for utilities and services for the Facility.

8.3.10. Not permit any mechanic's or materialmen's liens to be asserted against the Facility for work or materials by or on behalf of Tenant.

8.3.11. Comply with all applicable laws, statutes, ordinances, orders, rules, regulations, permits, licenses, authorizations, directives and requirements of all governments and governmental authorities, which now or hereafter may be applicable to Tenant, the Facility or the operation of the Facility (the "Legal Requirements").

8.4 **Maintenance and Repair.** Tenant shall furnish, maintain and repair the Facility to keep it in first class condition and in good repair (damage by casualty or condemnation and reasonable wear and tear excepted) throughout its useful life.

8.4.1 General Maintenance, Repair and Upkeep. Tenant shall maintain the Facility in a clean, safe and attractive state, including, but not limited to the surrounding sidewalk and landscape areas, telephone and data lines, offices, rest rooms and open areas. A clean and attractive state includes replacing bulbs and ballasts in lamps and lighting fixtures; cleaning, repairing and replacing signs; maintaining fire alarm call boxes, fire extinguishers and hose boxes and systems in proper working condition; general facility maintenance and repairs by tradesmen as required to ensure a clean, attractive and safe environment such as maintenance and repairs of electrical equipment, plumbing fixtures; painting pedestrian areas, offices, rest rooms, etc., other repairs as necessary; supplying rest rooms with soap, towels, toilet paper and providing for their disposal.

8.4.2 Garbage Removal. Tenant shall arrange for the storage, removal and disposal of all waste material in connection with the Facility. Tenant shall also be responsible for all storage and disposal of all waste materials throughout the entire Facility. Tenant shall comply with all applicable ordinances, statutes and regulations for storage, removal and disposal of waste materials.

8.4.3 Pest Control. Tenant shall maintain a pest control program that minimizes the infestation of pests and vermin in accordance with all applicable ordinances, statutes and regulations.

8.4.4 Graffiti Removal. Tenant shall remove or cause to be removed all graffiti applied to surfaces of the Facility and elsewhere in and around the Facility in a manner (chemicals and process) approved by the Landlord.

8.4.5 Maintenance and Custodial Equipment. Tenant shall keep all maintenance and custodial equipment in good repair and working order.

8.4.6 Maintenance of Electronic Security and Surveillance Equipment. Tenant shall keep all electronic security and surveillance equipment in good repair and working order.

8.4.7 Maintenance of Score Boards, Sound System and Video Boards. Tenant shall maintain the scoreboards, sound system, video boards, and video production equipment at the Facility in good repair and working order.

8.4.8 Window Washing. Tenant shall be responsible for window washing.

8.5 **Personnel**. Except for Landlord employees working at the Facility for the Landlord in connection with Landlord Activities, all employees working at the Facility shall be full or part time employees of Tenant or an Affiliate. The number of employees working at the Facility, and the compensation (salaries or wages, benefits and commissions) paid to them, shall be reasonably established by Tenant. Tenant shall recruit, hire, train, discharge, promote and supervise the Facility staff, all of whom shall be Tenant employees and Tenant shall be solely responsible for paying all federal, state and local taxes and all benefits for all such employees. The compensation (including benefits) of the Facility staff and all other Facility employees shall be a Facility Expense.

8.6 **Specific Operating Procedures.** In addition to the more general responsibilities of Tenant for operations of the Facility as provided herein, Tenant shall operate the Facility in accordance with the following operating procedures:

8.6.1 Facility Operating Hours. Tenant shall operate the Facility on days and at hours consistent with Sound Practice, subject to closure due to, casualty, condemnation, Force Majeure Events or major alterations or improvements.

8.6.2 Fees and Charges. Tenant shall set and establish fees and charges accordingly to maintain operations of the business.

8.6.3 Security and Crowd Control

i. Security. Tenant shall be responsible for the general safety, security and well being of all occupants of the Facility at all times, including providing and arranging for security and crowd control as reasonably necessary in connection with the Facility and events to be held therein. To the extent consistent with Sound Standards, Tenant shall provide security by means of electronic surveillance and foot patrols.

ii. Medical Staffing. To the extent consistent with Sound Standards, Tenant shall be responsible for (a) implementing appropriate medical policies as required on an event-by-event basis or (b) ensuring the access of on-call public medical services.
iii. Safety Plans. In conjunction with the Landlord, Tenant shall develop and implement (a) an emergency and evacuation plan and (b) a public safety and fire management plan for the Facility.

8.6.4 Landscape and Irrigation System Maintenance. Tenant shall maintain, repair and upkeep the landscape.

8.6.5 Tobacco. Tenant shall not allow the sale of tobacco products, either manually or through vending machines, anywhere within the Facility.

8.6.6 Management, Operation and Maintenance Plans. Tenant shall create a set of books, plans, or documents, which define management, operations, and maintenance of the facility. These documents shall be physically located within the facility.

8.7 **Contracts and Agreements.** All leases and financing agreements for additional FF&E beyond those initially provided by Landlord, and all contracts and agreements relating to the operation and maintenance of the Facility (including without limitation contracts for maintenance and repair services, pest control, supplies and landscaping services, and agreements for tournaments, banquets and other group functions), entered during the Term shall be entered by Tenant as the contracting party. Tenant shall not enter any contract or agreement which extends beyond the Term of this Agreement unless such contract or agreement is cancelable on 30 days notice.

8.8 **Compliance with Environmental Laws.** Subsequent to the Commencement Date, Tenant shall comply with all federal, state and local laws and regulations pertaining to the storage, use and disposal of "Hazardous Materials", meaning any material, substance or matter which is flammable, explosive, corrosive, radioactive or toxic, or which contains asbestos, or is a pesticide, or is a chemical known to cause cancer or reproductive toxicity or which is defined as a hazardous substance, material or waste, or as a toxic substance, material or waste, in any federal, State of New Mexico or applicable local law, regulation or order. All expenditures of Tenant and costs and expenses incurred by Tenant in performing the foregoing services or in remediating damage to the Property resulting from the storage, use or disposal of such Hazardous Materials by Tenant subsequent to the Commencement Date shall be considered Facility Expenses and shall be paid or borne solely by Tenant. Landlord shall be responsible for all costs and expenses associated with the remediation of, and liability arising from or related to, damages to the Property from the storage, use or disposal of Hazardous Materials ("Hazmat Costs"): (A) before the Completion Date; or (B) percolating under the property whether before or after the Completion Date. Tenant will be responsible for all Hazmat Costs by Tenant, its employees, agents and contractors after the Commencement Date.

8.9 Tenant shall maintain, and (to the extent in its possession) turn over to Landlord upon expiration or termination of this Lease, then current operating manuals and original warranties (to the extent assignable) for all equipment and fixtures then located at the Facility specifically excluding, in all cases, Tenant's Personal Property at the Facility which Tenant's Personal Property may and which are subsequently removed by Tenant upon expiration or earlier termination of this Lease.

9. DESTRUCTION OF OR DAMAGE TO FACILITY

If the Facility is damaged by fire or other casualty during the Term of this Lease, Tenant shall (a) repair such damage and restore the Facility to substantially the same or better condition as existed before the occurrence of such fire or other casualty using materials of the same or better grade than that of the materials being replaced (herein, a "Casualty Repair") and (b) this Lease shall remain in full force and effect. Such repair and replacement by Tenant shall be done in accordance with the terms and the standards of this Agreement and Tenant shall, at its expense, obtain all permits required for such work. An architect or engineer selected by Landlord shall review, at Tenant's expense, all plans and specifications and all draw requests hereunder. In no event shall Lease Amount or Additional Rent abate, nor shall this Lease terminate by reason of such damage or destruction. Provided that no Event of Default by Tenant shall then exist under this Lease (and no event has occurred which, with the passage of time, the giving of notice, or both, would constitute an Event of Default), and provided Tenant has: (i) delivered to Landlord plans and specifications and a budget for such Casualty Repair (all of which Landlord shall have approved), and (ii) deposited with Landlord cash or a letter of credit meeting the requirements (other than amount) of a Letter of Credit outlined in Section 5 above, in the sum equal to the excess, if any, of the total cost set forth in such approved budget over the amount of insurance proceeds received on account of such casualty, Landlord shall make available to Tenant all insurance proceeds actually received by Landlord on account of such casualty, for application to the costs of such approved repair and restoration, as set forth below.

10. INSURANCE, HOLD HARMLESS AND INDEMNIFICATION

10.1 To the fullest extent permitted by law, Landlord shall not be liable to Tenant for any damage to or loss or theft of any property or for any bodily or personal injury, illness or death of any person in, on or about the Facility arising at any time and from any cause whatsoever. Tenant waives all claims against Landlord arising from any liability described in this paragraph 10.

10.2 Tenant hereby agrees to indemnify and defend Landlord against and hold Landlord harmless from all third-party claims, demands, liabilities, damages, losses, costs and expenses, including attorneys' fees and disbursements, arising from or related to any use or occupancy of the Facility, or any condition of the Facility, or any damage to any property (including property of employees and invitees of Tenant) or any bodily or personal injury, illness or death of any person (including employees and invitees of Tenant) occurring in, on or about the Facility or any part thereof or any part of the building or the land constituting a part of the Facility arising at any time and from any cause whatsoever or occurring outside the Facility when such damage, bodily or personal injury, illness or death is proximately caused by any act or omission of Tenant or its agents, officers, employees, contractors, invitees or licensees. This paragraph 10.2 shall survive the termination of this Lease with respect to any damage, bodily or personal injury, illness or death occurring prior to such termination.

10.3 Insurance

10.3.1 Tenant's Insurance. Tenant shall obtain, pay for and maintain at all times during the Term the following insurance on or in connection with the Facility:

(a) Commercial General Liability Insurance, against claims for personal and bodily injury, death or property damage occurring on, in or as a result of the use of the Facility, in an amount not less than $1,000,000 per occurrence/annual aggregate on a claims occurrence basis; and liquor legal liability (or so-called Dram Shop Liability) insurance in an amount not less than $1,000,000 per occurrence/annual aggregate.
(b) Business Automobile Liability Insurance (including Non-Owned and Hired Automobile Liability), against claims for personal and bodily injury, death or property damage occurring on, in or as a result of the use of the Facility, in an amount not less than $250,000 per occurrence/annual aggregate on a claims occurrence basis; and liquor legal liability (or so-called Dram Shop Liability) insurance in an amount not less than $1,000,000 per occurrence/annual aggregate.
(c) Workers' Compensation and Employers Liability Insurance as required by New Mexico Law. Tenant shall comply with the provisions of the New Mexico Workers' Compensation Act, the Subsequent Injury Act, and the New Mexico Occupational Disease Disablement Law. Tenant shall procure and maintain during the term of this Lease complete Workers' and Employer's Liability Insurance in accordance with New Mexico laws and regulations. Such insurance shall include coverage permitted under Section 52-1-10, NMSA 1978, for safety devices. With respect to Workers' Compensation Insurance, if Tenant elects to be self-insured, Tenant shall comply with the applicable requirements of law. If any portion of the work is to be sublet, Tenant shall require the subtenants similarly to provide such coverage (or qualify as a self-insured) for all the latter's employees to be engaged in such work. Tenant hereby covenants and agrees that City, its officers, or employees will not be liable or responsible for any claims or actions occasioned by Tenant’s failure to comply with the provisions of this subparagraph and that the Indemnification provision of this Agreement shall apply to this paragraph. It is expressly agreed that the employees of Tenant are not City employees for any purpose.
(d) Business Interruption Insurance at limits sufficient to cover 100% of the period of indemnity not less than twelve (12) months from time of loss, including extended period of indemnity which provides that after the physical loss to the Improvements and equipment has been repaired, the continued loss of income will be insured until such income either returns to the same level it was at prior to the loss, or the expiration of six (6) months from the date that the Facility is repaired or replaced and operations are resumed, whichever first occurs.
(e) During any period in which Capital Improvements, Capitalized Repairs, or any other substantial alterations at the Facility are being undertaken, builder's risk insurance covering the total completed value, including all hard and soft costs (which shall include business interruption coverage) with respect to the Improvements being constructed, altered or repaired (on a completed value, non-reporting basis), replacement cost of work performed and equipment, supplies and materials furnished in connection with such construction, alteration or repair of Improvements or Building Systems Equipment, together with such other endorsements as Landlord may reasonably require, and general liability, worker's compensation and automobile liability insurance with respect to the Improvements being constructed, altered or repaired.
(f) Tenant shall, at all times during the Term, maintain, at Tenant's sole cost and expense, an insurance policy naming Landlord as an additional insured covering the Landlord's Personal Assets, insuring the Landlord's Personal Assets against loss by fire and other casualty or theft, with such coverage and deductibles to be agreed to between Landlord and Tenant and

consistent with insurance coverage previously maintained on the Landlord's Personal Assets (whether by Landlord or any prior owner of the Landlord's Personal Assets).
(g) Such other insurance (or other or different terms with respect to any insurance required pursuant to this Article 10.3.1, including without limitation amounts and types of coverage, deductibles, form of mortgagee clause, insurer rating) on or in connection with any of the Facility as Landlord may reasonably require; provided that such insurance is available to Tenant on a commercially reasonable basis and is consistent, as to types of coverage and amounts, with the requirements generally of prudent owners or operators of similar properties

10.3.2 Policies of insurance shall be written by companies authorized to write such insurance in New Mexico. When requested by City, Tenant shall allow City to review in the presence of Tenant's insurance representatives any or all policies of insurance for the insurance coverage required in this Section.

10.3.3 Each policy required by any provision of Section 10.3.1 except clause (d) thereof, shall provide that it may not be cancelled, substantially modified or allowed to lapse on any renewal date except after at least thirty (30) days' prior written notice to Landlord.

10.3.4 Tenant shall pay as they become due all premiums for the insurance required by Section 10.3.1, shall renew or replace each policy and deliver to Landlord evidence of the payment of the full premium therefor or installment then due at least ten (10) days prior to the expiration date of such policy, and shall promptly deliver to Landlord all original certificates of insurance evidencing such coverages.

10.3.5 Each policy obtained by Tenant shall contain an effective waiver by the carrier against all claims for payment of insurance premiums against Landlord and shall contain a full waiver of subrogation against the Landlord. Each policy obtained by Landlord, if any, shall contain an effective waiver by the carrier against all claims for payment of insurance premiums against Tenant and shall contain a full waiver of subrogation against Tenant. Tenant waives subrogation against Landlord to extent of insurance proceeds actually received or would have been received if adequate coverage had been in place.

10.3.6 Landlord's Right to Obtain Tenant's Insurance. Notwithstanding anything to the contrary contained in this Article10.3.1, if at any time Tenant fails to provide evidence of the insurance required to be maintained by Tenant hereunder within ten (10) Business Days of Landlord's request for same (said requests not to be made more than once per calendar quarter), Landlord shall have the right, but not the obligation, by providing written notice of such election to Tenant, to itself obtain and maintain all or any portion of such insurance, in which event Landlord shall charge Tenant the cost of such insurance as Additional Rent hereunder. In the event that Landlord so elects to obtain and maintain such insurance, Landlord shall cause Tenant, if Tenant so requests in writing, to be added as additional insureds and loss payees under the applicable insurance policy(ies), as its interests may appear. Landlord and Tenant agree to reasonably cooperate with each other in order to coordinate the acquisition and maintenance of any such insurance by Landlord, which may include, without limitation, the execution of any required forms and applications and providing relevant information to Landlord's insurance carrier.

10.3.7 During the continuance of any Event of Default, Tenant shall pay to Landlord on the first day of each calendar month an amount equal to one twelfth (1/12) of the premiums for property and casualty insurance required by this paragraph 10, as reasonably estimated by Landlord on the basis of bills and estimates thereof. If such premium payments shall have been made by Tenant, such amounts shall be held by Landlord, without interest, and shall not be deemed to be trust funds and may be commingled with the general funds of Landlord. Landlord shall apply such amounts to the payment of the insurance premiums with respect to which such amounts were paid. Landlord shall make no charge for holding and applying such amounts. If at any time the amount on deposit pursuant to this paragraph shall be less than the amount deemed necessary by Landlord to pay such premiums as they become due, Tenant shall pay to Landlord the amount necessary to make the deficiency within five (5) calendar days after notice from Landlord requesting payment thereof. Upon the expiration or termination of the term of this Lease (other than as a result of an Event of Default), Landlord shall promptly refund to Tenant any amount held by Landlord pursuant to this paragraph.

11. COMPLIANCE WITH LAWS, COVENANTS

11.1 Tenant shall with respect to the Facility and Bowling Equipment throughout the Term promptly comply or cause compliance with or remove or cure any violation of any and all present and future laws including the Americans with Disabilities Act of 1990 as the same may be amended from time to time ("ADA") (Landlord acknowledges that Tenant shall only be required to make accommodations under the ADA to the extent required by the ADA), ordinances (zoning or otherwise), orders, rules, regulations and requirements of all Federal, State, municipal and other governmental bodies having jurisdiction over the Facility and the appropriate departments, commissions, boards and officers thereof, or any other body now or hereafter constituted exercising lawful or valid authority over the Facility (collectively, "Legal Requirements"), or any portion thereof, and whether the compliance, curing or removal of any such violation and the costs and expenses necessitated thereby shall have been foreseen or unforeseen, ordinary or extraordinary, and whether or not the same shall be presently within the contemplation of Landlord or Tenant or shall involve any change in governmental policy, or require structural or extraordinary repairs, alterations or additions by Tenant and irrespective of the amount of the costs thereof.

11.2 In connection with its operations or other activities at the Facility, Tenant shall at all times and in all respects comply with all Environmental Laws including Federal, State and local laws, ordinances and regulations pertaining to Hazardous Substances, which are applicable to the Facility and Tenant's activities. Upon expiration or earlier termination of this Lease, Tenant shall cause all Hazardous Substances introduced to the Facility by Tenant or its agents or invitees to be removed from the Facility as required by and in compliance with applicable environmental laws, and transported for use, storage, or disposal in accordance and in compliance with all applicable Environmental Laws. "Environmental Laws" means the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. §§6901, et seq. (RCRA), as amended, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§9601 et seq. (CERCLA), as amended, the Toxic Substance Control Act, as amended, 15 U.S.C. §§2601 et seq., the Federal Insecticide, Fungicide and Rodenticide Act, as amended, 7 U.S.C. §§136 et seq., and all applicable federal, state and local environmental laws, ordinances, rules and regulations, as any of the foregoing may have been or may be from time to time amended, supplemented or supplanted, and any other federal, state or local laws, ordinances, rules and regulations, now or hereafter existing relating to regulations or control of Hazardous Material or materials. The term "Hazardous Materials" as used in this Lease shall mean substances defined as "hazardous substances", "hazardous materials", "hazardous wastes" or "toxic substances" in any applicable federal, state or local statute, rule, regulation or determination, including the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §§1801, et seq.; the Resource, Conservation and Recovery Act of 1976, 42 U.S.C. §§6901, et seq.; and, asbestos, pcb's, radioactive substances, methane, volatile hydrocarbons, petroleum or petroleum-derived substances or wastes, radon, industrial solvents or any other material as may be specified in applicable law or regulations.

12. PARTIAL TAKING

If less than substantially all of any Site shall be taken for public or quasi-public purposes, Tenant will promptly, at its sole cost and expense, restore, repair, replace or rebuild the improvements so taken in conformity with the requirements of this agreement as nearly as practicable to the condition, size, quality of workmanship and market value thereof immediately prior to such taking, without regard to the adequacy of any condemnation award for such purpose. There shall be no abatement of Rent during such period of restoration. In performing its obligations, Tenant shall be entitled to all condemnation proceeds available to Landlord for restoration or repair of the Facility under the same terms and conditions for disbursement set forth for casualty proceeds. Tenant shall, at its sole cost and expense, negotiate and, if necessary, litigate, the amount of the award, and Landlord shall have the right to participate in such process, at its sole cost and expense (it being acknowledged and agreed by Landlord that Tenant shall have the right to control such proceeds and settle all awards), and if Tenant fails to diligently prosecute such efforts, Landlord may take control of the process. Any condemnation proceeds in excess of the amounts used or requested as are made by Tenant for restoration or repair of the Facility, shall be the sole and exclusive property of Landlord. Tenant shall have the right to control all condemnation proceedings on Landlord's behalf, and shall also be entitled to receive any award made by the condemning authority in respect of business loss or, if available, business relocation and any other claim permitted by law which does not, in any such case, diminish Landlord's recovery.

13. SUBSTANTIAL TAKING

In the event the whole of the Facility shall be taken or condemned in any eminent domain, condemnation, compulsory acquisition, expropriation, or like proceeding (including transfers in lieu thereof) by any competent authority for any public or quasi-public use or purpose, or in the event such a portion thereof shall be taken or condemned (or transferred in lieu thereof) as to make it imprudent or unreasonable to use the remaining portion of the Facility for the permitted uses of the type and class immediately preceding such taking or condemnation (or transfer in lieu thereof) then, in any of such events, this Lease shall terminate as of the date of the taking and the parties hereto shall have no further liability under the lease .

14. DEFAULT: EVENTS OF DEFAULT

14.1 The occurrence of any one or more of the following events ("Event of Default") shall constitute a breach of this Lease by Tenant:

14.1.1 Tenant fails to pay any Lease Amount as and when such Lease Amount becomes due, and such failure continues for five (5) calendar days after written notice thereof, provided that if Tenant is more than five (5) calendar days late in the payment of Lease Amount once in any twelve (12) consecutive month period, only one notice need be given by Landlord during such 12 month period and any subsequent failure to pay Lease Amount on or before its due date within such twelve (12) consecutive months shall constitute an Event of Default after five (5) calendar days without notice; or

14.1.2 An Event of Default occurs under paragraph 21, subletting/assignment; or

14.1.3 Tenant fails to perform or breaches any agreement or covenant of this Lease not separately covered in this paragraph 14 to be performed or observed by Tenant as and when performance or observance is due and such failure or breach continues for more than thirty (30) calendar days after Landlord's giving written notice thereof to Tenant; provided, however, that if, by the nature of such agreement or covenant, such failure or breach cannot reasonably be cured within such period of thirty (30) calendar days, an Event of Default shall not exist as long as Tenant commences with due diligence and dispatch the curing of such failure or breach within such period of thirty (30) calendar days and, having so commenced, thereafter prosecutes with diligence and dispatch and completes the curing of such failure or breach within a reasonable time not to exceed one hundred eighty (180) calendar days, provided, further, that in the event that the cure of such failure or breach cannot be cured within such one hundred eighty (180) day period and the cure of such failure or breach does not involve a cost in excess of $100,000, then the Event of Default shall be waived so long as Tenant is diligently continuing to prosecute the curing of such failure or breach; or

14.1.4 Tenant (i) files, or consents by answer or otherwise to the filing against Tenant of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (ii) makes an assignment for the benefit of Tenant's creditors, (iii) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Tenant or of any substantial part of Tenant's property, or (iv) takes corporate action for the purpose of any of the foregoing; or

14.1.5 A court or government authority enters an order, and such order is not stayed or vacated within sixty (60) calendar days, (i) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Tenant or with respect to any substantial part of Tenant's property, or (ii) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy, insolvency or other debtors' relief law of any jurisdiction, or (iii) ordering the dissolution, winding-up or liquidation of Tenant; or

14.1.6 Any event occurs which is specifically stated to be an Event of Default under this Lease; or

14.1.7 An event of default shall occur under any loan agreement, indenture or other agreement related to Debt of Tenant securing or relating to an amount in excess of $75,000 and which event of default causes the lenders (or other parties) under such loan agreement, indenture or other agreement to exercise the right to accelerate the Debt or other obligations secured thereby. Tenant shall promptly give notice of any such default or acceleration to Landlord; or

14.1.8 Any representation or warranty of Tenant contained in this Lease shall have been materially and adversely false as of the date it was made and not corrected within thirty (30) calendar days after Landlord gives written notice thereof to Tenant; or

14.1.9 This Lease or any estate of Tenant hereunder is levied upon under any attachment or execution and such attachment or execution is not stayed or vacated within thirty (30) calendar days; or

14.1.10 Tenant shall abandon the Facility for thirty (30) calendar days; or

14.1.11 Any judgment or order for the payment of money in excess of $50,000 shall be rendered against Tenant and not paid or otherwise covered under any policy of insurance within thirty (30) calendar days after all rights to appeal shall have expired; or

14.1.12 Tenant fails to continuously maintain all insurance required to be maintained by Tenant in accordance with the terms and conditions of this Lease.

14.2 Landlord may treat the occurrence of any one or more of the foregoing Events of Default as a breach of this Lease. For so long as such Event of Default continues, Landlord, at its option and with or without notice or demand of any kind to Tenant or any other Person, may have any one or more of the remedies provided in this Lease, in addition to all other remedies and rights provided at law or in equity.

15. REMEDIES

15.1 Upon the occurrence of and during the continuance of an Event of Default, Landlord shall, in addition to, and not in derogation of any remedies for any preceding breach, with or without notice of demand (except as otherwise expressly provided herein) and without limiting Landlord in the exercise of any right or remedy which Landlord may have by reason of such Event of Default have all of the following remedies available:

15.1.1 Landlord shall have the right to terminate Tenant’s right to possession of the Facility and repossess the Facility by any lawful means without terminating this Lease. Landlord shall use good faith and reasonably prompt efforts, to the extent required by applicable law of the state where the Facility are located, to re-let the Facility for the account of Tenant for such rent and upon such terms as may be satisfactory to Landlord. For the purposes of that re-letting, Landlord may repair, and perform normal remodeling and alterations to the Facility. If Landlord fails to re-let the Facility, Tenant shall pay to Landlord the Rent in this Lease for the balance of the Term as those amounts become due in accordance with the terms of this Lease. If Landlord re-lets the Facility, but fails to realize a sufficient sum from the re-letting to pay the full amount of Rent in this Lease for the balance of the Term as those amounts become due in accordance with the terms of this Lease, after paying all of the costs and expenses of all normal and customary decoration, repairs, remodeling, alterations and additions and the expenses of the re-letting and of the collection of the rent accruing from the re-letting, Tenant shall pay to Landlord the amount of any deficiency upon Landlord's demand from time to time made.

15.1.2 Landlord shall have the right at any time to give a written termination notice to Tenant and, on the date specified in such notice, Tenant's right to possession shall terminate and this Lease shall terminate. Upon such termination, Landlord shall have the right to recover from Tenant:

(a) The "worth at the time of determination" of all unpaid Rent which had been earned at the time of termination;

(b) The "worth at the time of determination" of the amount by which the unpaid Rent for the balance of the then Term of this Lease after the time of termination, excluding the potential Lease Term under any unexercised options for any Extension Terms, exceeds the greater of (A) the net rental proceeds actually received or to be received from any actual subsequent replacement tenant(s) for any Site or (B) the amount of such rental loss that Tenant proves could be reasonably avoided; and

(c) All other amounts necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform all of Tenant's obligations under this Lease or which in the ordinary course of things would be likely to result therefrom. The "worth at the time of determination" of the amounts referred to in clause (i) above shall be computed by allowing interest at the Overdue Rate. The "worth at the time of determination" of the amount referred to in clause (ii) above shall be computed by discounting such amount to present value by using the discount rate equal to the sum of two percent (2%) plus the then Treasury Rate. For the purpose of determining unpaid Rent under clause (i) and (ii) above, the Rent reserved in this Lease shall be deemed to be the total Rent payable by Tenant under paragraph 5 hereof.

15.1.3 Even if Landlord terminates Tenant's possession under this Lease, this Lease shall continue in effect and Landlord shall have the right to enforce all its rights and remedies under this Lease, including the right to recover all Rent as it becomes due under this Lease up to the time of the termination. Acts of maintenance or preservation or efforts to relet the Facility or the appointment of a receiver upon initiative of Landlord to protect Landlord's interest under this Lease shall not constitute a termination of the Lease unless and until written notice of such termination is given by Landlord to Tenant. Landlord shall have unrestricted rights of entry for such purposes following an Event of Default. Landlord shall be entitled to an administrative fee of five percent (5%) of all amounts expended under this paragraph 15.

15.1.4 All agreements and covenants to be performed or observed by Tenant under this Lease shall be at Tenant's sole cost and expense and without any abatement of Lease Amount or Additional Rent. If Tenant fails to pay any sum of money to be paid by Tenant or to perform any other act to be performed by Tenant under this Lease as and when due or required to be performed, Landlord shall have the right, but shall not be obligated, and without waiving or releasing Tenant from any obligations of Tenant, to make any such payment or to perform any such other act on behalf of Tenant in accordance with this Lease. All sums so paid by Landlord and all necessary incidental costs shall be deemed Additional Rent hereunder and shall be payable by Tenant to Landlord on demand, together with interest on all such sums from the date of expenditure by Landlord to the date of repayment by Tenant at the Overdue Rate. Landlord shall have, in addition to all other rights and remedies of Landlord, the same rights and remedies in the event of the nonpayment of such sums (plus interest at the Overdue Rate) by Tenant as in the case of default by Tenant in the payment of Rent.

15.1.5 If Tenant abandons or surrenders the Facility, or any portion thereof, or an Event of Default by Tenant pursuant to paragraph 14.1.11 above shall have occurred, or Tenant is dispossessed by process of law or otherwise, any movable furniture, equipment, trade fixtures or personal property belonging to Tenant and left in the Facility, or any portion thereof, shall be deemed to be abandoned, at the option of Landlord, and Landlord shall have the right to sell or otherwise dispose of such personal property in any commercially reasonable manner. If an Event of Default by Tenant pursuant to paragraph 14.1.11 above shall have occurred Landlord shall have the right, but not the obligation, to sublet the Facility, or any portion thereof, on reasonable terms for the account of Tenant, and Tenant shall be liable for all costs of such subletting, including the cost of preparing the Facility, or any portion thereof, for subtenants and leasing commissions paid to brokers.

15.1.6 Landlord shall be entitled to collect from Tenant Landlord's costs and expenses, including attorneys' fees and expenses, in connection with the enforcement of its remedies and/or the defense of any matter, including during an appeal and whether suit is actually filed or not.

15.1.7 Upon the occurrence of and during the continuance of an Event of Default, Landlord shall have the right to commence an action in any court of competent jurisdiction located in the State of New Mexico for the purpose of adjudicating the Event of Default and any or all of Landlord's rights and remedies under the Lease. Tenant hereby consents to the exercise of personal jurisdiction over Tenant in any such court in New Mexico and to New Mexico as the choice of venue.

16. LANDLORD'S RIGHT OF ENTRY

Landlord, and its respective designees, shall have the right to enter the Facility, and any part of the Facility, at any time during normal business hours and any part of the Facility on Two (2) Business Days' advance notice and to inspect the same, post notices of non-responsibility, monitor construction, perform appraisals, perform environmental site assessments and engineering studies, and during the last twenty four (24) months of the Term or at any time after and during the continuance of an Event of Default, exhibit the Facility to prospective purchasers, and examine Tenant's books and records pertaining to the Facility, insurance policies, certificates of occupancy and other documents, records and permits in Tenant's possession with respect to the Facility; provided, however, that such entry shall (i) not unreasonably interfere with Tenant's conduct of its business operations and (ii) be subject to the escort of Tenant.

17. NOTICES

Notices, statements, demands, or other communications required or permitted to be given, rendered or made by either party to the other pursuant to this Lease or pursuant to any applicable law or requirement of public authority, shall be in writing (whether or not so stated elsewhere in this Lease) and shall be deemed to have been properly given, rendered or made, when received by personal delivery or overnight delivery or overnight courier delivery (or, if such delivery is refused, upon the date that delivery would have occurred but for such refusal) or facsimile transmission (with electronic confirmation therefor) with a confirmation copy of the entire original transmittal sent by overnight delivery or by overnight courier delivery addressed to the other parties as follows:

To Landlord: City Of Alamogordo
City Manager's Office
1376 E 9th St
Alamogordo, NM 88310

To Tenant: Downtown Venture Corporation
3751 Mesa Village Dr
Alamogordo, NM 88310

Any party listed in this paragraph 17 may, by notices as aforesaid, designate a different address for addresses for notice, statements, demands or other communications intended for it.

18. MECHANICS' LIENS

18.1 Except for liens created by or through the act of Landlord, Tenant shall not suffer or permit any mechanic's lien or other lien to be filed or recorded against the Facility, equipment or materials supplied or claimed to have been supplied to the Facility at the request of Tenant, or anyone holding the Facility, or any portion thereof, through or under Tenant. If any such mechanic's lien or other lien shall at any time be filed or recorded against the Facility, or any portion thereof, Tenant shall cause the same to be discharged of record or bonded over within sixty (60) calendar days after the date that Tenant receives notice of filing or recording of the same. However, in the event Tenant desires to contest the validity of any lien it shall (i) on or before thirty (30) calendar days prior to the due date thereof (but in no event later than sixty (60) calendar days after the filing or recording thereof), notify Landlord, in writing, that Tenant intends to so contest same; (ii) on or before the due date thereof, if such lien involves an amount in excess of $10,000, bond over or deposit with Landlord security (in form and content reasonably satisfactory to Landlord) for the payment of the full amount of such lien, and from time to time deposit additional security so that, at all times, adequate security will be available for the payment or bonding over of the full amount of the lien together with all interest, penalties, costs and other charges in respect thereof.

If Tenant complies with the foregoing, and Tenant continues, in good faith, to contest the validity of such lien by appropriate legal proceedings which shall operate to prevent the collection thereof and the sale or forfeiture of the Facility, or any part thereof, to satisfy the same, Tenant shall be under no obligation to pay such lien until such time as the same has been decreed, by court order, to be a valid lien on the Facility. If an Event of Default exists, Landlord may apply any deposit then held by Landlord with respect to any such lien to discharge such lien. If no Event of Default exists, then any deposit then held by Landlord will be so applied upon Tenant's written direction. Any surplus deposit retained by Landlord, after the payment of the lien shall be repaid to Tenant. Provided that nonpayment of such lien does not cause Landlord to be in violation of any of its contractual undertakings, Landlord agrees not to pay such lien during the period of Tenant's contest. However, if Landlord pays for the discharge of a lien or any part thereof from funds of Landlord (and not amounts deposited with Landlord by Tenant for such event), any amount paid by Landlord, together with all costs, fees and expenses in connection therewith (including attorney's fees of Landlord plus an administration fee equal to 5% of such costs and expenses), shall be repaid by Tenant to Landlord on demand by Landlord, together with interest thereon at the Overdue Rate. Tenant shall indemnify and defend Landlord against and save Landlord and the Facility, and any portion thereof, harmless from and against all losses, costs, damages, expenses, liabilities, suits, penalties, claims, demands and obligations, including attorney's fees, resulting from the assertion, filing, foreclosure or other legal proceedings with respect to any such mechanic's lien or other lien or the attempt by Tenant to discharge same as above provided.

18.2 All materialmen, contractors, artisans, engineers, mechanics, laborers and any other Person now or hereafter furnishing any labor, services, materials, supplies or equipment to Tenant with respect to the Facility, or any portion thereof, are hereby charged with notice that they must look exclusively to Tenant to obtain payment for the same. Notice is hereby given that Landlord shall not be liable for any labor, services, materials, supplies, skill, machinery, fixtures or equipment furnished or to be furnished to Tenant upon credit, and that no mechanic's lien or other lien for any such labor, services, materials, supplies, machinery, fixtures or equipment shall attach to or affect the estate or interest of Landlord in and to the Facility, or any portion thereof.

18.3 Tenant shall not create, permit or suffer, and, subject to the provisions of paragraph 21(a) hereof, shall promptly discharge and satisfy of record, any other lien, encumbrance, charge, security interest, or other right or interest which, as a result of Tenant's action or inaction contrary to the provisions hereof, shall be or become a lien, encumbrance, charge or security interest upon the Facility, or any portion thereof, or the income therefrom, other than Permitted Encumbrances. However, in the event Tenant desires to contest the validity of any other lien, encumbrance, charge, security interest, or other right or interest it shall (i) on or before sixty (60) calendar days prior to the due date thereof (but in no event later than sixty (60) calendar days after Tenant receives notice of the filing or recording thereof), notify Landlord, in writing, that Tenant intends to so contest same; (ii) on or before the due date thereof, if such lien, encumbrance, charge, security interest, or other right or interest involves an amount in excess of $10,000, bond over or deposit with Landlord security (in form and content reasonably satisfactory to Landlord) for the payment of the full amount of such lien, encumbrance, charge, security interest, or other right or interest, and from time to time deposit additional security so that, at all times, adequate security will be available for the payment or bonding over of the full amount of such lien, encumbrance, charge, security interest, or other right or interest together with all interest, penalties, costs and other charges in respect thereof.

19. END OF TERM

19.1 Upon the expiration or earlier termination of this Lease in its entirety, Tenant shall surrender the Facility to Landlord in good operating condition and repair suitable for the use of the Facility for the Permitted Use, except as repaired, rebuilt or altered as required or permitted by this Lease (or, in the case of termination pursuant to paragraph 13, as condemned). Upon expiration of this Lease in its entirety, Tenant shall remove all alterations not consented to by Landlord and all of Tenant's Personal Property from the Facility and the Bowling Equipment, unless Landlord has previously acquired the Bowling Equipment, in which event all Bowling Equipment shall remain with the Facility. Tenant shall repair at its sole cost any damage caused by such removal. Any Personal Property not so removed, including Tenant's Personal Property shall become the property of Landlord at no cost, expense or liability to either party. Twelve (12) months prior to the expiration or earlier termination of the Lease in its entirety and for each Site, Landlord and Tenant shall jointly prepare an inspection report identifying those matters requiring repair, restoration or replacement prior to surrender of the Facility. Without limitation of Landlord’s regular inspection rights under this Lease, if the Lease is not extended for any Extension Term then 24 months prior to the expiration or termination of the Primary Term and if the Lease is extended for any Extended Term then eighteen (18) months prior to the expiration or termination of the Term, Landlord and Tenant shall re-evaluate the condition of the Facility and update the inspection report. Tenant covenants not to defer any replacement work during the final twenty (24) months of the Term.

19.2 If the Facility is not surrendered as above set forth, Tenant shall indemnify, defend and hold Landlord harmless from and against loss or liability resulting from the delay by Tenant in so surrendering Facility, including any claim made by any succeeding occupant founded on such delay. Tenant’s obligation to observe or perform this covenant shall survive the expiration or other termination of this Lease for six (6) years. In addition to the foregoing, and in addition to the Additional Rent, Tenant shall pay in advance and on a monthly basis to Landlord a sum equal to 1/12 of one hundred fifty percent (150%) of the Lease Amount payable during the preceding year during each month or portion thereof for which Tenant shall remain in possession of the Facility or any part thereof after the termination of the Term or of Tenant’s rights of possession, whether by lapse of time or otherwise. The provisions of this paragraph 19.2 shall not be deemed to limit or constitute a waiver of any other rights or remedies of Landlord provided herein, at law or at equity.

19.3 All property of Tenant not removed on or before the last day of the Term of this Lease shall be deemed abandoned. Tenant hereby agrees that Landlord may remove all property of Tenant, including Tenant’s Personal Property, from the Facility upon termination of this Lease and to cause its transportation and storage, all at the sole cost and risk of Tenant and Landlord shall not be liable for damage, theft, misappropriation or loss thereof and Landlord shall not be liable in any manner in respect thereto and Landlord shall be entitled to dispose of such property, as Landlord deems fit, without the requirement of an accounting. Tenant shall pay all costs and expenses of such removal, transportation and storage. Tenant shall reimburse Landlord upon demand for any expenses reasonably and actually incurred by Landlord with respect to removal or storage of abandoned property and with respect to restoring said Facility in accordance with the terms and conditions of this Lease.

19.4 Except for surrender upon the expiration or earlier termination of the Term hereof as expressly provided herein, no surrender to Landlord of this Lease or of the Facility shall be valid or effective unless agreed to and accepted in writing by Landlord.

20. MEMORANDUM OF LEASE

The parties agree to simultaneously with the execution of this Lease promptly execute a Memorandum of Lease in recordable form and either of the parties shall have the right, without notice to the other party, to record such Memorandum of Lease. If a Memorandum of Lease is recorded, Landlord and Tenant shall execute such customary amendments and terminations related thereto as may be required or requested by Landlord or Tenant.

21. SUBLETTING/ASSIGNMENT

21.1 Except as set forth in paragraph 21.2 below, Tenant shall not, directly or indirectly, without the prior written consent of Landlord, assign this Lease or any interest herein, or any interest in Tenant, or sublease the Facility or any part thereof, or permit the use or occupancy of the Facility or any portion thereof, by any Person other than Tenant, such consent not to be unreasonably withheld, conditioned or delayed. This Lease shall not, nor shall any interest herein, be assignable as to the interest of Tenant involuntarily or by operation of law without the prior written consent of Landlord, such consent not to be unreasonably withheld, conditioned or delayed. For purposes of this paragraph, the occurrence of a Corporate Control Event, shall be deemed to be an assignment of this Lease which is prohibited by the preceding paragraph unless Tenant obtains Landlord's prior written consent as set forth above. Any of the foregoing prohibited acts without such prior written consent of Landlord, if required, shall be void and shall, at the option of Landlord, constitute an immediate Event of Default that entitles Landlord to all remedies available at law and pursuant to this Lease. Tenant agrees that the instrument by which any assignment or sublease to which Landlord consent is accomplished shall expressly provide that the assignee or subtenant will perform all of the covenants to be performed by Tenant under this Lease (in the case of a partial assignment or a sublease, only insofar as such covenants relate to the portion of the Facility subject to such partial assignment or a sublease) as and when performance is due after the effective date of the assignment or sublease and that Landlord will have the right to enforce such covenants directly against such assignee or subtenant. Any purported assignment or sublease without an instrument containing the foregoing provisions shall be void. Unless and until expressly released by Landlord, Tenant shall in all cases remain primarily liable (and not liable merely as a guarantor or surety) for the performance by any assignee or subtenant of all such covenants, as if no assignment or sublease had been made.

21.2 If Landlord consents in writing, Tenant may complete the intended assignment or sublease with its terms and conditions approved in writing by the Landlord.

21.3 Unless and until expressly released by Landlord (it being agreed that Landlord shall not be required to give such release), no assignment or sublease whatsoever shall release Tenant from Tenant's obligations and liabilities under this Lease (which shall continue as the obligations of a principal and not of a guarantor or surety) or alter the primary liability of Tenant to pay all Rent and to perform all obligations to be paid and performed by Tenant. The acceptance of Rent by Landlord from any other Person shall not be deemed to be a waiver by Landlord of any provision of this Lease. Consent to one assignment or sublease shall not be deemed consent to any subsequent assignment or sublease. If any assignee, subtenant or successor of Tenant defaults in the performance of any obligation to be performed by Tenant under this Lease, Landlord may proceed directly against Tenant without the necessity of exhausting remedies against such assignee, subtenant or successor. Landlord may consent to subsequent assignments or subleases or amendments or modifications to this Lease with assignees, subtenants or successor of Tenant, without notifying Tenant or any successor of Tenant and without obtaining any consent thereto from Tenant or any successor of Tenant, and such action shall not release Tenant from liability under this Lease.

21.4 Tenant shall have no right to mortgage, grant a lien upon, encumber or otherwise finance Tenant's interest under this Lease or record a lien upon Tenant's interest in the Facility under this Lease, and Tenant shall not permit, cause or suffer to be recorded in the real estate records of the county in which the Facility are located any mortgage, deed to secure debt, deed of trust, assignment, UCC financing statement or any other document granting, perfecting, or recording a lien upon Tenant's interest in this Lease or interest in the Facility under this Lease.

21.5 If Tenant shall assign this Lease or sublet the Facility or any portion thereof to any Person other than Landlord, or request the consent of Landlord to any assignment, subletting, or other action which requires Landlord's consent hereunder, Tenant shall pay (i) Landlord a processing fee in each instance equal to $200 and (ii) Landlord's attorneys' fees and costs incurred in connection therewith.

22. DISPUTE RESOLUTION.

In order to provide a mechanism for resolving disputes regarding the foregoing provisions of this Lease, the Parties agree as follows:

22.1 Negotiations. Within thirty (30) calendar days after either Party's receipt of a written notice of a dispute from the other Party, the Dispute shall be submitted for resolution through good faith negotiations between representatives of the Parties with authority to resolve the matter. Such persons shall negotiate in good faith to resolve the matter within sixty (60) calendar days (unless the Parties mutually agree to extend the negotiations). The negotiations shall be considered to have failed if, after at least three (3) joint meetings, either Party determines that no reasonable resolution can be reached and provides written notice to the other representatives of a request for mediation.

22.2 Mediation. Any Dispute which cannot be resolved by the negotiation provisions of paragraph 22.1 shall be subject to the following mediation process:

22.2.1 The mediation shall be conducted by one mediator who shall be selected jointly by the Parties within ten (10) calendar days after notice of the request for mediation. If the Parties cannot agree on a mediator, the third shall be appointed by a court of competent jurisdiction upon motion of either Party. Each Party shall share equally in the cost of the jointly appointed or court appointed mediator.

22.2.2 The mediation shall be non-binding and shall commence within five (5) calendar days after the selection of the mediator.

22.2.3 The mediation shall continue until the earlier of (i) thirty (30) calendar days after selection of the mediator, or (ii) the date the Dispute is settled or the mediator declares that the Parties are at an impasse and the Dispute cannot be resolved.

23. MISCELLANEOUS PROVISIONS

23.1 This Lease and all of the covenants and provisions hereof shall inure to the benefit of, and be binding upon, the parties hereto and the heirs, personal representatives, successors and permitted assigns of the parties.

23.2 The titles and headings appearing in this Lease are for reference only and shall not be considered a part of this Lease or in any way to modify, amend or affect the provisions thereof.

23.3 This Lease contains the complete agreement of the parties with reference to the leasing of the Facility, and may not be amended except by an instrument in writing signed by Landlord and Tenant.

23.4 Any provision or provisions of this Lease which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision hereof, and the remaining provisions hereof shall nevertheless remain in full force and effect.

23.5 This Lease may be executed in one or more counterparts, and may be signed by each party on a separate counterpart, each of which, taken together, shall be an original, and all of which shall constitute one and same instrument.

23.6 The term “Landlord” as used in this Lease shall mean only the owner or owners at the time in question of the Facility and in the event of any transfer of such title or interest, Landlord named in this Lease (and in case of any subsequent transfers, then the grantor) shall be relieved from and after the date of such transfer of all liability as respects Landlord’s obligations thereafter to be performed hereunder, provided that any funds in the hands of Landlord or the then grantor at the time of such transfer, in which Tenant has an interest, shall be delivered to the grantee. The obligations contained in this Lease to be performed by Landlord shall, subject as aforesaid, be binding on Landlord’s successors and assigns, only during their respective periods of ownership.

23.7 This Lease shall be governed by and construed and enforced in accordance with and subject to the laws of the State of New Mexico

23.8 Any claim based on or in respect of any liability of Landlord under this Lease shall be enforced only against the Facility (and the proceeds therefrom) and not against any other assets, properties or funds of (1) Landlord or any director, officer, member, shareholder, general partner, limited partner, or direct or indirect member, partner, employee or agent of Landlord or any of its members (or any legal representative, heir, estate, successor or assign of any thereof), and (2) any predecessor or successor partnership, corporation or limited liability company (or other entity) of Landlord or any of its members, either directly or through Landlord or its predecessor or successor partnership, corporation of limited liability company of Landlord or its general partners.

23.9 Without the written approval of Landlord and Tenant, no Person other than Landlord, Tenant and their respective successors and assigns shall have any rights under this Lease.

23.10 There shall be no merger of the leasehold estate created hereby by reason of the fact that the same Person may own directly or indirectly, (1) the leasehold estate created hereby or any interest in this Lease or such leasehold estate and (2) the fee estate in the Facility. Notwithstanding any such combined ownership, this Lease shall continue in full force and effect until terminated by an instrument executed by both Landlord and Tenant.

23.11 Whenever in this Lease either party is required to take an action within a particular time period, delays caused by acts of God, war, major casualty, strike, labor shortage or other cause beyond the reasonable control of such party shall not be counted in determining the time in which such performance must be completed (except in the case of the obligation to pay money) so long as such party shall, promptly after becoming aware of the commencement of such delay, shall give the other party notice thereof and estimating the duration thereof.

23.12 If at any time a dispute shall arise as to any amount to be paid by one party to the other hereunder, the obligor may make payment “under protest”, and such payment shall not be deemed a voluntary payment, and the right of the obligor to contest its liability for such payment shall survive such payment without prejudice to the obligor’s position.

23.13 Landlord and Tenant each represent that they have dealt with no broker, finder or other Person who could legally charge a commission in connection with Landlord’s acquisition of the Land or with the Lease or Tenant’s Other Lease.

23.14 The parties hereto specifically acknowledge and agree that, notwithstanding any other provision contained in this Lease, it is the intent of the parties that their relationship hereunder is and shall at all times be that of landlord and tenant, and not that of partners, joint venturers, lender and borrower, or any other relationship other than that of a landlord and tenant.

23.15 The parties hereto specifically acknowledge and agree that time is of the essence with regard to all obligations under this Lease.

23.16 TO THE EXTENT PERMITTED BY APPLICABLE LAW, LANDLORD AND TENANT HEREBY WAIVE TRIAL BY JURY IN ANY ACTION OR PROCEEDING, AND WITH RESPECT TO ANY CLAIM ASSERTED IN ANY SUCH ACTION OR PROCEEDING, BROUGHT BY EITHER OF THE PARTIES AGAINST THE OTHER ON ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE, THE RELATIONSHIP OF LANDLORD AND TENANT, TENANT’S USE OR OCCUPANCY OF THE FACILITY, ANY CLAIM OF INJURY OR DAMAGE, OR ANY EMERGENCY OR OTHER STATUTORY REMEDY WITH RESPECT THERETO.

IN WITNESS WHEREOF, the parties have hereunto set their hands under seal on the day and year first above written.

TENANT LANDLORD

	City of Alamogordo
By: ________________________________ Title: Jay Chun CEO of Downtown Venture Corp Date: __________, 2017	By ____________________________________ Richard Boss, Mayor Date: __________, 2017 ATTEST: ________________________ Rachel Hughs, City Clerk APPROVED AS TO FORM: _________________________ Petria Schreiber, City Attorney

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

The foregoing instrument was acknowledged before me this ________ day of _______________, 201__, by Richard Boss, the Mayor of the City of Alamogordo, a New Mexico municipal corporation, on behalf of the corporation.

My Commission Expires:_____________ ________________________________
NOTARY PUBLIC

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

The foregoing instrument was acknowledged before me this ________ day of _______________, 201__, by ____on behalf of the Tenant.

My Commission Expires:_____________ ________________________________
NOTARY PUBLIC

OTERO COUNTY ASSESSOR'S OFFICE

Property Profile

Active

Account:	R023586	Tax Year:	2017	Account Type:	G
Mill Levy	32.385000	Version:	01/17/2017	Area ID:	01_NR
Estimated Tax:	$0.00	Parcel:	01N4054092181338	Previous ID:	01-15201

Owners Name and Mailing Address

ALAMOGORDO CITY OF
1376 E 9TH ST
ALAMOGORDO, NM 88310

Property Location

Situs: 3751 MESA VILLAGE DR
City, State, Zip: ALAMOGORDO, NM 88310
Neighborhood: C48

Legal Description

Subd: MESA VILLAGE UNIT 1 REPLAT A Lot: 4A

Assessment Information

2017 Tax Year	Full Value	Assessed Value	Gross Sq Ft	Acres	Taxable
Land:	395,253	131,751		3.416	
Improvements:					
Exemptions:		0			
Total:	395,253	131,751		3.416	131,751

2016 Tax Year	Full Value	Assessed Value	Gross Sq Ft	Acres	Taxable
Land:	395,253	131,751		3.416	
Improvements:					
Exemptions:					
Total:	395,253	131,751			131,751

Public Remarks

Photograph

Building Sketch

EXHIBIT
tabbies
A

Book - Page	Reception #	Grantor	Grantee	Date
	201409301	HERITAGE GROUP LLC	CITY OF ALAMOGORDO	12/23/2014
B: 0128 P: 0161	01280161			
B: 0169 P: 0402	01690402			
B: 0305 P: 0388	03050388			
B: 0309 P: 0553	03090553			
B: 0990 P: 0323	09900323			
B: 1012 P: 0634	10120634			
B: 1089 P: 0645	10890645			
B: 0065 P: 0003	00650003			
B: 0065 P: 0080	00650080			
B: 2007 P: 05103	200705103			

WARRANTY DEED

The Hertiage Group LLC

, for consideration paid, grants to

City of Alamogordo

whose address is ,

the following described real estate in County, New Mexico:

Tract A, Mesa Village, Unit 1, Replat A, ALAMOGORDO, OTERO COUNTY, NEW MEXICO.

Subject to patent reservations, restrictions, and easements of record and taxes for the current year and subsequent years.

with warranty covenants.

WITNESS my hand and seal this 5 day of October, 2016

Randal L Rabon

Representative Capacity:

State of New Mexico)
) SS.
County of Otero)

This instrument was acknowledged before me on the 5th day of October, 2016, by

.

My commission expires: 7.28.18

Notary Public

(Seal)

Expires 7.28.18

AGENDA REPORT
CITY OF ALAMOGORDO
CITY COMMISSION

Meeting Date: 12/19/2017 **Report Date:** 12/13/2017 **Report No:** 10.

Submitted By: Mark Threadgill

Subject: Consider and act upon final publication of Ordinance No. 1544 amending and adding sections of Chapter 28 of the Alamogordo Code of Ordinances regarding water and sewer services. *(Mark Threadgill, Customer Service Manager)* **(Roll Call Vote Required)**

Fiscal Impact:
Amount Budgeted:
Fund:

Additional Fiscal Impact:

Recommendation: Staff recommends City Commission approves Ordinance No. 1544 for final publication.

Background:

Ordinance No. 1544 – proposed ordinance includes:

1. Increases subdivision lot exemption to 5 years with possibility of 3 year extension.
2. Adds language to include original developer, successor or assignee.
3. Adds language that allows lots not in a subdivision and never developed to be removed from paying base rates.
4. Adds language that utility accounts transferred to owner by the City will only be charged the water base rate unless there is recorded water usage.
5. Creates a modified base rate of $10.00 per month for lot(s)/parcel(s) on which no structure currently exists.
6. Eliminates residential property owner deposit.
7. Eliminates commercial property owner deposit.
8. Provides a mechanism for rental property owners to eliminate the $25.00 transfer fee.
9. Adds $25.00 per month hydrant meter rental fee.

Estimated fiscal impact of these changes: A reduction of approximately $85,000-$100,000 in FY18 revenues and a reduction of projected FY19 revenues of $170,000.

New Material ~~Deleted Material~~

ORDINANCE NO. 1544

AMENDING SECTIONS 28-03-005, 28-03-085, AND 28-03-100 AND ADDING SECTION 28-03-082 OF THE ALAMOGORDO CODE OF ORDINANCES REGARDING WATER AND SEWER SERVICE

WHEREAS, the City of Alamogordo owns and operates the municipal water and wastewater utility systems; and

WHEREAS, the City Commission of the City of Alamogordo is charged with adopting ordinances, regulations and fees to insure the continuing operation, maintenance, repair and expansion of the municipal utility systems; and

WHEREAS, the City Commission of the City of Alamogordo finds that certain Sections of Chapter 28 of the Alamogordo Code of Ordinances should be amended to address concerns of municipal utility customers; now

BE IT ORDAINED by the City Commission of the City of Alamogordo, New Mexico that Sections 28-03-005, 28-03-100, and 28-03-085 and adding Section 28-03-082 of Chapter 28 of the Code of Ordinances be amended as follows:

SECTION ONE:

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

(a) Every property within the municipal boundaries shall be deemed to have water and sewer utility service available if service lines exist from the city water and sewer mains to the property and such properties shall be subject to customer charges and capital improvement charges as set by city commission for the respective services.

(1) New lots within subdivisions (as that term is defined in chapter 22 of the city Code of Ordinances) which have never been sold or otherwise transferred and which remain the property of the original developer shall be exempt from the customer charge and capital improvement charges for a period of ~~three (3)~~ five (5) years from the date of acceptance of the subdivision by the city.

(2) Vacant subdivision lots owned by the original developer as of the date of the passage of this ordinance (28-03-005) shall be exempt from customer charges and capital improvement charges for a period of ~~two (2)~~ five (5) years.

(3)An application for water meter submitted by any person(s) for lots exempted through this article shall void any and all exemptions and the property owner shall immediately be responsible for all customer charges, capital improvement charges and consumption charges approved by the city commission.

(4) The original developer, successor, or assignee of subdivisions covered by this ordinance may petition the City Commission for an extension of the exemption period within three (3) months of the termination of an exemption. Any additional time approved by the City Commission shall not exceed three (3) years. No additional

exemption shall be granted after the expiration of the original or any extended time period(s).

(b) Utility accounts transferred to the property owner by the City, except those accounts subject to Sec. 28-03-082, shall only be charged the monthly base rate for water, adjusted for meter size.

(1) All services except for water shall be inactivated.

(2) Water shall be shut-off at the curb.

(3) Any recorded usage of water shall result in the activation of all City services and charges until the account is again transferred.

(c) Lot(s)/parcel(s) of land served by the municipal utility and not part of a subdivision as defined in chapter 22 of the city Code of Ordinances on which no structure of any sort exists, or has existed, shall be exempt from the customer charge and capital improvement charges provided the property owner pays all city costs associated with removal of the meter, riser, meter can, etc., and capping of the service line.

(1) It is incumbent on the property owner to provide proof to the City that the lot/parcel is eligible for the exemption under this section.

(2) Property owner applying for exemption under this section shall provide a written declaration that there are no plans to develop the property.

SECTION TWO:

28-03-100. - Deposit.

(a) The following deposits shall be paid by the applicant for water and sewer service at the time of application for service, for the purpose of a guarantee of payment of accounts and damages to service connections or meters:

~~(1) Residential accounts billed to owner ..... $ 70.00~~

(2) Residential accounts billed to renters 140.00

a. Residential accounts billed to renters after receipt of owner's notarized release form 210.00

(3) Commercial/business accounts billed to renters deposit 150.00

(4) Hydrant meter deposit 815.00

~~(5) Accounts outside city billed to owner ..... 70.00~~

(6) Accounts outside city billed to renters 140.00

a. Accounts outside city billed to renters after receipt of owner's notarized release form 210.00

~~(b) If the homeowner has established satisfactory credit under rules and regulations established by the city treasurer, the deposit shall be applied to the homeowner's account.~~ The renter's deposit will be held until the account is ~~finaled~~ terminated ~~out~~.

(c) If the ~~customer~~ homeowner has established satisfactory credit under the rules and regulations established by the Finance Director, the deposit plus final bill charges will be transferred to a new location at the customer's request.

<u>SECTION THREE: (Adding new Section 28-03-082)</u>

28-03-082. – Modified Base Rate

Effective the first billing cycle after February 1, 2018, lot(s)/parcel(s) of land served by the municipal utility and not part of a subdivision as defined in chapter 22 of the city Code of Ordinances and on which no structure exists shall be charged a modified monthly base rate of ten dollars ($10.00).

a. It is the responsibility of the property owner to identify, in writing, to the City of Alamogordo, Customer Service Division lot(s)/parcel(s) that may qualify for the modified base rate in this section. The modified base rate shall become effective upon written notification from the property owner and in no instance shall the effective date be prior to the date of notification.
b. If water is used at lot(s)/parcel(s) covered by this section for any purpose the property owner shall be charged the monthly base rate for water and/or sewer as set in section 28-03-080, consumption charges, and all other applicable charges.

<u>SECTION FOUR:</u>

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

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

(1) Late fee per customer if payment for water, sewer or residential garbage collection fees, or any combined billing is more than ten (10) calendar days past due $10.00

(2) Service calls (Monday—Friday, 8:00 a.m.—4:30 p.m.) 32.00

Service calls during all other times 64.00

(3) New application or transfer of service 25.00

(a) Property owners who submit Statement of Property Ownership form(s) shall not be charged a transfer fee for the properties listed on the form unless terminated for non-payment.

(4) Meter installation varies based on actual cost which includes parts mark-up.

(5) Administrative connection charge (connection charge) will be charged according to the cost of the particular situation.

(6) Administrative fee for all liens filed 200.00

(7) Processing fee (active delinquent accounts) 31.00

(8) Disconnection fee current water and sewer base rate multiplied by twenty-four (24) as adjusted for meter size.

(9) Cut off/turn on fee 32.00

(10) Monthly rental fee for hydrant meters – to be billed monthly so long as the hydrant meter is in the possession of the customer … $25.00

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: 12/19/2017 **Report Date:** 12/11/2017 **Report No:** 11.

Submitted By: Shelbe Abbott

Subject: Consider, and act upon first Publication of Ordinance No. 1554, a Map amendment to the Official Zoning Map of The City Of Alamogordo to rezone the property from R-1 Single Family Dwelling District to C-1 Neighborhood Business District contingent upon permit issue for building and actual ground breaking of the church complex located on Scenic Dr. south of First St. *(Darron Williams, City Planner)* **(Roll Call Vote Required)**

Fiscal Impact:
Amount Budgeted:
Fund:

Additional Fiscal Impact:

Recommendation: Approve Ordinance 1554 for first publication.

Background: Ordinance No. 1554 is for a Map Amendment to the Official Zoning Map of The City Of Alamogordo to rezone the property from R-1 Single Family Dwelling District to C-1 Neighborhood Business District contingent upon permit issue for building and actual ground breaking of the church complex. Legal Description: Tract C Weber Lot Line Adjustment No. 2, Alamogordo, Otero County, New Mexico. Located on Scenic Dr. south of First St.

City of Alamogordo

City Commission

Rezoning Request Case:
Z-2017-0005(A)

Darron Williams, City Planner
December 5, 2017

Case: Z-2017-0005(A)

Request:

The applicant is requesting that the city amend the zoning map to change the zoning of the property with legal description: TRACT C-1, WEBER LOT LINE ADJUSTMENT NO. 2, ALAMOGORDO, OTERO COUNTY, NEW MEXICO.

Owner(s)/Applicant:

Cottonwood Christian Fellowship
7035 Highway 70 North
Alamogordo, NM 88310

Case: Z-2017-0005(A)

Tonight's Case

Alamogordo Web Map

October 30, 2017

Alamogordo_City_Limits

Parcels

World Transportation

1:4,514

0 0.035 0.07 0.14 mi

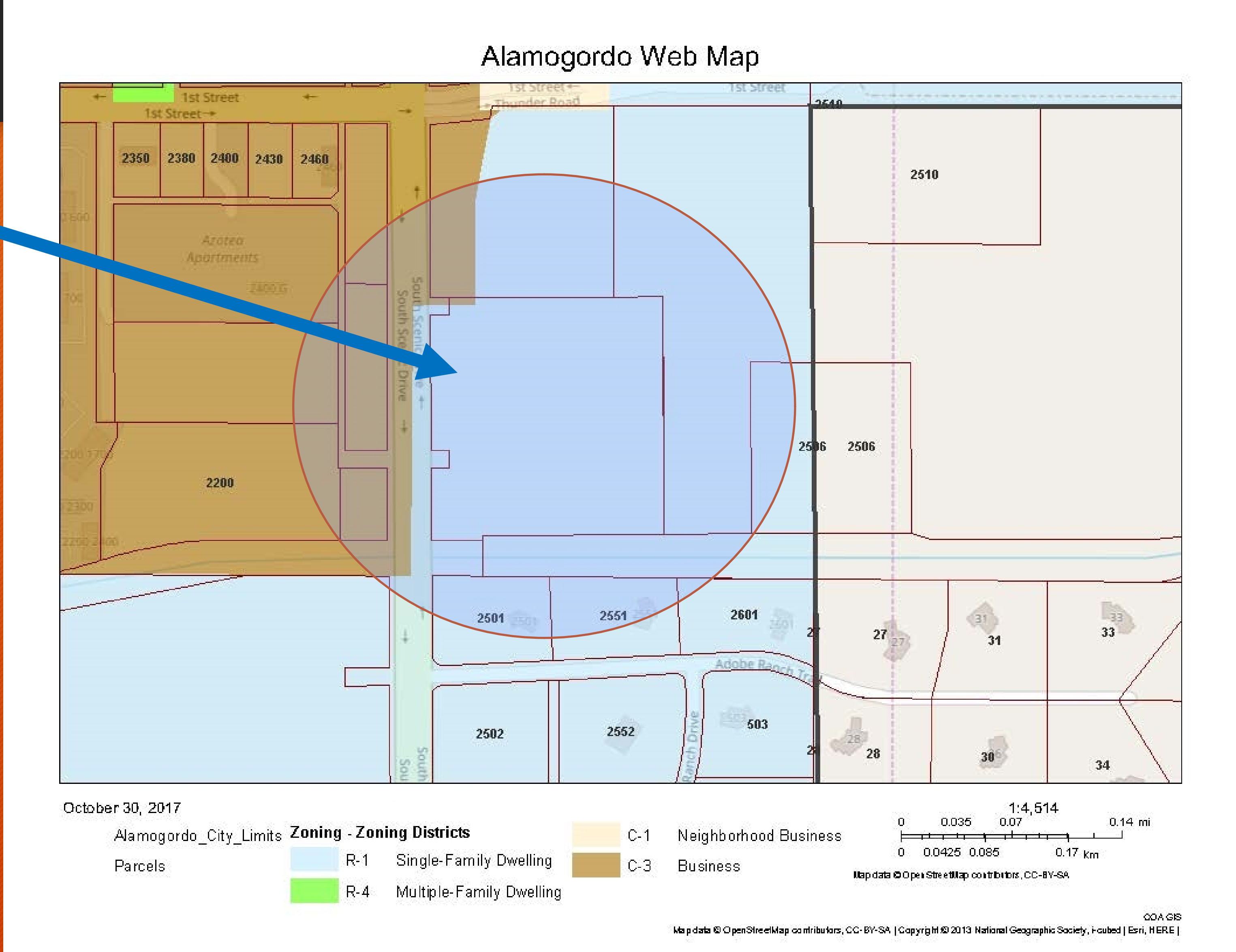
0 0.0425 0.085 0.17 km

Esri, HERE, DeLorme, MapmyIndia, © OpenStreetMap contributors
Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus

COA GIS

Case: Z-2017-0005(A)

Tonight's Case



Case: Z-2017-0005(A)

Findings of Fact

- 1. The property is located on east side Scenic Drive, south of 1st Street.
- 2. The property is owned by Cottonwood Christian Fellowship.
- 3. The request is to amend the zoning map to change the zoning from R-1 Single Family Dwelling to C-1 Neighborhood Business.
- 4. The application filed September 29, 2017; legal notice published October 15, 2017.
- 5. Heard at 2 November's P&Z Commission; commission unanimously voted in support.
- 6. Twelve (12) letters were mailed by certified/return receipt to all property owners of record within two hundred (200) feet from the property excluding public right-of-way, of the property for which the rezoning is sought.
- 7. As of today, one letter returned undeliverable and one letter of protest received from property owners within the two hundred feet radius of the proposed zoning. Bear in mind all but a couple of the residential properties within the radius are outside of City Limits.

Case: Z-2017-0005(A)

Staff Recommends:

Staff and P&Z Commission recommends approval contingent upon permit issue for building and actual ground breaking of the church complex.

Record of Decision
City of Alamogordo
A New Mexico Municipal Corporation

Case#: **Z-2017-0005(A)**

For the Subject Property as follows:
Commonly Known As: **TRACT C WEBER LOT LINE ADJUSTMENT NO. 2, ALAMOGORDO, OTERO COUNTY, NEW MEXICO**

Uniform Property Code & Account Number: **01N-4-057-095-191-088 , R056510**

Legal Description: **WEBER LOT LINE ADJUSTMENT NO. 2, ALAMOGORDO, OTERO COUNTY, NEW MEXICO**

The Alamogordo Planning & Zoning Commission considered this item on **November 2, 2017** and recommended the following action to the Alamogordo City Commission by a vote of 3-0-0 contingent upon permit issue for building and actual ground breaking of the proposed church complex.

Approve the rezoning of the property detailed above for Case # **Z-2017-0005(A).**

The Alamogordo City Commission issued the following decision on ________________, by a vote of __________

Approve as recommended for first publication Ordinance # 1554

The Alamogordo City Commission issued the following decision on____________ , by a vote of __________

Approve as recommended for final publication Ordinance #1554 .

Attest:	CITY OF ALAMOGORDO, New Mexico, A New Mexico Municipal Corporation
______________________________ Rachel Hughs, City Clerk	______________________________ Richard Boss, Mayor

ORDINANCE No. 1554

AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF ALAMOGORDO, CHANGING THE CLASSIFICATION OF A CERTAIN PROPERTY COMMONLY KNOWN AS TRACT C WEBER LOT LINE ADJUSTMENT NO. 2, ALAMOGORDO, OTERO COUNTY, NEW MEXICO FROM THEIR PRESENT DESIGNATION AND ZONING DISTRICT OF R-1 SINGLE FAMILY DWELLING TO C-1 NEIGHBORHOOD BUSINESS, WITHIN THE CORPORATE BOUNDARIES OF THE CITY OF ALAMOGORDO, OTERO COUNTY, NEW MEXICO.

WHEREAS, Cottonwood Christian Fellowship (hereinafter referred to as "the Owners") are the owners of certain real property commonly known as TRACT C-1, WEBER LOT LINE ADJUSTMENT NO. 2, ALAMOGORDO, OTERO COUNTY, NEW MEXICO (herein after referred to as "the Property") located within the corporate boundaries of the City of Alamogordo, New Mexico, (hereinafter referred to as "the City"); and

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

Z-2017-0005(A) to change the zoning of the Property, and

WHEREAS, the Planning and Zoning Commission, after notice and hearing did recommend to the City Commission adoption of an ordinance amending the zoning map by removing the Property from the present designation and zoning district of R-1, Single Family Dwelling District to C-1, Neighborhood Business District contingent upon permit issue for building and actual ground breaking of the proposed church complex.; and

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

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

TRACT C WEBER LOT LINE ADJUSTMENT NO. 2

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

PASSED, APPROVED, AND ADOPTED this _______ day of _____________, 2017

CITY OF ALAMOGORDO, NEW MEXICO a New Mexico municipal corporation

By: ___________________________________
Richard Boss, Mayor

ATTEST:

____
Rachel Hughs, City Clerk

APPROVED AS TO FORM:

____
Petria Schreiber, Assistant City Attorney

AGENDA REPORT
CITY OF ALAMOGORDO
CITY COMMISSION

Meeting Date: 12/19/2017 **Report Date:** 12/11/2017 **Report No:** 12.

Submitted By: Petria Schreiber

Subject: Consider, and act upon, Application for Assignment of Airport Lease for Area E6-C at the Alamogordo-White Sands Regional Airport, from Douglas Brugman to Don Gressman. *(Petria Schreiber, City Attorney)*

Fiscal Impact:
Amount Budgeted:
Fund:

Additional Fiscal Impact:

Recommendation: Approve Assignment Lease.

Background: Douglas Brugman currently leases Area E6-C at the Alamogordo-White Sands Regional Airport. Mr. Brugman now wishes to assign the lease to Don Gressman. Mr. Gressman has submitted the necessary documents for the assumption and assignment of the lease.

The Airport Advisory Board considered the request at its Special Meeting on November 27, 2017 regular meeting and recommended approval of the assignment.

Staff similarly recommends approval of the assignment.

CITY OF ALAMOGORDO
ALAMOGORDO-WHITE SANDS REGIONAL AIRPORT

APPLICATION FOR ASSIGNMENT OF LEASE

The undersigned hereby applies to the City of Alamogordo for the assignment of that land lease governing the area of the Alamogordo-White Sands Regional Airport known as E6C Area Airport.

The current holder of this lease is Doug Brugman. By my signature below, I state to the City of Alamogordo that I approve of and request the authority to transfer all of my right, title and interest in this lease to

Don Gressman.

I understand that if the City approves this assignment of lease, I will be relieved of any further responsibility under this lease other than undetected or undisclosed environmental issues.

The undersigned Assignee, Don Gressman, hereby states that it is willing to accept the assignment of the lease and assume all responsibilities and liabilities for the previous leaseholder and subjects itself to all of the terms and conditions of the existing lease and the Ordinances of the City of Alamogordo. The undersigned further states that it is familiar with the Ordinances of the City of Alamogordo, the lease for the subject property, and has made a thorough inspection of the property and any improvements thereon and accepts the responsibilities of this assignment "as is."

Both parties to this request for assignment state that they are requesting the City of Alamogordo to accept the Assignee in the stead of the current lessee.

Assignee agrees that the rental for the area pursuant to the Lease agreement will be $ 131.60 per year and that any amounts due and owing must be paid at the time this assignment is approved by the City. Assignee further agrees that all future lease payments will be $ 131.60.

ASSIGNOR:

Date: 11/7/17

Doug Brugman

ASSIGNEE:

Date: 11-7-17

The City of Alamogordo hereby agrees to the assignment of the Lease governing the area at the Alamogordo-White Sands Regional Airport known as E6C from Nov. 7, 2017 to June 30, 2022.

This assignment is effective on the 7 day of 11, 20~~14~~ 17.

CITY OF ALAMOGORDO, NEW MEXICO

Date: ____________

By: ______________________________
Maggie Paluch, City Manager

ATTEST:

____
Rachel Hughs, City Clerk

APPROVED AS TO FORM:

____
Petria Schreiber, City Attorney

Land Lease E6-C
White Sands Regional Airport
Douglas Brugman, LESSEE

WHEREAS, the City of Alamogordo ("City"), a Municipal Corporation of the State of New Mexico, is the owner of certain real properties known collectively as the White Sands Regional Airport ("Airport") in Otero County, New Mexico; and,

WHEREAS, the City maintains designated areas on the Airport specifically to lease said areas to aviation-related businesses and individuals to develop the Airport, its infrastructure, and aviation business for the benefit of the citizens of the City; and

WHEREAS, Douglas Brugman ("Lessee") desires to lease a particular parcel of that real property on the Airport for the purpose of furthering the Lessee's aviation interests; and

WHEREAS, the City is willing to lease the parcel desired to the Lessee, and the parties desire to execute a written Lease containing the terms and conditions of their Lease.

WHEREAS, the City of Alamogordo and the Lessee agree that the premise behind this contract, and the direction/directive of federal, state and local government(s), is to promote the self-sufficiency of Alamogordo-White Sands Regional Airport ("Airport").

WHEREAS, the City of Alamogordo and the Lessee agree to follow required and/or necessary federal and state mandates, procedures and/or regulations, in order to receive federal and/or state funds and/or grants for the exclusive benefit of airport related use, improvements, activities and/or services.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and for other good and valuable consideration, the following is agreed:

1. DEFINITIONS:

A. ***Airport*** – means the White Sands Regional Airport, owned and operated by City of Alamogordo as a general aviation facility.

B. ***Airport Manager***– means the city manager or his designee.

C. ***Aviation Related Activities*** - means activities as defined by the Federal Aviation Administration (FAA), which encompass aeronautical related activities, benefit and/or services to help promote and/or support aeronautical activities. If the FAA has not specifically defined aviation activities, City will make a determination as to what is considered "aviation activities."

D. ***City*** - means the individuals employed hired, appointed, designated and/or elected by the constituency of Alamogordo and/or the City of Alamogordo, which may act on its own behalf, as duly acknowledged by the State of New Mexico, as a separate municipal corporation.

E. ***City of Alamogordo*** - means the Municipal Corporation, with the City Commission as its governing body.

F. ***City Commission*** – means the duly elected members of the City Commission, as currently composed and as its membership might change from time to time, and any successor body.

G. ***Federal Aviation Administration* or *FAA*** – means the United States Department of Transportation, Federal Aviation Administration, or any successor agency.

H. ***General Aviation*** – means all aircraft or aeronautical operations and activities other than Commercial and Military Aviation related activities.

I. ***Improvements*** – means rights, benefits and/or access to structures, buildings, edifices, foundations, and/or the installation of utilities, built and affixed above and/or below bare ground, leased by the City and designated to Lessee, together with all rights appurtenant thereto.

J. ***Lease*** – means this Lease including stipulated renewals with final termination date established, together with all Exhibits hereto, incorporated herein by reference, and any amendment hereof duly executed by the parties.

K. ***Lease Year*** – means any consecutive twelve (12) month period, from July 1st until June 30th of the following year.

L. ***Negotiations*** - means a discussion to produce the mutual assent and agreement between the City of Alamogordo and Lessee regarding, and not limited to: termination, assignments and other issues, as they pertain to this Lease.

M. ***Notice*** - means written correspondence, sent certified mail, from either Lessee or City.

N. ***Off-Site Improvements*** - means rights, benefits and/or access to structures, paved areas, and/or utilities, built and affixed above and/or below bare ground, by Lessee, away from, Lessee's leased Parcel, to which Lessee agrees will belong to the City.

O. ***On-Site Improvements*** -means rights, benefits and/or access to structures, buildings, edifices, foundations, and/or the installation of utilities, built and affixed above bare ground, and specifically described as the leased Parcel designated by the City, belonging to Lessee.

P. ***Parcel*** - means the bare dirt ground specifically described and directly leased to Lessee by City.

Q. ***Sign(s)*** - outwardly symbol, logo, name or board affixed, present or posted on the Parcel identifying the leased Parcel, activities conducted on Parcel and Lessee(s).

DB
(Lessee's Initials)

2. THE LEASED AREA DESCRIBED: The City hereby Leases to the Lessee, a 1,200 square foot parcel of real Property located in the NM 1/4 of Section 14, T17S, R9E, N.M.P.M. of the U.S.G.L.O. Surveys, within the City Limits of Alamogordo in the County of Otero, State of New Mexico, described as Parcel E6-C on the Plat Showing Lease Property and more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference, together with an easement for ingress and egress to the property (hereinafter "Parcel") by the Lessee.

3. TERMS:

A. ***Initial Lease Term.*** An Initial Lease is a lease for an undeveloped parcel of real property located at the Alamogordo White Sands Regional Airport. The term of this Lease shall be ten (10) years (hereinafter "Lease Term") commencing on the "Commencement Date," as hereinafter defined, and terminating on the tenth (10th) anniversary of the Commencement Date. The Commencement Date shall be the first day of July, 2012, and the tenth anniversary date shall be the 30^{th} day of June, 2022. Possession of the Parcel by the Lessee shall begin on the Commencement Date. As a condition of the Initial lease, the Lessee shall have the right to enter into two additional five-year terms at the conditions in effect at the beginning of each of the five year terms.

B. ***Termination.***

1. Upon termination of this Lease, Lessee shall have no further rights hereunder, except as otherwise expressly provided herein, and the City may take immediate possession of the leased Parcel. Lessee shall thereafter be released from any and all liability, cost or expense associated with the Parcel, including the improvements thereon accepted by the City, or associated with termination of this Lease, except for environmental concerns not detected at the time this Lease terminates.

2. ***Negotiations Prior to Termination of Lease.*** Not less than one year prior to the termination of this Lease, Lessee and City shall either enter negotiations or make provisions for the disposal of any improvements on the Parcel.

C. ***Disposal of Improvements:***

1. When Requested by Lessee: if at any time during the Lease Term, when all Rent then due and owing has been fully paid and Lessee is not in default under this Lease, Lessee may request to remove any or all improvements. Lessee shall give forty-five (45) days advance written notice of its intent to remove the improvements to the City, which shall not unreasonably withhold consent. When removing improvements, the Lessee shall restore the Parcel to its previously existing condition, including filling excavations, returning the surface to grade, and leaving the Parcel safe and free from all debris and hazards. **Any exceptions must be by mutual agreement.**

2. At Expiration or Termination of Lease: at the expiration or termination of this Lease, any or all buildings and other permanent improvements to the Parcel will, at the direction and sole discretion of the City, either remain intact on the Parcel and become the property of the City, or be removed by the Lessee. Should the City elect for the Lessee to remove any or all improvements, the Lessee shall do so within forty-five (45) days. When removing improvements, the Lessee shall restore the Parcel to its previously existing condition, including filling excavations, returning the surface to grade, and leaving the Parcel safe and free from all debris and hazards, **any exceptions must be by mutual agreement**. All improvements not removed as aforesaid shall, without compensation to or by City, become City's property free and clear of all liability and expenses. Lessee shall thereafter be released from any and all liability, cost or expense associated with the Parcel, including the improvements thereon, or associated with termination of this Lease. However, if Lessee fails to promptly remove said improvements if and as required by the City, the City may assess and bill Lessee based on receipt of an itemized statement of costs of removal and restoration of the Parcel performed by or for the City.

3. Provide to City Right of First Refusal: after the drafting of a mutually agreed sales/purchase agreement, Lessee shall first offer City the right to purchase On-Site Improvements, and City may elect to purchase said improvements. If City selects to purchase On-Site improvements, City will bear the cost to ascertain the appraisal value of improvements, and/or the parties may mutually agree on another method to ascertain value of improvements; or

4. Purchase of Lessee's improvements by third party, with approval of City: Lessee may sell On-Site improvements to a third party (Buyer), with the approval of City and/or after City has negotiated a Lease with Buyer.

D. ***Holdover.*** If Lessee remains in possession of the Parcel after the expiration of this Lease, without any written agreement hereof, such holding over shall not be deemed as a renewal or extension of this Lease, but shall create only a month-to-month tenancy with the City's acting as current owner of the improvements from the date of lease expiration. The rates for holdover tenancy shall be 10 times that of the final rental rate of this Lease.

E. ***Continuing Leases Term.*** For those Leases of real property at the Alamogordo White Sands Regional Airport, which are not Initial Leases, the term may be for not more than ten (10) years. The conditions shall be those in effect at the time of entry into the Lease. Should an existing Lessee elect not to enter into a Continuing Lease, the provisions of the above paragraph shall apply.

F. ***Force Majeure.*** Neither party shall be in violation of this Lease if it is prevented from performing any term hereof by reason of strike, boycott, labor dispute, embargo, shortage of material(s), Act of God, act of a public enemy, act of superior government authority, weather condition, riot, rebellion, sabotage or any other circumstance for which it is not responsible or

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(Lessee's Initials)

which is not within its control. In the case of an individual Lessee's, death, disability or incapacity, this shall constitute a Force Majeure condition for such time as is reasonably necessary for alternative arrangements to be made for the conduct of Lessee's affairs, but not to exceed two (2) years.

4. FEES AND CHARGES: Lessee shall pay the following fees and charges:

A. *Processing Fee.* *If after verbal discussions with the city, the individual wishes the City to process the application for a lease*, the individual shall pay a nonrefundable processing fee with the City of Alamogordo in the sum of Two Hundred Fifty Dollars and no cents ($250.00).

B. *Rent.* Beginning on the Commencement Date, the Lessee shall pay the City a fixed annual rental payment ("Rent"). The amount of the Rent shall be at the rate specified by the City Commission per square foot per year **by Resolution**. The adjusted Rent payment shall be due on July 1st. Rent may also be adjusted as appropriate to reflect the increased cost of new or substantially higher levels of services provided at the Airport. **Adjustments must comply with City Ordinances and Resolutions as voted by the City Commission.**

5. PAYMENTS DUE:

A. *Due In Advance.* In addition to those payment dates specified above, all rent payments shall be due and payable in advance, beginning on the Commencement Date and continuing regularly and annually without notice from City thereafter during the Lease Term. However, the City may elect to invoice payment notices.

B. *Due Annually.* The first annual payment shall be due and payable on the Commencement Date and shall be prorated to the next June 30th. All subsequent payments shall be due on July 1st each year thereafter.

C. *Late Fee Due.* On any annual rental payment made after July 1st, Lessee shall in addition pay a late charge of ten percent (10%) of the annual rent for each month or part thereof that the payment is late or Fifty Dollars ($50.00), whichever is greater.

6. NO REFUNDS: Lessees may relinquish this Lease to the City; however the Lessee shall not be entitled to a refund of any fees of any kind paid.

7. INSURANCE REQUIREMENTS:

A. *General Liability.* Lessee shall maintain general liability insurance insuring such claims. This insurance shall name the City of Alamogordo (City) as an additional insured. The insurance shall have a minimum per occurrence limit of $ 1,000,000 or as required to meet the mandatory requirements of the New Mexico Tort Claims Act or its successors in law, whichever is greater. Increased Limits. Upon thirty (30) days written notice, the City shall be entitled to require Lessee to increase the limits of any insurance required herein to an amount equal to such increase in the New Mexico Tort Claim Act maximum limits of liability.

B. *Hangar Insurance.* Lessee shall maintain hangar insurance covering the improvements on the parcel. Such insurance shall be a hangar insurance policy with the broadest cause of loss endorsement including vandalism and malicious mischief. The insurance shall be on a replacement cost basis and shall name the City of Alamogordo as an additional insured, as its interests may appear.

C. ***Proof of Insurance.*** Such insurance shall be with a licensed and authorized company to do business in the State of New Mexico. The Lessee shall furnish annually to the City on the rent payment due date of this Lease, a certificate or other evidence and proof of maintenance of the above required insurances. The certificate of insurance shall provide the City of Alamogordo with a minimum 60 days notice of cancellation or non-renewal of the insurance policy. Lessee shall provide the City with notice of any changes thereof and furnish to the City evidence of acquisition of a substitute therefore and payment of premium thereof. If the Lessee shall fail to maintain such insurance coverage, then the City may obtain same and add the cost of such insurance to the next due Lease payment. If the City does so, it may charge interest thereon at the rate of 15% per annum from the time of payment, which shall be added to the rental becoming due and shall be collected as an additional fee.

8. QUIET ENJOYMENT: The Lessee, upon payment of the required fees and rents, and the faithful performance of such covenants, agreements and conditions required by law, or this Lease, may peaceably and quietly have, enjoy those portions of the Airport authorized for their use. Such use shall be free from molestation, eviction or disturbance by the City or any person claiming by, through, or under it, subject to the terms and conditions of the law or agreement entered into. Such quiet enjoyment is conditional upon Lessee adhering to the following conditions:

A. ***Permitted Uses.*** Lessee shall have use of the Parcel only for construction of a hangar, and the housing and maintaining of personal, non-commercial aircraft, as well as for the construction, maintenance and operation of said hangar in connection with these uses, in so far as it does not disturb the peaceful enjoyment of other tenants and conforms to airport permitted use under the current or any revised Standards, Regulations, Codes and Policies.

B. ***Additional Uses Require Permission.*** The Lessee shall not use or permit the use of the Parcel, or improvements thereto, for any purpose or use other than those expressly and specifically authorized by this Lease. Additional uses may be hereafter authorized in writing by the City, but only upon such terms and conditions as may be set out in such authorization.

C. ***Commercial Use of Parcel and Future Improvements.*** Lessee agrees to obtain permission from the City prior to commencing or permitting any commercial use of the Parcel not specifically listed, or making any additional improvements thereto, in accordance with the current Airport policies, code and/or standards. In the event that this Parcel, or improvements thereto is used for business purposes, the Lessee shall at all times maintain and pay any required permits, licenses, insurances, and taxes as required by law.

D. ***Signs.*** Lessee must obtain City consent to paint or construct any exterior signs; including approval for a City Sign Permit. Lessee further agrees that upon vacating the improvements, Lessee will restore exterior signs to same condition as received at time of occupancy. The Lessee shall be responsible for all cost and expense of maintaining its signs as permitted hereby. Lessee shall not erect, paint or maintain any temporary signs or advertising displays, such as banners, balloons, flashing sign boards, and/or any similar visual devices whatsoever, without City's consent.

9. OBTAIN PERMITS, PAY TAXES, AND OBEY LAWS:

A. Lessee shall pay when due all valid taxes, special assessments, excises, license fees and permit fees of whatever nature applicable to its operation or levied or assessed against the Airport or improvements thereto. Lessee shall take out and keep current all licenses, permits, and certificates (City, County, State and Federal) required for the conduct of its activities at and upon the Airport, and further agrees not to permit any of said taxes, excise or license fees to knowingly become delinquent.

B. Lessee shall, at its own expense, fully comply with all laws, regulations, rules, ordinances, and requirements of the applicable City, County, State and Federal authorities and agencies which affect this Lease, the land granted by this Lease, any improvements upon the Leasehold, and/or operations thereon. Such compliance shall be with any laws, regulations, rules, ordinances or requirements which have been or may be enacted or promulgated during the effective period of this Lease.

C. Lessee recognizes the authority of the City Commission and staff to take those necessary and legal actions required to safeguard any person, aircraft, equipment or property at the Airport. Lessee agrees to abide by any suspension, restriction, or designation of specific procedures applicable to any or all Airport operations whenever such actions are established by such authorities.

10. ASSIGNMENT AND SUBLEASE:

A. ***City Consent Required.*** Lessee shall not assign or sublease the rights granted by this Lease, nor the Leased parcel, nor the improvements constructed or occupied in accordance with this Lease, without the prior written consent of the City, which consent shall not be unreasonably withheld. The City may condition such consent upon an increase in the Rent, and may require other conditions or covenants before consenting to an assignment or sublease. Such additional rent, conditions or covenants shall be in accord with those terms and conditions for similar agreements in effect at the time of the assignment, sublease, or sale. If the Lease is assigned or subleased, all clauses herein binding the parties hereto are also binding on any and all successors and/or assigns, unless specifically amended by the City as a condition of consent.

B. ***Assignment Relieves Lessee.*** Upon a valid assignment of this Lease, but not upon a sublease, the Lessee shall be relieved of all obligations and liabilities arising from this Lease effective as of the date of the assignment.

11. DEFAULT AND TERMINATION:

A. ***Definition.*** If the City/Lessee determines the City/Lessee is in violation of any of the terms, conditions or covenants of this Lease, or the Lessee fails to pay, on time, any fees or charges due, the condition shall be considered a default of the Lease.

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(Lessee's Initials)

B. ***Written Notice Required.*** The City/Lessee shall provide the City/Lessee with written notice of any determination of default.

C. ***Compliance Time.*** The City/Lessee shall then have thirty (30) days to cure or remedy said default or otherwise comply with any demand contained within such written notice which cures or remedies the default.

D. ***Failure to Comply.*** If the City/Lessee fails to correct the default as specified by the City's/Lessee's notice within the specified period, or if the City/Lessee receives a third notice of default within any 18 consecutive month period, the City/Lessee may, at its option, terminate this Lease immediately, or at any time thereafter. Such termination may be made without further notice or demand.

1. **In the event of a Lessee default and** upon such termination, without further notice or demand, the City may enter upon and into the Parcel, or improvements thereto, or any part thereof, and take absolute possession of the same fully and absolutely, and such re-entry shall not be judged trespass. In addition, the City may also require all associated and permitted operations to cease and be removed from the Airport. **The City may also follow the provisions of paragraph 24.**

2. **In the event of a default by the City, the lessee may terminate the lease and follow the provisions of paragraph 24.**

E. ***Lease Remains Binding.*** All provisions of this Lease remain binding upon the City/Lessee while the Lessee is in default, and if this Lease is terminated due to default.

F. ***What Constitutes Blatant Default.*** Parties will be in **Blatant** default upon the occurrence of:

1. In the event that Lessee has not commenced repairs within six (6) months from the date of said damage and thereafter completed such repairs within six (6) months, this Lease may be immediately terminated by the City.

2. Non-payment of all rents and/or fees, 90 days after July 1.

3. Failure to retain insurance for hanger, as outlined in Article seven.

4. The blatant and conscious deprivation of rights and privileges, outlined in this Lease and/or other agreement(s) entered into between Lessee and City.

5. Failure to comply with federal, state and local government regulations, as they pertain and are relevant to this Lease.

6. Refusal to provide access to Parcel as set out in Article Twenty one.

7. Using or allowing the use of the Parcel in contradiction of this Lease.

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(Lessee's Initials)

12. AIRPORT DEVELOPMENT: The City reserves the right to further develop the Airport as it sees fit, without unreasonable interference or hindrance from Lessee.

A. ***Eminent Domain Rights.*** If the physical development of the Airport requires the relocation, removal or alteration of Lessee's improvements from the Airport, the City has the right to condemn the improvements wholly under the City's eminent domain rights.

B. ***Notice of Total Taking:*** In the case of a total taking by the City of the parcel(s) authorized for use by this Lease, the City will provide a minimum of ninety (90) days notice of such impending action. In the event of such a total taking, Lessee's obligation to pay rent and other charges shall terminate on the date of the taking.

C. ***Actions in the Event of Total Taking.*** In the case of a total taking, both parties hereto agree that the value of this Lease shall be declared to be zero dollars ($0.00). The value of the Improvements will be determined by an independent appraisal at Fair Market Value (FMV). The Lessee will have the option of receiving the monetary FMV of the improvements or having similar improvements constructed at another parcel and entering into a new Lease at the then current land lease rate.

13. AMENDMENT: This Lease shall not be altered, changed or amended except by instrument in writing executed by the City and Lessee.

14. SEVERABILITY: If any clause or provision herein shall be adjudged invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law, it shall not affect the validity of any other clause or provision, which shall remain in full force and effect.

15. RIGHT OF AIRCRAFT OPERATIONS: The City hereby reserves a right of aircraft ground operations on and above the surface of the Airport, when conducted in accordance with the Federal Aviation Regulations, together with the right to cause such noise, odors and other disturbances as may be inherent in such operation.

16. RESERVED WATER, GAS, OIL, AND MINERAL RIGHTS: The City reserves, subject to the BLM Patent all water, gas, oil, hydrocarbon and mineral rights in and under the surface of the Airport. However, the City shall not conduct any operations on the surface of the Airport for the exploration, development or recovery of the rights and substances reserved which would unreasonably interfere with the Lessee's use of the Airport.

17. EASEMENTS AND RIGHT OF WAY:

A. ***Existing Easements.*** This Lease is subject to all existing rights-of-way or easements of record and all other Leases granted by the City to other parties at the Airport, and to those retained by the City.

B. ***City's Right to Use Existing Easements.*** The City retains the right to locate utilities as necessary on existing easements on the Airport.

C. ***Easements to be Accessible.*** Lessee shall leave any utility easements upon the Airport open and unobstructed. A perpetual easement and right-of-way for the construction, maintenance,

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(Lessee's Initials)

removal and replacement of any and all utility lines, manholes, and related facilities through, over, across and under the Airport is hereby reserved for the benefit of the City.

D. ***City's Right to Establish Easements.*** The City may at any time and from time to time relocate, in whole or in part, any easement serving the Airport, provided that such relocation does not diminish or permanently interrupt the rights or operations of the Lessee nor increase the costs to be incurred by Lessee. The City may temporarily interrupt operations with respect to such Easements during the period of relocation, and the City agrees to restore the Airport to a condition substantially similar to the condition existing prior to any alterations thereto by the City.

E. ***City's Right to Protect Aerial Approaches.*** The City reserves the right to take such action as may be reasonably necessary to establish and protect aerial approaches to the Airport against obstruction, including the right to prevent persons from erecting or permitting to be erected any improvements on the Airport which would constitute a hazard to aircraft.

18. RIGHT TO PERFORM OWN AIRCRAFT SERVICING AND MAINTENANCE: It is clearly understood by the Lessee that no rights or privileges have been granted which would prevent any legal person from performing any services that it may choose to perform on its own aircraft at locations reserved for such purposes. All such servicing, maintenance and repair shall be conducted in accordance with Federal Aviation Regulations and applicable law.

19. SECURITY AND SAFETY: Lessee will participate in the City's security and safety programs as they relate to the Airport.

20. AIRPORT ACCESS: Subject to the rules and regulations established by the City, the Lessee has the right of free access, ingress to and egress from those parts of the Airport authorized for the Lessee's use by this Lease. Such access also applies to the Lessee's employees, agents, patrons and invitees, its suppliers of materials and furnishings of services and its equipment, vehicles, and machinery. The City may, at any time, temporarily or permanently close or consent to the closing of any roadway or other right-of-way for such access, ingress, and any other area at the Airport or in its environs presently or hereafter used as such. In such a case, a means of access, ingress and egress reasonably equivalent to that formerly provided may be substituted and concurrently made available subject to the Airports Security and Operational needs.

21. CITY'S RIGHT TO ENTER: The City, its officers, agents and representatives, subject to any security regulations imposed by any governmental authority, shall have the right to enter all parts of the premises at all reasonable hours to inspect the premises when reasonably required and as it may deem necessary or desirable.

A. ***Right to Inspect.*** Unless faced with an emergency situation as outlined in Section 28.A (4), upon 30 days notice to Lessee, City may enter and conduct a general inspection of On-Site improvements. Said general inspections may be conducted once in a calendar year.

B. ***Follow-Up Inspections.*** Upon finding a hazard on Lessee's Parcel, City will send notice stating findings and will reschedule an appointment with Lessee to re-enter Parcel to

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(Lessee's Initials)

ascertain that Lessee is in compliance with relevant safety regulations. If the hazard is considered an imminent threat to other Lessees and/or the City of Alamogordo, City shall immediately inspect Parcel, but City must thereafter issue a notice to Lessee outlining City's explanation and findings, for said inspection.

22. OPERATIONAL/SAFETY REPORTS: Lessee agrees to submit to the City, upon request by the City any report or reports or information regarding Lessee's operations at the Airport. The City agrees to receive from Lessee, upon request by Lessee, any reports the Lessee deems appropriate for the purpose of keeping the City informed of any operational problems and of any suggested improvements at the Airport.

23. AUTOMOBILES AND OTHER VEHICLES: The City reserves the exclusive right to control, by security gate, uniform driving regulations, or otherwise, all vehicular ingress and egress to, and operations on, the aircraft operating areas including but not limited to all taxiways, runways and ramp areas on the Airport.

24. ATTORNEY'S FEES: City and Lessee agree that if either is found by a court to have breached this Lease, reasonable attorney's fees and the cost of litigation may be recovered by the prevailing party.

25. NOTICES: Whenever any notice is required or permitted hereunder, such notice shall be in writing. Any notice or document required or permitted to be delivered hereunder shall be deemed to be delivered whether actually received or not, when deposited in the United States mail, as Certified Mail, postage prepaid, return receipt requested, and addressed to the party at the address set forth below:

City Clerk
City of Alamogordo
1376 E. Ninth St
Alamogordo, New Mexico 88310

1140 Douglas Brugman
Box 1140 283 Fresnal Canyon Rd
La Luz, Nm 88337

26. EXHIBITS: The following exhibits are attached and made part of this Lease:

A. EXHIBIT "A": Plat of lease site.

27. CONSTRUCTION AND IMPROVEMENTS:

A. ***Permit(s), License(s) and Approval(s).*** Lessee shall or may, at its own sole cost, improve the Leased Parcel, only with the written Consent of City. City must respond to Lessee's request for improvements, within 30 days of City receiving said request. Lessee shall or may build, affix and/or add improvements in compliance with plans and specifications approved by the City. Lessee shall obtain any and all federal, state and local governmental approvals, licenses and permits required for the improvement, and shall comply with all federal, state and local laws applicable thereto. The City shall have neither obligation nor responsibility for improvement of the Leased Premises.

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(Lessee's Initials)

B. ***Preparation of Plans and Specifications.*** Tied to building requirement for major construction, Lessee shall prepare, or have prepared, detailed drawings, plans and specifications for the construction, improvements and/or exterior alterations to the improvements, as applicable and as might be required by the City, state and/or federal regulations. Lessee shall begin work on proposed improvements only after receiving the prior written approval of plans and specifications from all entities, including, but not limited to City.

1. ***Title to Improvements (On-Site Improvements).*** During the Lease Term, title to all improvements existing or constructed upon the Parcel by Lessee are and shall be vested in Lessee.

2. ***Title to Off-Site Improvements.*** Off-Site improvements vest to the City, upon acceptance by the City.

3. ***Proposed Improvements.*** For either Off-Site or On-Site Improvements, if Lessee is required to provide plans for said improvements, as summarized and attached to this Lease as Exhibit C, hereto, and incorporated herein by reference, Lessee shall begin such process with no less than submission of a building permit application to the City, not later that six (6) months following the Commencement Date of this Lease.

4. ***City Codes Apply.*** Lessee must meet City standards as specified in the *Alamogordo Code of Ordinances*, in addition to all relevant state and federal regulations, for all design, planning, and construction activities, including development or extension of infrastructure. In addition, Lessee may pave Off-Site access from the Parcel, when necessary, or improvements thereto. Taxiways, taxi lanes, or roads, and such construction shall match the grade of the existing Parcel.

5. ***Installation of Utilities.*** City warrants that all utilities, which are necessary for the conduct of Lessee's activities are available at the Airport. However, Lessee shall obtain and install any necessary electrical, gas, water, sewer and septic tank, and any other utility service, subject to the development guidelines, rules and regulations or building codes of the State of New Mexico, the City of Alamogordo, and/or other utility company requirement(s). City shall not be liable to Lessee for any interruption in or curtailment of any utility service. City shall not be liable for damages to persons or property for any such interruption, nor shall such interruption in any way be construed as cause for abatement of rents or fees or operate to release Lessee from any of its obligations hereunder.

6. ***Septic Systems.*** Lessee may be allowed to use and maintain an easement on common City Property to the ________N/A________ of the building to

construct an individual on-site septic system, if necessary and as required to meet New Mexico Environment Department Regulations. The location and dimensions of this easement and constructed improvement shall be shown on the site plan submittal. In the event that the City provides a waste water disposal service to the Parcel in the future, Lessee shall be required to cease use of the individual on-site septic system and hook up to the City waste water system, at Lessee's own cost, for sewage disposal, in accordance with the *Alamogordo Code of Ordinances*.

7. ***Time Restrictions.*** All building construction described in Exhibit "C" must be completed on or before the second anniversary date of the approval of the construction plan(s) and/or drawing(s), that date being __N/A________, or any other mutually agreed upon date established between City and Lessee.

8. ***Additional Improvements Constructed During the Lease Term.*** Upon receiving written approval from City, Lessee may construct additional improvements or modifications at a later date, adhering to the requirements of those codes and regulations then in effect on the Airport. Lessee must use new or City approved materials, which are compatible with existing improvements on Parcel. However, in all cases, construction must be completed within two (2) years of receiving City approval.

C. ***Mechanic's and Materialman's Liens.*** Lessee shall not permit any mechanic's, materialman's or any other lien to be imposed upon or attached to the Parcel or improvements on the Airport or any part thereof, or the improvements thereon, by reason of any labor performed or materials furnished by any mechanic or materialman or for any other reason.

D. ***Certificates of Completion; Construction Records.*** Upon the completion of any Off-Site and/or On-Site improvement hereunder, Lessee shall submit to City a copy of its Certificate of Occupancy, acceptance letter certifying completion, and/or a certified copy of any certificate or permit which might be required or provided by any federal, state or local agency in connection with the completion, occupancy or use of the improvement. As-Built-Drawings of improvements shall be provided ninety (90) days after Lessee receives Certificate of Occupancy.

E. ***Airport Manager Duties.*** Airport Manager shall be a point of contact to aid, inform and/or direct Lessee, as to any questions or concerns regarding the White Sands Regional Airport.

28. MAINTENANCE REPAIRS AND IMPROVEMENTS LEASEHOLD:

A. ***Condition, Maintenance and Repairs of Leasehold and Improvements Thereto.*** Lessee Accepts Parcel "As-Is." Lessee acknowledges that it has fully inspected the Parcel and hereby accepts the Parcel and any buildings, improvements and appurtenances thereto as is, in their present state and condition, as suitable for the purpose for which the same are Leased.

1. ***Lessee Shall Maintain.*** Lessee shall maintain, at its own expense, the Parcel (On-Site) and any Lessee-owned improvements, fixtures or equipment on the Parcel in a safe, sanitary, orderly, and sightly manner, in accordance with all applicable codes and regulations. Lessee shall also maintain the cleanliness of all paved area on the Parcel, and shall be responsible for mowing all grass, controlling weeds, and maintaining existing shrubs and trees on the Parcel. Lessee shall maintain all rest rooms on the Parcel, or improvements thereto in a sanitary and clean condition, using proper odor control devices and providing and maintaining an adequate supply of paper towels, soap and toilet tissue.

2. ***Erosion Control.*** Where the slope, terrain, or soil disturbance is such that active soil or wind erosion may be present on the Parcel (On-Site), Lessee must carry out erosion control practices to mitigate the erosion. These practices include, but are not limited to drainage facilities constructed and maintained by Lessee, landscaping, and/or seeding and maintaining of vegetation.

3. ***City's Right to Correct Deficiencies.*** The City has the right to require reasonable maintenance and repairs to the Parcel (On Site) and improvements thereon by Lessee as required by this Lease. Notice of City's intent to repair shall be in writing, with a minimum 30-day notice. Should Lessee fail to make the required corrections, the City shall have the right to enter the Parcel and Off-Site Improvements, to correct deficiency. City may recover the cost of Parcel and On-Site Improvement repair from Lessee, plus an additional fifteen percent (15%) administrative cost.

4. ***City's Right to Correct Deficiencies under an Emergency Situation.*** In case of major and/or an imminent hazard regarding the health, safety, and welfare to airport users, improvements, parcel, and/or the community at large, the City may immediately enter Lessee's parcel and correct said hazard, at Lessee's cost, unless imminent hazard is caused by the City.

5. ***Repair of Damage.*** If the Parcel, or improvements thereto, are partially destroyed or damaged by fire or other casualty, then Lessee shall secure repair and restore the Parcel, or improvements thereto as soon as it is reasonable practicable, so as not to create an imminent safety hazard to other airport users. Repair or restoration shall commence not later than six (6) months after such damage, and be completed within six (6) months thereafter. Such restoration shall be to substantially the same or improved condition in which the Parcel or improvements thereto were before such damage.

B. ***Destruction of the Parcel.*** In the event the Parcel, or improvements thereto, are completely destroyed or so badly damaged that repairs cannot be commenced within six (6) months and completed within six (6) months, thereafter, the Lease may be terminated by either Lessee or City. Such termination shall be effective as of the date of notice by Lessee and response by City, stating that either party does not intend to re-build, and intends to terminate the Lease, or the parties may mutually agree to locate to another parcel at the Airport.

29. ENVIRONMENT:

A. ***Environmental Laws.*** Consistent with all other terms hereof regarding compliance and/or environmental matters, Lessee shall at all times comply with all applicable federal, state and local laws, including, but not limited to, the transportation, storage and use of hazardous materials, substances and waste, as might now or hereafter be defined by such laws. Environmental laws shall be interpreted in the broadest sense to include any and all federal, state, local statutes, ordinances, regulations, rules or guidelines now or hereafter in effect, as the same may be amended from time to time, which govern hazardous substances or relate to the protection of human health, safety or the environment. Hazardous substances shall be interpreted in the broadest sense to include any and all substances, materials, wastes, pollutants, oils or governmental regulated substances or contaminants as defined or designated as hazardous, toxic, radioactive, dangerous, or any other similar term in or under any of the environmental laws. Upon expiration or earlier termination of this Lease, Lessee shall cause all hazardous substances introduced at the Airport by Lessee, its personnel, or its agents to be removed from the Airport and transported for use, storage, or disposal in accordance and compliance with all applicable environmental laws.

B. ***Hazardous or Toxic Materials.*** Lessee shall not improperly use, store or dispose of on the Parcel or any airport property, any material or substance now or hereafter classified as hazardous or toxic under any federal, state or local law which is now or might become applicable to the Leased Parcel or Lessee possession and use thereof. Notwithstanding, the presence of certain materials, necessary to support Lessee's operations, located within the proper receptacles of any truck or other vehicle, or in other proper containers correctly stored in locations approved by City, shall not be a violation of this Section. As required by law, Lessee shall maintain written procedures for handling and disposing of hazardous or toxic materials.

C. ***Environmental Assessment and Remediation.*** At the expiration or termination of this Lease, the City may conduct an Environmental Assessment on the leased Parcel or affected Parcel, conducted in accordance with laws, codes and regulations in effect at that time. The costs of remediation, if any should be required by law, shall be the responsibility of the Lessee, provided that the City can prove that Lessee's use of the property is the cause of the required remediation.

30. INDEMNIFICATION REQUIREMENTS:

A. Indemnification Agreement. The Lessee covenants that it and all of its agents and personnel will use due care and diligence in all of its or their activities and operations at the Airport.

B. General Indemnification. The Lessee agrees to defend, indemnify and hold harmless the City and its officers and employees from and against all suits, actions, claims, demands, penalties, fines, liabilities, settlements, damages, costs and expenses, including but not limited to consultants' fees, reasonable fees of attorneys, court costs and litigation expenses, of whatever kind or nature, known or unknown, contingent or otherwise, brought against the City because of any injury, including death at any time resulting from bodily injury, damages for care and loss of services, or damage received or sustained by any person, persons or property arising out of or resulting from any negligence, act, or omission of the Lessee, its agents or its personnel arising out of the operations or the Lessee's performance, purported performance, or non-performance of its Lease or the Lessee's activities at the Airport, including without limitation any claim relating to any obstacle free areas, taxi lanes, taxiways or any other aircraft movement areas.

C. Environmental Harm Indemnification. Without limiting any provisions of its Lease, the Lessee shall defend, indemnify and hold the City and its offices and employees harmless from and against all suits, actions, claims, demands, penalties, fines, liabilities, damages, costs and expenses of whatever kind or nature, known or unknown, contingent or otherwise, brought against the City arising out of or in any way related to: a) any actual or alleged contamination by Hazardous Substances of the Airport by the Lessee, its employees, or its agents; b) the presence, disposal, or release of Hazardous Substances by the Lessee, its employees, or its agent at the Airport that is on, from or affects the soil, air, water, vegetation, buildings, personal property, persons, animals or otherwise; c) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to the use of Hazardous Substances by the Lessee at the Airport; d) any violation by Lessee of any Environmental laws.

D. Costs. As used in this Indemnification Agreement, costs shall include but not be limited to: a) all claims of third parties, including government agencies for damages, response costs or other relief; and b) the cost, expense or loss to the City of any injunctive relief, including preliminary or temporary injunctive relief applicable to the City; and c) all expenses of evaluation, testing analysis related to Hazardous Substances including fees of attorneys, engineers, consultants, paralegals and experts; and d) all expenses of reporting the existence of Hazardous Substances to any agency of the State of New Mexico or the United States, as required by applicable Environmental Laws; and e) any and all expenses or obligations including attorneys' and paralegal fees incurred at, before or following any trial or appeal there from, or any administrative proceeding or appeal therefrom, whether or not taxable as costs, including without limitation, attorneys' and paralegal fees, witness fees, expert or otherwise, deposition costs, copying and telephone charges and other expenses; and f) any damages, costs, liabilities and expenses which are claimed to be owed by any federal or state agency.

E. Limitations. The Lessee shall not in any event be required to indemnify or hold harmless City pursuant to these Indemnification provisions with respect to any bodily injury, death, or injury to or destruction of property which is not caused by or does not arise out of the acts or omissions of the Lessee or its officers, employees, or agents, including environmental harm which results from the presence or discovery of any pre-existing Hazardous Substances at the Airport.

F. Scope of Indemnification. With respect to any claims, actions, suits, damages or judgments caused by or resulting from any negligence, act, or omission of the Lessee, its agents, or personnel, the Lessee shall a) investigate or cause the investigation of accidents involving such injuries; and b) negotiate or cause to be negotiated settlement of all claims made as may be deemed expedient by the Lessee, and defend, or cause to be defended, suits for damages, even if groundless, false or fraudulent, brought on account of such injuries or damages against the City; and c) pay and satisfy judgments finally establishing the liability of the City in all actions defended by the Lessee pursuant to these Indemnification provisions; and d) pay, or cause to be paid: 1) all costs taxed against the City in any legal proceeding defended or caused to be defended by the Lessee as aforesaid; 2) any interest accruing up to the date of payment by the Lessee; 3) all premiums charged upon appeal bonds required in such proceedings; and 4) all expenses incurred by the City for investigation, negotiation, and defense, including but not limited to expert witnesses and attorneys fees incurred, should the Lessee fail to provide the defense and indemnification required herein.

G. Notice. The City shall, promptly upon receipt of a notice of claim, give the Lessee every demand, notice, summons, or other process received in any claim or legal proceeding contemplated therein. In the event the City shall fail to give the Lessee notice of any such demand, notice, summons, or other process received by the City and such failure to give notice results in prejudice to the Lessee in the defense of any action or legal proceeding contemplated herein, such failure or delay shall release the Lessee of its liability pursuant to this paragraph insofar as only the particular claim or legal proceeding is concerned, and only to the extent of such prejudice. Nothing in this paragraph shall be deemed a change or modification in any manner whatsoever of the method or condition of preserving, asserting, or enforcing any claim or legal liability against the City. This paragraph shall not be construed to prohibit the Lessee from seeking contribution or indemnity from any third party that may have caused or contributed to the event for which the Lessee indemnified the City.

H. Period of Indemnification. The Lessee's obligations and liabilities under this Indemnification provision shall survive the expiration or earlier termination of its Lease.

IN WITNESS WHEREOF, City and Lessee have executed the Lease to be in effect as of the date first written above.

CITY OF ALAMOGORDO, LESSOR

Susie Galea, Mayor

(Signature) 6/1/12 (Date)

LESSEE

Douglas Brugman

Douglas Brugman 5/23/12
(Signature) (Date)

575.443 2960
(Phone #) (Email)

ATTEST:

Reneé L. Cantin
Reneé L. Cantin, City Clerk
(SEAL)

APPROVED AS TO FORM:

Stephen P. Thies, City Attorney

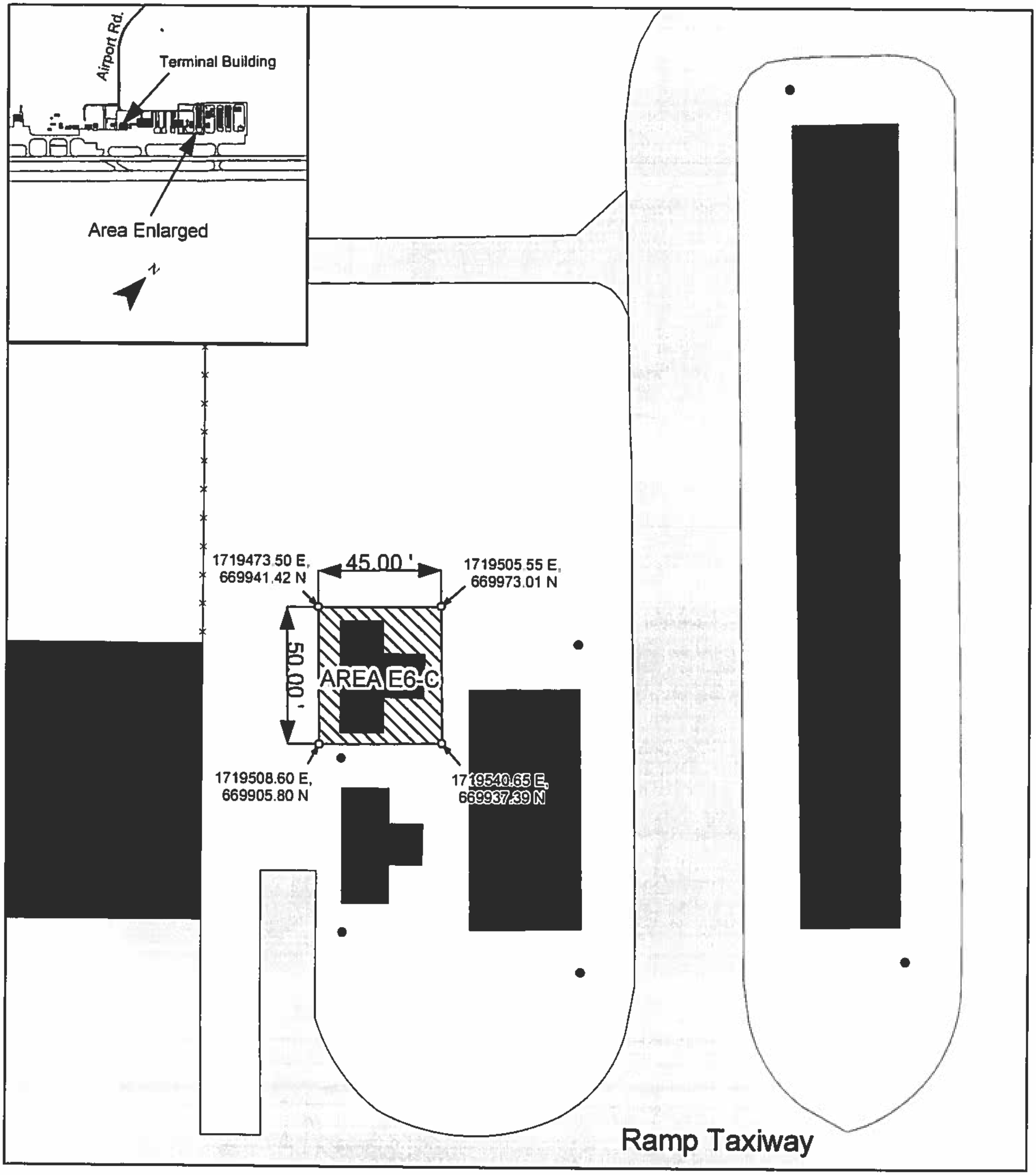

Exhibit A
Area E6-C
50' x 45' = 2,250 Square Feet

Coordinates are New Mexico State Plane, NAD 83, Central Zone.

N

50 0 50 Feet

Map Prepared by COA-GIS May 14, 2012

AGENDA REPORT
CITY OF ALAMOGORDO
CITY COMMISSION

Meeting Date: 12/19/2017 **Report Date:** 12/13/2017 **Report No:** 13.

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 Alamogordo Public Library Board.

Background:

Airport Zoning Board. Three (3) vacancies. Staff Liaison - Cheryl Otero-Baker
(Openings due to the expired term of Darron Williams and 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.

Alamogordo Public Library Board. One (1) vacancies. Staff Liason - Melissa Garcia.
The following individual is interested in being appointed:
Roque Rosales - if appointed this will be his first term.

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.

Parks and Recreation Board. Two (2) vacancies. Staff Liason - Jan Wafful. *(Opening due to the resignations of Ray Vincent and Paul Sanchez)*
No nominations received.

Senior Volunteer Programs Advisory Council. One (3) vacancies. Staff Liaison - Julie Baker *(Openings due to the expiring terms of Annarelle McDonald)*
No nominations received.

ALAMOGORDO

PUBLIC

LIBRARY

BOARD

RECEIVED
DEC 08 2017
CITY CLERK

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

Name: ROQUE ROSALES

Home Phone: 921-1454 Work Phone: ______

Cell Phone: 921-1454 Fax No: ______

e-mail address: rr1025@hotmail.com

Physical Address: 2334 APACHE LANE

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

Mailing Address: 2334 APACHE LANE

Present Employer: SELF Job Title: WRITER Security guard

Board/Committee you wish to serve on:

First choice: A.P.C. BOARD

Second choice: ______

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

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

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

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

Experience and education relating to the Board/Committee: UCLA - Bachelors WRITER - published Author - Poet - Public speaker Security guard -

Please indicate your interest in serving on a City Board/ Committee: Be part of the Community

Please return completed application to:

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

AGENDA REPORT
CITY OF ALAMOGORDO
CITY COMMISSION

Meeting Date: 12/19/2017 **Report Date:** 12/15/2017 **Report No:** 14.

Submitted By: Petria Schreiber

Subject: Adjourn into Executive Session in compliance with Section 10-15-1(H), NMSA 1978 (as amended), to discuss Limited Personnel Matters; Recent Resignations and Terminations. **(Roll Call Vote Required)**

Fiscal Impact:
Amount Budgeted:
Fund:

Additional Fiscal Impact:

Recommendation:

Background: