

**CITY OF ALAMOGORDO, NEW MEXICO  
CITY COMMISSION REGULAR MEETING MINUTES  
7:30 P.M., COMMISSION CHAMBERS  
JUNE 8, 2010**

**RON GRIGGS, MAYOR  
ED COLE, MAYOR PRO-TEM  
MARION LEDFORD, COMMISSIONER  
JOE FERGUSON, COMMISSIONER  
ROBERT RENTSCHLER, COMMISSIONER**

**JOSH RARDIN, COMMISSIONER  
AARON RANCE, COMMISSIONER  
MARK ROATH, CITY MANAGER  
STEPHEN THIES, CITY ATTORNEY  
RENEE CANTIN, CITY CLERK**

**CALL TO ORDER, ROLL CALL, INVOCATION & PLEDGE OF ALLEGIANCE**

Mayor Griggs called the meeting to order at 7:30 p.m. Roll Call was taken by the City Clerk. The City Clerk announced there was a quorum present. Invocation was given by Mayor Pro-Tem Cole. The Pledge of Allegiance was led by City Manager Roath.

**APPROVAL OF AGENDA**

**Mayor Pro-Tem Cole moved to approve the agenda. Commissioner Rentschler seconded the motion. Motion carried with a vote of 7-0-0.**

**PRESENTATIONS**

- 1. Presentation to Dr. Stephen Trout, Reverend for the Grace United Methodist Church, for his many years of service to the City by providing the Invocation at City Commission meetings. (Ron Griggs, Mayor)**

Mayor Griggs read the Mayor's Commendation that will be presented to Dr. Rev. Stephen Trout who could not attend this evening. He added that Rev. Trout will be leaving to accept a new assignment with the church in Farmington next month.

**CONSENT AGENDA (Roll Call Vote Required for items 4 & 5)**

Item # 6 was removed from the consent calendar by Commissioner Ferguson.

- 2. Approval of Minutes of the May 17-19 Budget Work Sessions and May 25, 2010 Regular Meeting of the Alamogordo City Commission. (Renee Cantin, City Clerk)**
- 3. Approval of a Statement for the Executive Session of May 25, 2010. (Renee Cantin, City Clerk)**
- 4. Approval of Resolution No. 2010-15 requesting the Local Government Division of the Department of Finance & Administration, State of New Mexico approval of revised budget figures for FY 2009/2010. (LeeAnn Nichols, Finance Director)**
- 5. Approval of Resolution No. 2010-16 for a Litter Control and Beautification Grant with the New Mexico Department of Tourism related to the Keep Alamogordo Beautiful (KAB) Program. (Matt McNeile, Assistant City Manager)**

**Commissioner Ledford moved to approve items # 2, 3, 4, & 5, of the consent calendar. Commissioner Rardin seconded the motion. Roll call was taken for items No. 4 and 5. Motion carried with a vote of 7-0-0.**

## ITEMS REMOVED FROM CONSENT AGENDA

6. **Approval of Change Order No. 3 for PW Project No. 2009-005, GRIP2 North Scenic Drive Reconstruction in the amount of \$67,292.21 including NMGRT.** *(Mark Threadgill, Assistant City Manager)*

Mayor Griggs read the agenda report and turned the floor over to Commissioner Ferguson.

Commissioner Ferguson said he asked to have this item removed because he had a couple of questions. He asked Assistant City Manager Threadgill if he checked to ensure the prices Mesa Verde is charging us is within the standard of everyone else. He doesn't mind Mesa Verde making some money on these things, but he wants to make sure they are fair market prices.

Mark Threadgill, Assistant City Manager explained that the \$67,000 actually represents three different changes. The first was an area that we found on the far west side of North Scenic, just before it intersects with North Florida; there was some unstable earth in that area that had to be over-excavated, they replaced it with engineer fill and a geotextile fabric was used to further stabilize the area. This was unanticipated work that we didn't know existed before we started the excavation on that area. As a point of reference, once they started on the south side lanes, the new lanes, as the vehicles would go over that area, you could actually watch the earth unglute when they were driving over it. That had to be taken care of for the longevity of the road. The second was for drainage modification to address a low area. The third was for the driveway under drains for some of the properties along North Scenic where we are doing the improvements to keep water from pooling and allowing it to drain, because we changed the elevations to the entryways to some of those properties. As far as getting additional quotes; one each of these three items, as we did on the first two change orders, we requested formal written quotes from the contractor and subcontractors and compared them to the standards that we had. Once we compared them, we found they met the specifications they responded to during the initial quote.

Commissioner Ferguson said he just wanted to ensure the city is getting treated fair on this. The other thing he wanted to ask is how much of Scenic Drive comes from grant money and how much money did the tax payers have to put up. Mr. Threadgill stated it is approximately 78 percent, and there is a decimal point after that, of grant money, and 21 point something percent of city match. The Grip II grant was actually for two projects, the North Scenic Project and the completion of South Florida, Desert Lakes, Martin Luther King, extensions. The North Scenic Project was ready to go when the grants were awarded; we began on the design phase, had the construction phase under contract, and as we all know the state had some financial problems this past year. Any funds that were not under contract reverted back to the state, and in this case, \$765,000 from the initial GRIP II grant awarded to the city was reverted back to them. The balance of the grant is still a 78/22 split between the Grip II and the city match money.

Commissioner Ferguson asked if the change order was going to be the same, a 78/22 split. Mr. Threadgill confirmed this and explained the grant will pay approximately 78 percent and the city will pay the balance. Commissioner Ferguson asked if the city was going to have to come up with additional money because it is \$67,000. He then asked what we are looking at. Mr. Threadgill said we are looking at about \$20,000, in round numbers.

**Commissioner Ferguson moved to approve Change Order No. 3 for PW Project No. 2009-005, GRIP2 North Scenic Drive Reconstruction in the amount of \$67,292.21 including NMGRT. Commissioner Rance seconded the motion. Motion carried with a vote of 7-0-0.**

## UNFINISHED BUSINESS

7. **Consider, and act upon, the final publication of Ordinance No. 1373, approving a Local**

**Economic Development Project for secured financial assistance proposed by Premier Pellets, LLC., and proposed Project Agreement. (Stephen Thies, City Attorney)**

Mayor Griggs read the agenda report and at our last Commission Meeting, this item was tabled and the City Attorney, along with Commissioner Ferguson and Commissioner Rardin were to meet with representatives with Premiere Pellets and discuss this project agreement. He asked if the meeting had taken place and what the results of that meeting were.

City Attorney Thies began by saying during the meeting, he and the two commissioners met with the two representatives of Premiere Pellets, on Wednesday, June 2<sup>nd</sup>. At that time, we discussed five issues. The first issue was the amount of job credits. As you recall, the project agreement that was presented to the Commission had a job credit of \$2,106, which was based on a formula created by a couple members of the City Commission. The second issue was the number of jobs. The project agreement required them to create nine full time jobs, and to maintain those jobs for a period of ten years. The third issue is the amount of security they would be obligated to provide. In the event they were unable to meet their obligation and were unable to pay back the incentive we would be providing, we needed to look at some type of security for the recovery of our investment. The fourth issue is the limited disbursement of the economic incentive payment that we would be making to them. The fifth issue is the matter of insurance. The last three issues we reached an agreement on, for the most part they agreed to provide the security in the initial project agreement, make the disbursement with the eligible cost that has already been incurred and providing invoices for those costs; we would be paying the disbursement for those costs already incurred and paying them other costs as they are incurred. They ensured us we would be named as the additional insured agency on both the bio-mass dryer and the real property. On the first two issues, we didn't really reach an agreement; there was a lengthy discussion about the amount of the job credit. Their proposal to us was a credit of \$5,350, and they were reluctant to commit to nine jobs because of the nature of these jobs. They were concerned that these individuals would constitute them the 2,080 hours, which makes up the full time job. We had a lengthy discussion and, after that discussion there was a proposal put on the table where the job credit would be increased to \$2,707, and the number of jobs would be decreased to seven, instead of nine. The intent was to present that proposal to the Commission tonight for discussion, but on Friday he received a phone call from one of their representatives, saying that neither of them could be here tonight and asked if the matter could be tabled for an additional two weeks. This will give us some additional time to revise the language of the project agreement, and present it again in two weeks.

Commissioner Rance asked City Attorney Thies if he said they had settled on seven jobs versus nine. City Attorney Thies explained they didn't settle on it, but it was discussed and the proposal was made that instead of nine jobs, they would obligate themselves to create and maintain seven jobs on an annual basis. The reason for that is because these individuals will be somewhat seasonal and they may not put in the necessary hours to constitute a full time job and by decreasing the requirement by two jobs, they can take the hours worked by those two other individuals and add them to the hours these seven would work. Between the nine part time positions, they would essentially come up with the seven full time positions. Commissioner Rance asked if that was based on the \$2,707. City Attorney Thies confirmed this.

Mayor Pro-Tem Cole asked under the fair labor standard act, how they can add the jobs of those two positions to the other seven, or are the people in those positions going to be working less than 40 hours per week before they add those two jobs. City Attorney Thies explained that under the fair labor standard act doesn't really have any application to what we are proposing here. They are agreeing to provide the equivalent of seven full time jobs. That means the seven to nine individuals are going to work a total of 14,000 plus hours. They would need to provide those hours of work to at least seven individuals over a years period. Mayor Pro-Tem Cole wants to make sure he understands completely, it is seven full time jobs. City Attorney Thies explained it is full time equivalent; they get credit for the number of hours an individual works. If they hire nine people and those nine individuals work 14,000 plus hours, they would then have created seven full time

additions. There is a head count required of them and an hour count. Our whole incentive is based on them providing full time jobs, and they will not get the incentive unless they provide those full time jobs. Mayor Pro-Tem Cole asked if there is the possibility of nine full time jobs. City Attorney Thies explained their plan is to hire nine individuals; it is unlikely that all nine of those individuals will be working 2,080 in any particular year because of the nature of this particular operation.

Commissioner Rentschler asked if what they are really creating is seven jobs at 2,080 hours. City Attorney Thies confirmed this. Commissioner Rentschler went on to ask if by increasing the job credit to \$2,707, how much more is that then we have used before, what is the standard amount. City Attorney Thies stated it would be comparable to the job credit that was given to, initially Sunbaked Biscuits and later Marietta. If he recalls correctly, they were to receive \$2,756 for every job they created. 1-800-Flowers was structured a little differently, they received credit for providing hours and their credit was around \$900 for every 30 hours they provided to an individual. PreCheck received a credit of \$1,194, and the hourly wage they had to pay was \$13.50. There was no hourly rate component for 1-800-Flowers, but Marietta and Sunbaked were required to pay \$9.00 an hour.

Commissioner Rentschler asked if the term of the payback is \$2,707 times seven, divided into the \$241,000. City Attorney Thies explained the term of the payback would be, over ten years; they are obligated to pay that amount. The difficulty of the proposal is that on paper, they don't pay back the entire \$241,000 incentive. What they are willing to do is create seven positions, but they are confident they will create additional positions. The agreement would be structured where they would get additional credit if they created additional positions. Those additional positions will not be associated with the bio-mass dryer, because it would be maxing out the number of hours they have available on that aspect of their operations. If they receive the additional credit, they are confident they will create enough additional positions over a period of ten years, that they will have repaid their incentive. They would only be obligating themselves to create nine jobs. The issue here is that they don't want to set themselves up for failure, where if they don't meet the nine job obligation, we would have to declare them in default because they didn't create those nine jobs. That is part of the rationale in going this route, to give them the flexibility. On paper, they will pay off their incentive over a period of 10 years.

Commissioner Rentschler asked if the security was the dryer itself. City Attorney Thies said it was and added it is also a second mortgage on the real estate, so we are more than adequately secured. Commissioner Rentschler asked if this mortgage was a junior to the existing mortgage, have we done this before. City Attorney Thies confirmed this and said it is up to the Commission to decide what an adequate consideration is.

Commissioner Ledford said we started off with nine jobs and \$2,106 then went to seven jobs and \$2,707, how did we do the math with this? City Attorney Thies stated Commissioner Rardin did the math. Commissioner Rardin stated he took the \$18,949 that we wanted yearly for the nine jobs and divided it by seven and it gave him the \$2,707. He said they were trying to give the flexibility that the company wanted. In doing the math again, if we proposed eight jobs, it would be \$2,368.63 per job. Commissioner Ledford asked if we reduced it to five jobs, would we just raise the credit amount. Commissioner Rardin said no, they didn't want to go any lower and didn't want to go any higher than \$2,707. Commissioner Ledford said if we take \$2,707 by dividing seven jobs into the \$18,949. His question is, if they say they can only create six jobs, would we then divide the six into the \$241,000 and that would give a higher credit, wouldn't it. He wants to know what the justification is. What if they only want to create one job? He doesn't understand the logic, the more jobs they create is what we are after, the less the credit. If we are going to raise the credit as we lower the amount of job, how does that make this work? Is this something that both parties agreed to? City Attorney Thies said no, not until the Commission agrees to the new proposal.

Commissioner Ledford said he has a hard time figuring out how this works. The whole part of this incentive program is to create jobs, not to get the credit higher. We reduce the jobs and raise the credit, and it is just as good as a nine jobs. He doesn't understand how that gives the tax payers a

return on their investment. City Attorney Thies explained, using the seven positions, they could pay each employee more and the amount of payroll would actually go down if they used the nine positions. The original contract agreement required them to create nine positions with an annual salary to each of those individuals of \$18,720. If they decrease the amount of positions to seven, we are going to have \$36,000 or \$37,000 less in wages being pumped into the local economy.

Commissioner Ledford asked if the seven jobs are going to get this paid off in ten years. Are they going to create more jobs later on? City Attorney Thies said they are confident that they will create additional jobs with the further expansion of their business, and if we give them credit for those additional jobs, they would have created enough additional jobs to repay the incentive, in full, in ten years.

Commissioner Ledford said if someone were to pay \$8.00 an hour, all we would have to do is raise the credit and everybody is happy. City Attorney Thies stated it would be one way of looking at it. Commissioner Ledford said it doesn't make sense. Did we do it that way before? City Attorney Thies said there is no rhyme or reason of how we reached prior credits. That is what we are trying to do, get away from just trying to pull a number out of the air, and have some logic for determining the amount of credit we are going to give a company when they create jobs.

Commissioner Ledford said his point is, whatever the amount of incentives, all we would have to provide is the amount of income they need to pay to get credit, and that works. That doesn't make sense, he is not sure the Commission understands what is going on. City Attorney Thies stated we want to have some reason for the amount of credit you are giving to them, some benefit. That is the objective of this whole plan, you are giving them money and they are giving something back to you. What they are giving back to you is the creation of jobs, where they are going to pay a certain amount of money to those individuals, and in turn they are hopefully going spend that money in the local economy. Commissioner Ledford said he understands that, but he is trying to figure out if we can lower the number of jobs and raise the credit, it is the same answer. City Attorney Thies stated you end up with the same result, but it doesn't give us what we are looking for and that are the further expansion of our economy.

Commissioner Ledford said the whole point of this incentive is to create jobs. If you take off two jobs and raise the credit, the way he understands it, that is not productive creating jobs. When the next company comes in, all we have to do is divide the hourly rate into the loan, the money amount, to get the credit to make it work and that doesn't make sense. City Attorney Thies agreed. Commissioner Ledford said he knows Premiere Pellets representatives are not here today, but wanted to know if this what was agreed upon, is this what we are going to do? City Attorney Thies stated if we revise the agreement and send it to them, they will review it, make any changes, and a proposal would come before you in two weeks. At that time, we could have further discussion on the proposal then, or you can have further discussion on the proposal tonight. If you don't find what is being offered is expectable, you could direct him and the two Commissioners to have additional discussions with Premiere Pellets and attempt to find something that both sides would find agreeable.

Commissioner Ledford said he can appreciate them trying to make this work, but it appears to him that if they said they only wanted to create two jobs, they would divide the payroll amount into the loan amount, come up with the credits, and we are done. Commissioner Rardin said in the other part of the discussion that we had, they anticipated creating more than the seven jobs. We told them that even if he pays it off in five years, he still has to maintain those seven jobs for ten years. They have to stay in the community for ten years if the party agrees. Even if they pay this off, they can't skip town and "use the money and run." This way, they have to stay here for at least ten years and created the amount of positions they agreed to create. Commissioner Ledford said he knows we want to create good paying jobs, but he doesn't know if \$9.00 an hour is considered good pay or not. He asked what minimum wage is now. City Attorney Thies said he believes it is \$7.50.

Commissioner Ledford indicated that he appreciated what Commissioner Rardin and Commissioner

Ferguson have accomplished, and he appreciates their commitment to stay here, but his point is, if they wanted to create five jobs, we would have to make this work with the same amount of money. Commissioner Rardin said at that point we would just walk away. Commissioner Ledford asked why they didn't just walk away when they wanted seven instead of nine. Commissioner Rardin stated they were trying to be flexible. In this type of industry, you may have nine people employed, but trying to get nine people to show up every day, you would have to hire 13. He can see their side of the argument because he is in this position, because he employs people, and that is why he was trying to be flexible. They said they were going to create nine, but this would only obligate him to create the seven; more than likely, he will create nine or ten. Commissioner Ledford said if they create seven jobs for ten years, would this be paid off. Commissioner Rardin said it would not. Actually, that is where the discrepancy is between us and them. There was a schedule in the packet that went from nine to 14 jobs, in order to pay it off in a ten year period, and that is what he thought we had agreed to. He thought we had agreed to start with seven jobs, and over a period of ten years, it would bump up to 12 jobs. That is where the disagreement is with us and with Premiere Pellets. That is what we still have to discuss with them. Commissioner Ledford asked if they are still working on that. Commissioner Rardin stated that is what we still need to discuss, and that is why the e-mails were being sent. There was a misunderstanding between us and them on the amount of jobs.

Commissioner Ledford said he took the \$18,720 and divided that by nine and it gives you the \$2,106. Commissioner Rardin confirmed this and said instead of doing nine jobs, he took the \$18,720 and divided it by seven jobs and it gave him the \$2,707. It bumped the credit up \$601 per job and reduced the jobs by two. Commissioner Ledford said so we are paying them more for fewer jobs. Commissioner Rardin confirmed this. Commissioner Ledford said it doesn't make any sense. That is not the purpose of the program.

Mayor Pro-Tem Cole said he doesn't see how we can hold a company to ten years, or any number of years. As a Commission, we have been thought that several years ago with another business that came into town, which for whatever reason, went out of business. When Commissioner Rardin says they are going to be here ten years, he doesn't know how we can guarantee that. Commissioner Rardin said it will be in the contract and there will be some type of penalty if they don't. We talked about that in the agreement, that if they leave prior to the ten years, we would figure out some sort of penalty schedule, where they would have to pay us a certain amount of money for leaving early. City Attorney Thies added that is the reason we get security, in the event they do pack up and leave, we have some other means to recover the money, and in this case it would be the bio-mass dryer and a second mortgage against the real estate. Hopefully we would be able to recover some of the incentive.

Mayor Pro-Tem Cole said we may have the equipment, but does it have any value if they close the business down. He thinks it would be worth looking at, having some type of earnest money, if they do go out of business, to cover the city. City Attorney Thies said for the ten years, which is not unusual for an economic development project, to obligate them for a ten years period. Mayor Pro-Tem Cole mentioned he doesn't want to discuss it this evening, because as the Commission, we are in discussions with them, but he would encourage them to look at some sort of escrow money, or something along those lines. City Attorney Thies said they would be escrowing the money we gave them. We front the company the money up front, and in this case they buy a bio-mass dryer, and they install some infrastructure that they need to be able to run that bio-mass dryer, and then they pay back that money through the creation of jobs over a period of ten years. The PreCheck Agreement was, they are obligated to create jobs on an annual basis, if they meet that job creation requirement, then they receive the incentive; but only if they meet the numbers. They get a lesser amount if they don't meet goal, but they don't receive the full amount unless they create all the jobs they are obligated to create. It would be difficult for them to put up an escrow, it would take away the amount of money they have available to install the bio-mass dryer.

Mayor Pro-Tem Cole said he will await the final agreement, which he thinks he heard someone say it would be two weeks from now. City Attorney Thies confirmed this.

Commissioner Rance said the times that we have offered these incentives, do we have a true policy or procedure, of how we do it each and every time. He then asked the City Attorney if we do it different each and every time, is that correct. City Attorney Thies confirmed this as well.

**Commissioner Rardin moved to table the item until the June 22<sup>nd</sup> Regular Meeting. Commissioner Ferguson seconded the motion. Motion carried with a vote of 6-1-0. Mayor Griggs voted nay.**

- 8. Consider, and act upon, the Final Subdivision Plat for Palo Duro 2; Subdivider's Contract; Waiver of Protest Agreement, and acceptance of 1.315 acres of right-of-way for Dr. Martin Luther King Drive in lieu of the Public Land Fee of Five Percent. (Mark Threadgill, Assistant City Manager)**

Mayor Griggs read the agenda item and turned the floor over to Mr. Threadgill.

Mr. Threadgill began by saying this is the Palo Duro 2 Subdivision, final plat for Tool Box, LLC. This was discussed extensively at the last City Commission, which he was unable to attend at that time. The Commission made some discussions concerning the dedication for the right-of-way for Martin Luther King, in lieu of the public land dedication, five percent fee. Since the Palo Duro 2 Subdivision was not a specific item on that agenda, it is being brought back at this meeting, so you can ratify the action that was taken last meeting pursuant to this subdivision and approve the Subdivider's Contract. We received a call this afternoon about 4 o'clock, from the Subdivider asking for a revision to paragraph 12 of the Subdivider's Contract, and he has handed out that revision. We made the revisions to the Subdivider's Contract, paragraph 12, with basically turns it into completion of phases, phase 2A and phase 2B. And since the city no longer issues the certificates of occupancy, they are not issued by the State of New Mexico, Construction Industries Division; the completion of the utilities, streets and gutters, is that the water and wastewater service will only be issued in the name of the Subdivider. Even if they sell the property, the Subdivider will be responsible for the water and wastewater, until all of the necessary improvements are completed and accepted by the City. Everything else is as it was before.

Mayor Griggs asked if there were any questions or comments from the Commission as it relates to this item. Hearing no comments, he asked for a motion.

**Mayor Pro-Tem Cole moved to approve the Final Subdivision Plat for Palo Duro 2; with the Amended Subdivider's Contract, paragraph 12; Waiver of Protest Agreement, and acceptance of 1.315 acres of right-of-way for Dr. Martin Luther King Drive in lieu of the Public Land Fee of Five Percent. Commissioner Rardin seconded the motion. Motion carried with a vote of 7-0-0.**

## NEW BUSINESS

- 9. Consider, and act upon, a leak adjustment request for Jack Brock, Pastor of Christ Community Church. (LeeAnn Nichols, Finance Director)**

Mayor Griggs read the agenda report and turned the floor over to LeeAnn Nichols, Finance Director.

Finance Director Nichols began by saying this is a leak abatement that was filed by Christ Community Church, and they did meet all of the requirements for the leak abatement. City Staff is not allowed to authorize anything over \$2,500 and the abatement came out to \$2,882.54,

Commissioner Ferguson asked what their normal water bill usually runs. Mrs. Nichols stated their average water bill is \$800. Commissioner Ferguson said their bill was about \$3,800, so they are asking for about \$2,000 back. Mrs. Nichols confirmed this.

Mayor Griggs asked if their average bill was \$800, because he thought their average bill was \$136. Mrs. Nichols said he is right and correct it, their average bill is \$139.65. Total billed over average was \$660.40, for a total of \$800. Mayor Griggs stated this is for the property on the corner of McKinley and Scenic. Mrs. Nichols confirmed this.

Pastor Perry Kenney said he has been with the church for 17 years, and we don't have an answer for what the bill was that high. We had a urinal leak and didn't catch it for several weeks, and we just saw the trickle. That is a lot of water, and he is not sure where it all went, but there was 4,007 gallons of water, and it seemed like it was more than what was leaking from the urinal. We could not see it; it was in a small bathroom of an unused building. We are a donation based organization, and request help with this bill.

Mayor Griggs asked if there were any other discussion on this item. Hearing none, he asked for a motion on this item.

**Commissioner Rance moved to approve the leak adjustment request. Commissioner Ferguson seconded the motion. Motion carried with a vote of 7-0-0.**

- 10. Consider, and act upon, an Agreement with Bohannon Huston, Inc. for engineering services to analyze and evaluate the diversion of flows from the proposed Dry Canyon Dam westward along existing drainage easements. (Mark Threadgill, Assistant City Manager)**

Mayor Griggs read the agenda report and said this is part of or potentially part of the northern flood control detention basin and channels. He then turned the floor over to Mr. Threadgill.

Mr. Threadgill began by saying this stems from a special meeting we had back on March 16<sup>th</sup>, and he believed most of the Commission was present. At that time, we went on a field trip to the north diversion channel project, the final part of the flood control project. He presented a slide show and said the original Corps study area, the Dry Canyon Drainage Master Plan area, which was contracted several years back. That study looked into taking the flows off the diversion dam, to the south and east, from the existing arroyos. After touring the area, we came back to the Commission Chambers and had a discussion with the Commission, Corps of Engineers, and Bohannon Huston, who did the study, the Commission had a number of questions. Going back to the original plan of the north diversion channel, we decided on moving the flows coming out of the north diversion dam all the way to the east, to the other side of Hwy 54, the Relief Route. We contacted Bohannon Huston, who did the Dry Canyon Drainage Master Plan, and explained the scope of work and asked them to prepare a quote and a timeline and we are bringing that to the Commission tonight. He indicated the approximate scope of the study area on the slide, and said taking the flows from that area, and moving them to the west, out to the red arroyo area, rather than bringing them south. He is presenting this tonight to get the Commission's approval and authorization to go ahead with this plan.

Commissioner Rentschler asked when we are going through this, his recollection of this is that we are not looking at moving the entire diversion directly west; we were looking at splitting that up. The culverts that are currently under North Scenic Drive and North Florida were not big enough to handle the entire flow, and we were going to take the excess off that site, but we were not talking about the entire flow, is that correct. Mr. Threadgill said no and showed the overlap area on the slide, and explained some of the area was Corps studied and some of that area is from the Drainage Master Plan Study. Some of it will be flowing to the west, and the remainder of it will be flowing to the south, we will be splitting that diversion. Commissioner Rentschler said he wanted to ensure that it is a shared drainage to accommodate both sides. Mr. Threadgill assures him it is a split diversion.

Mayor Griggs asked if there were any other questions regarding this item. Hearing none, he asked for a motion.

**Commissioner Rentschler moved to approve the Agreement with Bohannon Huston, Inc. for engineering services to analyze and evaluate the diversion of flows from the proposed Dry Canyon Dam westward along existing drainage easements. Commissioner Rardin seconded the motion. Motion carried with a vote of 7-0-0.**

**11. Discussion, and possible action, on City Commission support for the continuation of the Energy Efficiency and Conservation Block Grant (EECBG) Program, and directing the City Clerk to notify all interested parties. (Renee Cantin, City Clerk)**

Mayor Griggs read the agenda report and said this is a letter he received last week and asked the City Manager to look into it, because he was not sure what it concerned. He then turned the floor over to City Manager Roath.

City Manager Roath began by saying when we looked into this, we discovered that this group is seeking support from communities in New Mexico to submit to our local delegation, primarily Senator Bingaman, to encourage him to support continued funding and to move two percent of that money over to this program. Renee Cantin, City Clerk added the addition to that is that the City had previously received funding for this program last year for the Sterling Engine Solar Power Generation and Solar Powered Trash Compactors, in the amount of \$147,700. Currently this program is not funded and as a result, Mr. Wisely from Climate Communities is requesting support from the local governments, particularly the ones who have received previous funding. Mr. Wisely asked us to forward to Senator Bingaman, who is the chair of the committee, a list of people who support it. We are asking the Mayor and Commissioners, if each one want to support that and request they allow her to forward each of their names, that wish to support this, to Mr. Wisely so he can forward it to Senator Bingaman.

Mayor Griggs asked Ms. Cantin if she knew anything about Mr. Wisely's company, Climate Communities. Ms. Cantin said she doesn't know in great detail, but she knows he works fairly close with Senator Bingaman on an ongoing basis. She believes this may be something that is actually coming from Senator Bingaman, so he is aware of the number of communities that support this. She also knows they are a national coalition of local governments, who work to ensure federal energy and climate policy recognizes the critical role of local governments.

Mayor Griggs said he knows we have used this program and received some funding for our solar powered trash compactors. His concern he had about this is whether or not the company has any other agendas. He would be more comfortable, if the Commission wants to do this, to write directly to the Senator and not go through Climate Communities. He would like to by-pass them and not have our letters associated with them, should there be something they would support that we wouldn't as a community or as a Commission.

Commissioner Rance stated when he read the letter; there was one piece of it that bothered him. He agreed that we need to do it independently because he also believes there is an ulterior motive in this process. Commissioner Ferguson agrees with Mayor Griggs and Commissioner Rance. He doesn't know where this guy is from. It seems like we are getting money for this and he is asking us to support him, and he worries about that.

Ms. Cantin said she could draft up a letter to Senator Bingaman, if that is what the Commission wants.

City Manager Roath agreed and said it is a logical and direct approach. It would also give us the opportunity to thank the Senator for his past efforts, in allowing us to receive these funds, and perhaps leave a thought in his mind and maybe we would receive future funds in that area.

Mayor Griggs agreed and said those were his thoughts as well. He then said if the Commission

agrees, he would like to ask the City Manager and City Clerk work to on drafting a letter that we will send directly to Senator Bingaman. He thinks there are several paragraphs in the example that he feels there is no need for, but they can discuss that later.

**The City Clerk was directed to prepare a letter to send directly to Senator Bingaman on behalf of the Commission.**

**12. Discussion, and possible action, on economic incentives the City might offer a potential retail business.** *(Mark Roath, City Manager; Stephen Thies, City Attorney, and Mark Threadgill, Assistant City Manager)*

Mayor Griggs read the agenda report and said the reason to address this, is that Albertson's is interested in coming to Alamogordo. Albertson's has been offered financial incentives in other communities to establish a place of business there. Those communities are not in New Mexico, they are in Texas and Louisiana, where the laws are different. Here in New Mexico, we have the Anti Donation Clause in the State Constitution, which precludes us giving money to businesses to come in. The Economic Development Act was enacted to assist communities with bringing in manufacturing or new jobs. Retail jobs, such as Albertson's, were specifically excluded from that particular act. The only document that we have seen as a Commission is a document that was drafted by the City of Rio Rancho, who is a Charter City, as are we. Their document provides a Gross Receipts Tax rebate to certain identified retail business. It does that by reimbursing them for the cost of the public infrastructure they may put in. As this stands, we have no means whatsoever to assist Albertson's to come. The discussion tonight needs to deal with whether we are interested in enacting an ordinance, something similar to Rio Rancho's, to where we want to provide incentives to Albertson's. We would be able to, if we chose, and if we didn't choose, we would not offer them incentives but if another Commission wanted to provide incentives to a retail operation, they could do so. He is going to ask Mr. Shyne, who has some relationship with Albertson's, although he is not representing them, to address the Commission. He would first like to have the City Manager and City Attorney address the Rio Rancho ordinance, and then we will move forward from there. He then turned the floor over to City Manager Roath.

City Manager Roath began by saying he believes the Mayor has summed up this issue quite well. Obviously, one of the issues that we have is that the State of New Mexico doesn't give much liberty to municipalities to provide incentives in the retail area, so we are somewhat hampered there. He added that the City Attorney has taken some time and located an ordinance from Rio Rancho and he has asked him to explain that to the Commissions. He also said the Assistant City Manager has asked his staff to look at any alternatives on this issue.

City Attorney Thies said as the Mayor indicated, the Rio Rancho ordinance is structured so it encourages the location or relocation of retail and other service related businesses in the City of Rio Rancho. They adopted this pursuant to the fact they are a Charter City and generally a Charter City can do anything the Legislature has said they can't do. That is the rationale for adopting this. It is structured on the lines of the Local Economic Development Act, and what they do is reimburse a developer for the cost of certain infrastructures related to the development of retail or service related entity. They also will reimburse impact fees when the reimbursement would be instrumental in bringing that particular entity into the city. The ordinance goes on to specify what the entity must do in order to qualify for the reimbursement. For example, a restaurant would require a certain seating capacity, they also require the retail entity to have a certain amount of gross sales, and they put an employment requirement of 15 employees. They have even provided incentives to a car dealership, provided they have an annual sale of 600 units. They will also provide an incentive to existing businesses, provided they basically double the square footage of the retail space that they have. It goes on to specify authorized projects, it is a lengthy list, but they primarily intend to reimburse businesses for the necessary infrastructure to allow for the construction of a particular facility, whether it is a single building or a mini mall type building. What they do is determine the amount of Gross Receipts Tax that these new entities generate, and over a period of years they will reimburse

that entity up to 50 percent of those infrastructure costs, provided they receive sufficient Gross Receipts Tax to reimburse the entity. In a nut shell, we would give this incentive, reimburse them for infrastructure costs, we would reimburse them based solely on the Gross Receipts Tax they have generated, because they have located in our community. If they don't generate additional Gross Receipts Tax, they wouldn't get any money.

Michael Shyne began by saying his relationship with Albertson's; he is a real estate broker trying to sell them a piece of property in Alamogordo. He has showed them 12 different properties in Alamogordo and during the two times they visited within the past year. We finally got to a point where they had completed their analysis of Alamogordo, which was done by a company that analyzed the city for Albertson's, to see if there is adequate business to support an additional groceries store; Albertson's conclusion is that there is. While Albertson's was looking at Alamogordo, America's economy was falling apart. We got to the point of where we are today, and the amount of time it takes to discussion a quarter million dollar incentive for ten jobs; it is clear how important jobs are to every community, not just Alamogordo. The consequence of that demand for job creation in every city in America, they are all trying to capitalize on. All the other cities that Albertson's looked at, are offering them special deals. First of all, in a lot of cities, there are large vacant modern buildings that they can purchase or lease for half of what they would have had to spend two years ago, before this recession. That is one advantage that Alamogordo can't compete with, and he keeps telling them that it the good news with Alamogordo, that we really don't have a lot of big vacant buildings. We do have the old Wal-Mart building, but we all know the story of why it sits there vacant for over a decade.

We do have the old IGA building, but it is not modern enough of a building for them. They clearly understand that our economy is based upon Holloman Air Force Base. Not only do they understand it from the analysis they have currently made, but we have the good fortune that Albertson's was operating in Alamogordo for approximately a decade in the past. They have history here, they have experience, and they have a comfort level with Alamogordo. At the same time, they have to evaluate where they are going based on what it means to them economically. Other cities are offering them some pretty good incentives. In addition to the common things, such as waiving building permit fees and waiving inspection fees, and credit for job creation, they are being offered five years of reimbursement of property taxes, or five years of reimbursement of Gross Receipts Tax; this is a lot of money. They want to come to Alamogordo, but at the same time, they have to make smart business decisions. It would be ridiculous for us to think we would say come to Alamogordo and build, but it is going to cost a lot more to come here than in an equal city in another state, because they are offering incentives and we are not. It is real easy to ask why we should give incentives to a business who wants to come to Alamogordo, if they want to come here, they should. That is the mind set that we have worked under for the past eight to ten years, and it hasn't improved the living in Alamogordo or brought businesses here. The people out at Holloman ask for certain things, but we can't attract those businesses. Maybe it is time for Alamogordo to ask what we can do to attract other businesses, what changes can we make to make Alamogordo more attractive than other places. He is not saying it is all economics; he thinks it is other things too, but he is not sure what they are. If we want to make Alamogordo better, if we want to improve the quality of life here so that Alamogordo can attract people, we don't want to be stuck buying groceries at Wal-Mart or Lowe's. We don't want to get into the situation, and it has probably happened quite a bit, where a family comes to Alamogordo, and they go to the grocery store and they decide not to stay here because of the lack of choices. Now is the time that we need to start thinking about Alamogordo's future. He is asking the Commission to think out of the box here, and ask what we can do to bring Albertson's in. He thinks the City Attorney's proposal is thinking bigger than just Albertson's, it is thinking of a new kind of incentive plan that can be created to attract other businesses as well, and that is where we will win. He is excited about the City considering this modification of the program that Rio Rancho has. At the same time, he thinks we can go beyond that, and maybe it is time to go beyond that. What has been ignored in the past, has shown what has happened to Alamogordo, nothing. The City Attorney has discussed the expenses that would be reimbursed, such as infrastructure, but he thinks we need to go beyond that. A few simple ideas would be if a business comes to town and buys a property with an old building on it and tears it down, they got rid of an eyesore; that is a public benefit, or how about demolition costs being reimbursable. If they add attractive landscaping, that is

the beautification of Alamogordo, and we desperately need that, why shouldn't that be reimbursable?

What if they spend a lot of money and create a building that is very attractive, how about reimbursing the company for the extra architectural expense. There are a lot of ways we could create incentives that would be opened to all businesses that qualify under this proposal. If each business, in their own way, would improve the beauty and quality of living in Alamogordo, we would be living in a great community. He is asking the Commission to seriously look at this. Earlier you were talking about a quarter of a million dollars for 10 jobs for the pellet plant; Albertson's is wanted to create 100 to 150 jobs. The rule of thumb, if you create a new job in industry, it creates seven new jobs to service that.

It is not that way in retail. If you create one new retail job, and there is about 1.15 new jobs created in addition to that. 125 Albertson's jobs will create an additional 130 jobs in addition to that. Those are the king of jobs we want in Alamogordo. He encourages the Commission to think of ways to encourage businesses to want to come here and stay.

Commissioner Ledford said he thinks out of the box every day, that is what business is all about. He thinks there are certain times when business is important, but a lot of times we have to look at what it is. What government typically does is take care of services and issues that are similar in nature. For example, we have a library, so we don't want to see another library come in. The way he sees it, especially for the city, is we spend a lot of time, money and energy, including the quality of life issues, that the free market doesn't deal with. He would love to have another groceries store, and he would like to have a lot of other things, especially restaurants. What concerns him is how we get there. Some of the items with the Rio Rancho ordinance, dealing with infrastructure, dealing with rebate of permits, or not charging demolition, he thinks those are good ideas, because those are like the initial cost; that is to get them here and to get them started. His concern with the ordinance regarding Gross Receipts Tax, exemptions for five years of property tax, is that now we are talking about creating an environment that is unfair to the competition, and he is sensitive to that. Everybody is in business, and he would hate to think the government is going to bring in someone else and give them a competitive advantage over the existing business. Although part of what we are talking about tonight is coming up with some type of direction that the city can go in to bring in new business, at the same time he wants to be careful, because we are stuck with the way the law is now in manufacturing. He also wants to be careful that it is not an on going disadvantage with equal businesses. Grocery stores all operate from one to three percent of their bottom line, and that is very sensitive. He has not spoken to Lowe's yet, but his guess is that they are not going to be real excited about this, and he doesn't blame them. In the beginning he was okay with it, but he doesn't want to keep doing it on an ongoing basis. He wants to be careful when it comes to property tax and Gross Receipts Tax. Mr. Shyne asked Commissioner Ledford what he meant by ongoing basis. Commissioner Ledford explained that he meant competing with other stores on every year at a disadvantage. When they come in and acquire the land, and we give them some incentives, maybe we help pay for it through some sort of property tax rebate, but he doesn't know for sure, and then give the Gross Receipts Tax relief; that hurts the citizens of Alamogordo because they don't get that revenue. He believes there is a certain amount of revenue that would stay here, if we had another grocery store, but people will still go out of town to shop for various reasons. He thinks it would benefit Alamogordo over all, if we had another grocery store, and two or three other restaurants. Restaurant owners would also be a little sensitive if we gave new owners incentives and not the existing owners. Although he is in favor of looking at this, he thinks we are not here tonight to make any fast decisions.

Mr. Shyne stated they are not looking for any decisions tonight, they are just hoping to initiate a project. Commissioner Ledford said he would be in favor of something, and he said certain situations are different in Alamogordo. If a new type of business were to come into town, he may like the idea of a Gross Receipts Tax or property tax relief, but he is not sure how fair that is to existing business owners. He added that the base does have a grocery store as well. He has been to towns half the size of Alamogordo that have more than we do. There is something else besides the quality of life issues, it is called being able to make it work. He said we had a bond issue that failed with quality of life issues, so we have to be careful as to what we call quality of life. Mr. Shyne agreed and said there may be a better way for him to describe the issue.

Mr. Shyne went on to say the other thing he did not address is the competition issue. He admits that he doesn't go to the grocery store, but his wife does and so he doesn't know what anything sells for. When he picked up the Albertson's crew at the airport and drove them around, we pulled up to Wal-Mart; they all went in, including CEO of Albertson's. About 15 minutes later they came out, he stayed in the car, and the CEO turned to the other gentlemen and said can you believe what they are doing here. He asked him what he was talking about, and the CEO said the prices here are unbelievable. He asked him what he was talking about, because he thought the prices were the same in all Wal-Marts, and they all started laughing at him. According to them, Wal-Mart prices are whatever they believe they can get away with. These people, who are much more knowledgeable concerning the price of groceries, were laughing at the lack of competition in Alamogordo. We could easily say, do we want to give some tax money away, because that will hurt the citizens, but that hurt will be way less than the benefit of enjoying competition with groceries in Alamogordo.

Commissioner Rentschler said considering what we have been talking about for a long time, the quality of life in Alamogordo. He came in here he thought it was unfair competition by the government, but after reading this ordinance carefully, there is a clause that talks about substantial expansion of existing businesses. Other businesses, who want to grow, may be eligible for this kind of incentive. The quality of life in Alamogordo, everyone in here and everyone he has talked with, agrees that we do need another grocery store and several new restaurants and other types of businesses. If you go to Roswell or Las Cruces, sure they are a lot busier than us, but not that much if you look at the business they do; but these incentives are being offered else where, he doesn't know that we can match what they are offering. It would be creating 125 jobs, but at the cost of the city. He doesn't even know if it will help keep shoppers here, a lot of them go to Las Cruces to do their shopping. There is not a lot we can do with Gross Receipts Tax on grocery stores, because a lot of time they don't charge it, unless something changes in Santa Fe. He is kind of in the middle right now, but he would really like to see us have more retail options. He thinks they should consider some type of retail incentive, just so we can compete with other states. When it comes to people relocating here or the Air Force coming here, there are a lot of ways to help enhance Alamogordo, and he thinks we would all benefit in the long run if more retail business came into town.

Commissioner Rance stated we need to be talking about being able to provide back to the community, an amenity that is needed, desired and asked for on a daily basis. It is all about how we approach this, we don't have \$250,000 to offer, but we can do other things. He is excited about the opportunity to help boost the economy, because we don't get this type of opportunity very often. He believes this could lead to more favorable growth in the community in the future.

Commissioner Ferguson said he likes Albertson's, but he agrees with Commissioner Ledford, he doesn't mind initial incentives, but he doesn't want anything that is on going, because he doesn't want to hurt the existing businesses here. The other thing he would like to see us do is to try and get the County in on this. Alamogordo part of Otero County, and they have a lot more money than we do. He does think we need to do something to attract businesses here in Alamogordo, but he doesn't want us to support those businesses. He doesn't mind helping a business get there, but then they are on their own.

Mayor Pro-Tem Cole said he has really wrestled with this problem, and he has doubts about the government getting involved with economic enterprises. There were several meeting that we have attended and he has heard several different comments, and he has listened to what some of the Commissioners have said. He tends to agree considerably with what Commissioner Ledford said; he just doesn't know where the government of any kind should get involved. He knows that different government entities have, and if it works or not, he can not debate it. He attended a lunch meeting, two or three weeks ago, we heard a gentleman speak, he brought up some thoughts that caused him to have more turmoil, or a different type of thinking about another grocery store coming to town. As he sits here tonight, he is not sure how he would vote on that issue whatsoever. For him it would be a real difficult question that he would have to study in order to come to a decision to be able to vote

on it. He is not saying he is for or against it, but it would just take a lot more than what he has heard at the moment. He feels that the government should have a limit on what it can do to help economic situations, in many areas.

Mr. Shyne stated there is nothing to vote on tonight. He said you may have noticed in last Friday's paper, there was an article about an aircraft leasing company going into Roswell. It read, Economic Development Director, Fred Mondragon, said New Mexico lured Aero-Sail to the area with tax incentives. All across America, the government is realizing that they have to do something to help the economy. If all the government, city, county and federal, decided to offer no more incentives, it would be a level playing field. Unfortunately, when different cities are doing different things all over the southwest, we are competing with those companies and we have to recognize what we are competing with. Mayor Pro-Tem Cole let Mr. Shyne know that he heard him make that same mistake, based on that article. You said over the years, there has been so much change with economic development and government entities, that we might as well change our thinking and know what the government is going to be involved. That statement that you made that evening has gone through his mind, and it is changing his political thinking a lot. It is a complete reversal of the thought process he had when he was a lot younger. As a Commissioner, he does not want to be solving the financial problem of a community. Mr. Shyne said thanks for his honesty. He said each and every one of you were elected, just for the reason that each of you have your individual thoughts and most of the voters in your districts felt you were the best candidate to serve the community. He is glad you are all there and your decision is one that he will respect, even if he doesn't agree with it.

Commissioner Rardin referred to the Rio Rancho ordinance and asked if that is what we want to model our policy after. Mayor Griggs said that is correct. Commissioner Rardin went on to say that to him it looks like it addresses larger cities and not one the size of Alamogordo. Mayor Griggs agreed and said we would have to modify this to some degree to reflect our community. If we used the ordinance as written, it would be hard for us to utilize. His thoughts are that they turn it over to the City Manager and the City Attorney, to work the ordinance and maybe include some of the ideas that Mr. Shyne mentioned tonight. The City doesn't get the fees for permitting buildings anymore; it now goes to the State of New Mexico. As the City Manager and City Attorney look at this, one of them thinks they will have to determine how we fund it. If it is upfront money, how are we going to fund it?

Mr. Shyne mentioned you could refund it later. Mayor Griggs stated the way this ordinance is worded, they refund it later, but if we gave a rebate of the building permit, when does that happen.

Mayor Griggs asked that we go forward and bring an ordinance back. He thinks we are a little ways from being where we want to go, but step one is to ask if we want to undertake this to see if it would be something that is beneficial to the community. From the discussion tonight, he believes the Commission is leaning forward to trying to see if we can get something on the books, and once we do that, we can determine when and if we want to move forward on this. We can then decide if we wish to move forward on some sort of incentive for Albertson's and other retail businesses that may come into town. We would first have to have a means for it, and second we would have to vote in order to do it. At this time, he thinks we should direct the City Manager and City Attorney to work on modifying the example ordinance, and come back within two weeks to a month, to come back with a proposal. We could then look at that proposal and see what we want to change anything, pass it as is, or not pass it at all. We have all heard that the citizens want new restaurants; they want new grocery stores, and more retail stores. A lot of those same people that want these new entities are also the ones who are not in favor of offering incentives. It was brought up tonight that we haven't been anywhere or done anything economic development wise, but that is not totally accurate. We have, and the reason we had those opportunities is because we have the Economic Gross Receipts Tax that allowed us to offer those incentives.

Mr. Shyne clarified that he meant in the past ten years, we have done very little retail wise. Mayor Griggs stated we have no incentives to offer retail and from an economic development standpoint, we have not pushed for that. That focus could be different, if at anytime the OCEDC board or

Commission decided to go after some of those, we could change our mindset on those at that time. In the future, if we wish to target a large restaurant chain, we would have to determine what qualifications we want to put on that chain. Those are some of the things we may need to consider. He was in Oregon, and there is a town that has 9,000 people and they had two grocery stores. Alamogordo has approximately 35,000 people, we could, and in theory have six grocery stores. He believes Alamogordo has the means to support more than two grocery stores.

Commissioner Ledford asked Mr. Shyne if he believed in free enterprise. Mr. Shyne said he believes he does. Commissioner Ledford said there is probably nobody who has done more for retail than we have. He knows Mr. Shyne has conducted a lot of business here, and he really appreciates all that he has done in the community. When we talk about free enterprise, there are a lot of reasons why we don't interfere. He doesn't want to give up on the market deciding whether or not they can make money; he does not want to hand out tax incentives because they forgot how to make a profit. We need to be cautious because he doesn't want the government involved. The best thing we can do is repeal the Gross Receipts Tax, because then we are better than anywhere else. It is not just about taxes, which maybe we could help some, it is about how to make a profit. He wishes Mr. Shyne well and hopes he gets this done, because the town could benefit from another grocery store.

Mayor Griggs reiterated that he is asking the City Manager and the City Attorney to get together and look at the Rio Rancho ordinance, and determine how they can best apply that to Alamogordo. There will be several changes in the ordinance, such as the topics Mr. Shyne brought up, and there are other options that may be put into that ordinance. Once they do that, they need to give us a means to fund some of this, and how we would handle that. We could draft the ordinance, but if we don't have a way to acquire the funding, it will not do us any good.

Mr. Shyne stated he believes that ordinance has a mechanism built in, and doesn't require an up front payment. The developer has to pay the up front payments, and over a period of time, they get all or part of that back. Mayor Griggs agreed but said if they pay Gross Receipts Tax, it comes back into our general fund, and we will need to determine how we set that money aside to ensure we have sufficient revenue to pay them their share back. It may not be very complicated, but it is something that we need to address both the operating side and the paying side. Mr. Shyne added that in Rio Rancho, it has addressed this as well and has there solution. Mayor Griggs stated they may, and that will be part of what the City Manager and City Attorney will be looking into.

Mayor Pro-Tem Cole asked Mayor Griggs if he is saying that we are directing staff to look at it, we are not saying we are committed. Mayor Griggs confirmed this and added that we are asking staff to bring us back a document that we can consider committing to.

**Recessed at 9:13 p.m. and reconvened at 9:26 p.m.**

Mayor Griggs asked if there was anyone in the audience who would like to address the Commission.

Mr. Bernie Sternthal said he hears a lot of conservative people talking about not doing anything. A week ago, he got up and talked about the beautification of the city. There is a grocery chain that wants to come into town, isn't there anyway of taking this checkerboard of green garbage and coming up with a solution so they can come in and put up some type of water fountain so people can walk around it. Is there any reason why if we get a company that is considering coming here, they won't reject it because the city is so boring. He would like to see some help from the Commission. The apartment he lives in is always flooding, there is mold and nothing is being taken care of. They don't replace any trees that die, they don't do anything about irrigation, and something needs to be done.

Mayor Griggs thanked Mr. Sternthal for his comments and asked if there was anyone else who wanted to speak.

Mr. Charles Dennett said he has lived in the city for 37 years. You are talking about providing tax relief incentives for businesses coming into town, and Mr. Shyne was right, this is something that has been done all over the United States. He can give two such examples. He is from New Hampshire, close to the Massachusetts line, the city there offered incentives to a business to come into town and several businesses came into town and were offered and the town grew because of it. He is weary of Albertson's coming back into town, or any type of grocery store, because they have a nasty habit of pulling the plug at the wrong time. He knows the manager of the local Albertson's that was here before, was worried about his profits taking a dip when Wal-Mart first came into town, but he bounced back shortly after that. The Albertson's head office decided they were not making enough money in Alamogordo and ordered that the store be closed. This is one of the dangers of running profit type stores, which it is out of their hands as to whether or not the store stays or goes. On the other hand, he thinks it is worth the risk, he thinks we need a third grocery store. He also thinks we should encourage big retail stores to come into town, because you would be amazed how many Alamogordo residents you will meet in Las Cruces, shopping at these large retail stores. He knows several people who own stores, which would love to come to Alamogordo because a lot of their customers are here.

Mayor Griggs thanked Mr. Dennett for his comments and asked if there were any additional comments. Hearing none, he said he believes the discussion tonight will generate comments from a verity of people over the next couple of weeks or month, while we are looking into an ordinance, which will potentially allow incentives to be given to retail operations. Something all of us will have to do is take the Rio Rancho ordinance and read through it and looks to see what it says. It targets certain things, but doesn't give incentives to everybody or every type of retail. It puts caps on certain things, and some of it we may be able to use and some will need to be changed. Just because we move forward with it, doesn't mean that we will wind up agreeing to do it, even if we agree to pass the ordinance. Step one is to draft the ordinance, and step two is discuss the ordinance for approval and step three would be to discuss a specific entity, such as Albertson's. One of the things everyone needs to understand, this is almost unprecedented in New Mexico. Rio Rancho has taken that step, and he thinks Mr. Shyne needs to convey to Albertson's that Alamogordo is looking at something which is outside the box. We are going to look at it and address it, but the fact that Albertson's is looking to come here is the initial driver behind this, and we will see where the Commission wants to go on this particular issue.

**13. Consider, and act upon, appointment(s) to Boards and Committees. (Ron Griggs, Mayor)**

Mayor Griggs read the vacancies. He appointed Arthur C. Wolford to the Alamogordo Disability Council and asked City Clerk to notify this individual.

## UNSCHEDULED COMMUNICATIONS

**A. Jerry Johnson commented on the following:**

- 1) He has some questions about the economic incentives package for Premier Pellets. The way he understands it, they need to generate \$2,152,800 worth of payroll over a ten year period, and that would generate enough economic activity that the \$241,000 would be repaid in return of Gross Receipts Tax. That is the way he understands it, and he would like to know what the \$2,152,800 represents. City Attorney Thies explained that the \$2,152,800, and he doesn't have the original project agreement in front of him, but he believes that is the amount of payroll they would have created over a ten year period; additional payroll above and beyond what they currently have.

Mr. Johnson asked if this was analysis on the basis of what kind of economic activity that business generates in the community, in regards to Gross Receipts Tax. City Attorney Thies said it was and explained that is how the formula is structured. The wages is just the amount

of wages they would be obligated to create. The wages are a component of that formula, and the incentive is structured after the hourly incentive they would be paying, and the number of employees they hire at that hourly rate.

Mr. Johnson said, so that number is in terms of their increase of payroll over those ten years; to make this an economic viable thing for the city to put the money into. He understands we are not getting any interest back on that \$241,000; this just gives us the capital. Mayor Griggs explained that the program is designed, if they create jobs, each job is assigned a job credit number which is then applied against the money that is advanced, in this instance. It is best if we don't pay money in advance; it is easier to work, because we have actual numbers to deal with. What the City Attorney was talking about, this is a formula that pulls out from the number of jobs created and the amount of total wages, to develop the credit. The credit is the amount that can then be applied against the amount loaned, to pay it off. In this instance, the City Attorney first recommended \$2,106, and as a result of the committee meeting, that number was expanded to \$2,707.

Mr. Johnson said he understands that part. His question is, the City Attorney didn't just pull that \$2,106 or \$2,707 out of thin air, did he; it is based on something. Mayor Griggs said he did not, and said it is based on a formula and he would be happy to show it to you. City Attorney Thies explained he didn't have it with him, but he could provide him with a copy of it.

Mr. Johnson said he did not have to see the formula itself, but would like to know the concept of it. City Attorney Thies explained it is premised on the dollar; how much they would pay an hour and how much that person would be spend to generate additional Gross Receipts Tax in the community. Mr. Johnson thought it was meant for that.

Mr. Johnson then said that figure corresponds to 11 ½ jobs, at \$9.00 an hour, over a ten year period of time. That is what it would take to generate that much payroll to make this break even. When you start negotiating with these people, and they say they don't want to come in for 11 ½ jobs, we want to come in for seven, then they will not reach the \$2,152,800 in economic activity. He believes it looks like they are trying to cram 20 pounds of stuff into a ten pound bag, because you are trying to make it fit what they are willing to sell. If it doesn't make economic sense, and the only way it will do that is to make economic sense for the city to break even, is for them to generate \$2,152,800 of payroll over that ten year period. Giving them more credit for fewer people doesn't do that. Mayor Griggs explained that the Commission didn't vote on anything tonight and the Commission as a whole is not trying to do anything in particular, other than to see if we have a deal that works. If the numbers don't fit, the Commission would not vote to support it. We will address it two weeks from now.

Commissioner Ledford reiterated that tonight we had a lot of issues involved, but we did not do any negotiations. Staff was trying to work thorough some of the negotiating with the company and they will continue and bring it back for us to discuss. The issue referred to about the dollars, we have not gotten there either, and that is what the Mayor was talking about. Our intent is to make this work, but we want it to work right for the citizens and tax payers. He agrees that they wanted to drop the number of employees to seven, but he thinks there is and was the intent to increase that over a ten year period. The math is probably not working because we still have to get there; and it is going to require more than that eventually. He wants to work on the credit himself, but every Commissioner has their vote and we want to make this work. We may need to revisit this and discuss the payroll versus the job credit. Keep in mind that when we started this, our intent was to give credit as they generated jobs, and now we are starting to loan money and it is a little frustrating. He is willing to go along with that as long as the numbers work.

Mr. Johnson said another thing that bothers him is that this plant won't be expanding their

business. They buy their bio-mass dryer and they are going to sell a lot more product and make a lot more money. He doesn't think it is unreasonable for them to foot part of the bill for that expansion. If they can generate the employment numbers, they should help foot the bill to the city. When you start converting the number of job credits, you can get behind the ball.

## REMARKS AND INQUIRIES BY THE CITY COMMISSION

### **Commissioner Rance commented on the following:**

- 1) Asked if there was an opportunity for city staff to look into the creation an ordinance covering vehicles as they travel through the city. He would like to see what we can do, he knows DOT has one, concerning commercial vehicles. We find debris lying on the streets and he thinks it would eliminate some of that trash. City Manager Roath stated they could look into that.

### **Commissioner Ferguson commented on the following:**

- 1) He would like to have an explanation of what happened at Western Bank the other day with their water.

City Manager Roath said he and Chief Trujillo had a meeting with the bank president today. We visited with her and discussed the situation at length, and both sides understood their positions, but we did not come to any clear understanding with regards to whether the city was in the wrong or right, or the bank was in the wrong or right. Clearly there was an incident that took place. Initially there was a sprinkler that malfunctioned and subsequently there was a second break in that line. We had a firefighter who noticed a large geyser of water spraying up in the air and the water was flowing into the parking lot. The firefighter was passing by and called dispatch to notify them there was a leak. There was a Public Safety Officer in the area that responded, after hearing the communication that there was a leak, and took the time to walk around the bank to try and find a shut off valve for the sprinkler system. When he observed it, it did not appear it was a city line and determined it was from the banks sprinkler system line and also tried to find a shut off valve. The officer could not find the shut off valve either and so he also called dispatch to notify them that there was a leak and advised them to call one of the bank representatives to inform them of the leak. The dispatcher that was on duty began the process of trying to use the existing list, in order to notify a representative of the bank. They did this within approximately ten minutes. They were able to notify a member of the bank, using the list they had. Chief Trujillo went back and reviewed the list, and determined that list was updated as of October of 2009. The individual that we finally notified, that was on the list, was an individual whose name was on the list provided in June of 2009. Once that individual was contacted, she indicated that she would take care of the issue. She was out of town, but she said she would try and get someone from the bank, so they could try and get it repaired. At approximately the same time, our street supervisor, was actually working and observing Cutler at a different location, and noticed water running down the street. He was concerned about the volume of water, so he followed the path of the water and arrived at the bank as well. He was not called, but he took it upon himself to try and locate a shut off valve for the sprinkler system. He could not locate one and subsequently called the on call person for the Public Works Department. The on call person lived in Tularosa, and he notified him that there was a leak. While this was going on, Ms. Dion Kidd also called dispatch and the on call person was asked to come back into the city, this was the second time, to shut the water off. HSC, the plumber that was hired by the bank, showed up and in the interim couldn't locate the shut off valve for the sprinkler system, but did shut off the city's water to the building. Our on call person arrived shortly after that. Those are basically the events as they occurred. They met with bank officials today, and in reviewing the outside of the building, they have installed a shut off valve, in the sidewalk, and they indicated that the shut off valve for the sprinkler system might be a box, but were unable to locate it, but they did install the new one next to the box. On Saturday night, and Sunday morning, he asked Chief Trujillo and Mr. Cesar to

gather all of the information about this issue and to have it ready so we can discuss it on Monday morning. We met and went over all of the facts. Chief Trujillo has gone back through the dispatch tapes and verbal communications, as well as checking the times. Mr. Cesar has talked with his appropriate staff. He feels reasonably comfortable in saying staff acted appropriately, as he indicated in a press release that the Commission received yesterday. The fireman that was passing by reported it, the Public Safety Officer that was in the area tried to assist, and the streets supervisor left the job he was working on to try and locate the problem, the dispatcher went through the five people on the initial list and was able to finally notify someone of the problem. He feels staff did the appropriate things in this area and he is sorry that it got so far out of hand. There may be a lot of excitement over the area because of the known issues that had occurred. He believes it has been addressed and they have expressed that to the bank as well.

Chief Trujillo believed the City Manager provided a very accurate briefing on what transpired. The short version is that City Staff discovered a leak on bank property and the bank representative, which was the bank's Vice President, was contacted within ten minutes of our discovery. We advised this person of what we had seen, and they indicated they would take care of the problem. They hired a plumber and had a city crew shut off the water.

Commissioner Ledford asked if the list was old or not. Chief Trujillo said the list we had, had been updated in October of 2009. This is something our department does on a regular basis, and we take information by e-mail, telephone, letter, and are constantly updating our information. He can show clearly when we updated it, and it was updated in October 2009. There is no way for us to update it unless we get the information from somewhere else. The person that was on the five member list, and we don't always get five people, was the Vice President, and they did not answer the first time we called, but the dispatcher continued to try, and was able to get them. They provided another list, from the bank, and that has already been entered into our system.

Commissioner Ledford asked when the comment was made that there was an old list and the dispatcher couldn't get a hold of somebody, which is the procedure he was concerned about. He asked if we are responsible for getting the list, or is it the entities responsible to provide the list and keep it updated. Chief Trujillo said that is correct. He believes the newspaper article said we were working off a list from 2008, but our records show it was updated in 2009. Three of the numbers we had on our list were disconnected and of the other two numbers, neither person answered immediately, but did on the second try. If they provided another list, at another time, he can't confirm that. The letter they gave him today showed a date of June 2009, but we don't show a record of receiving anything in June. The information we had, we updated in October, and there was no way for us to determine if they were correct numbers or not until we called them. The responsibility to provide us with the current information falls on the business owners.

Commissioner Rance asked if we maintain that list as a courtesy; there is no governing power. Chief Trujillo indicated there is no requirement for any resident or business to provide us with a contact list at all, but many people do. A lot of time we see people that have certain needs, such as diabetes, they will let our dispatcher know and we will enter that in our system. If we get a call from that citizen, it alerts the officers that there are some special needs for that resident, so we have more information. When it comes to businesses, we get alarms, we get damage report, or what have you, and we go straight to our list. These are not published numbers and but they provide them to us so we can make those phone calls.

Commissioner Rance then said his other comment has to do with the shut off of the water. He can appreciate DPS letting the business owner know if you turn the water off, because he has a fire suppression system. If that fire suppression system is not shut off, in a certain sequence, it can literally cause a lot of money to repair. He understands staff's hesitantly in shutting it off, you don't know anything about that system. Public Works Director Cesar explained that is why the water standby person will not turn off water without the permission of the business owner.

Commissioner Ferguson said he spoke with Ms. Kidd, and he thinks her problem is she feels we thought it was a low priority. He is just relaying what she mentioned to him. She feels it did not get to the dispatch people. Chief Trujillo said from his perspective, whether she provided us with a list or not, we were able to go down the list in our system, and contact an individual from the bank within ten minutes. Commissioner Ferguson understands, he is just relaying what she mentioned to him, that she had provided a more updated list. He thinks ten minutes is a reasonable amount of time, so he doesn't have an issue with that. She just thought she had provided a newer list to DPS and it never made it to dispatch. He is not sure how they can correct that, but it is an issue with her. Chief Trujillo said what we do is ask for the most current list and we take that directly to our dispatchers, so they can update their lists. Even if we go down the list and are unable to make any contract, we don't just stop. Some businesses don't even provide us with lists, but we do everything in our power to identify somebody we can contact. If we would not have been able to reach anyone on the list, we would have gone and looked for numbers on the doors or other representatives, employees that we are aware of, someone we could contract, but we would not just leave it.

Commissioner Ledford wants to know why the lists are so important; they sure do seem to be the talk of the town. He thought the problem was that they didn't get the water shut off. Chief Trujillo explained that they talked with the representative of the bank, at 8:57am, Saturday morning, and we didn't receive another call until 10:03am, which came from the plumbers that they had come in. At that time, the plumbers asked for the water stand by person to go to the bank, because they were unable to shut off the water, but prior to the water stand by person arriving at the bank, the plumber had been able to shut off the water.

Commissioner Ledford said as far as he is concerned, dispatch made that call, and he thinks that is all they are supposed to do. He wasn't sure about the flooding. City Manager Roath mentioned it has not been determined if the flooding happened due to the broke valve, or if it happened before the firefighter notice the water spraying up. He said that is one issue, the other issue is at the time that the fire fighter and the Public Safety Officer went out on the site, they thought it was strictly for the sprinkler system and in particular, that one sprinkler head. There was another break underground, in that flower box, that no one knew was a problem until the plumber got in there and began working on it. That additional break had some impact in regards with seepage into the building. The second break was not seen; they just assumed there was water in the flower bed because of the broken sprinkler head shooting water into the parking lot. Chief Trujillo added this is not the first time they have come across leaks in the middle of the night, or on the weekends. When we do notice them, we try to make contract with either the business owner or property owner and let them know they have a leak. We experiences that with our sprinkler systems in the parks and city buildings. Whether it is a broken city sprinkler or a business, our procedures are always the same. He can't say whether any of the bank representatives showed up down there, but we do know the plumbing company called us an hour or so later to ask if we would shut off the water.

Commissioner Rardin said he also spoke with Ms. Kidd and she mentioned that she had asked who the City Manager was, and the dispatcher told her it was Pat McCourt; is that true. Chief Trujillo said Ms. Kidd also mentioned that to him and he did check on that situation. We record all our conversations, so he was able to tell exactly what was said. Ms. Kidd asked who the City Manager was, and the dispatcher said Pat McCourt, but corrected herself right away and said it is not Mr. McCourt, it is Mark Roath. Commissioner Rardin said Ms. Kidd didn't mention that, she only mentioned Pat McCourt. Chief Trujillo said the dispatchers are multi-tasking, and it was a slip up on the conversation, but she did correct herself. Commissioner Rardin said it sounds like we only got half the story. Chief Trujillo said the president of the bank was very upset, there was some damage that was caused over there, and he can understand that. He does think some of that anger was misplaced and we had a lengthy conversation with her to try and clean up some of those issues and make sure we don't have these same problems in the future. From staff's perspective, we believe our members stepped forward to try and get this issue resolved.

Commissioner Rardin thinks staff did the right thing.

City Manager Roath added he thinks this is the perfect example that no good deed goes unpunished.

**Commissioner Rentschler commented on the following:**

- 1) Since we brought up this beautification of Alamogordo the other day, he had noticed that where most of the weed are, are on pieces of vacant land, and also properties with reality signs on them. We need to draft an ordinance that lets realtors know that if they list the land, they need to be responsible for the weeds. He believes if they do that, it will take care of 90 percent of the weed problem in Alamogordo. We need to keep our own yards clean too; he doesn't want to be calling the kettle black. He also suggested a 1(800) Weeds phone number. If someone wants to turn in a property, let the citizens call this number and they can report an address, so code enforcement can go out and look at them. He asked the City Manager to work on this.

Mayor Griggs said he believes our numbers are 439 numbers. He then asked if "9" on the phone represented "W". Chief Trujillo said it was. Mayor Griggs said so it is already set up. If we can get the phone company to give us the "eeds", we have it made.

Mayor Pro-Tem Cole said he just calls Jim Baker on the weeds; we don't need an 800 number.

**Mayor Griggs commented on the following:**

- 1) Saturday, when the leak occurred, he had an opportunity to talk to Brian Cesar, Chief Trujillo, and Dion Kidd. The fact they were on it and working on the issue for Western Bank, he appreciated the guys working on this and being responsive. We may not have had the right answer for the citizen, and maybe there is a change here and there that we can work on, but the city needs to remember that it's the people out there that pay our salaries and it's important to do the best we can to take care of the citizens.

**ADJOURNMENT**

**Commissioner Ledford moved to adjourn at 10:18 p.m. Commissioner Rardin seconded the motion. Motion carried with a vote of 7-0-0.**

*/s/Mayor Ron Griggs*

(SEAL)

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Mayor Ron Griggs

ATTEST:

*/s/ Reneé L. Cantin*

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City Clerk Reneé L. Cantin

*(Prepared by Marsha D. Brady, Deputy Clerk)  
Approved at the Regular Meeting held on June 22, 2010.*