

**CITY OF ALAMOGORDO, NEW MEXICO
CITY COMMISSION REGULAR MEETING MINUTES
RE-ORGANIZATION MEETING
7:30 P.M., COMMISSION CHAMBERS
JULY 14, 2009**

**MAYOR STEVE BROCKETT
MAYOR PRO-TEM CHRIS LUJAN
COMMISSIONER RON GRIGGS
COMMISSIONER ED COLE
COMMISSIONER MARION LEDFORD**

**COMMISSIONER JOE FERGUSON
COMMISSIONER ROBERT RENTSCHLER
INTERIM CITY MANAGER MATT McNEILE
CITY ATTORNEY STEPHEN THIES
CITY CLERK RENEE CANTIN**

Call Meeting to Order, Roll Call, Invocation, and Pledge of Allegiance.

Mayor Brockett was absent.

Mayor Pro-tem Lujan called the meeting to order at 7:30 p.m. Roll Call was taken by the Deputy City Clerk. Invocation was led by Dr. Rev. Stephen Trout. The Pledge of Allegiance was led by Commissioner Ledford.

1. Swearing in of the newly elected City Commissioner.

Judge Gene Galassini swore in Commissioner Robert Rentschler.

2. Reorganization of the City Commission.

Mayor Pro-tem Lujan announced that due to the Mayor's absence, he had a death in the family, he has spoken with most of the Commission and they had agreed they would hold off on this in respect for the Mayor but he wanted to get with the City Attorney. He had reviewed the Ordinance and he believed that it stated the re-organization needs to take place as soon as you are able to.

City Attorney Thies stated the re-organization should be held as soon as it is practicable after the election. If the Commission deems that it is not practical to hold the re-organization at this time due to the Mayor's absence that is an acceptable reason.

Mayor Pro-tem Lujan asked if there was a need to take a vote. City Attorney Thies stated that we will just reschedule it for the 28th. Mayor Pro-tem Lujan verified that this was acceptable to the rest of the commission and it was confirmed.

PUBLIC HEARINGS:

3. Public Hearing and approval for a Restaurant Beer and Wine Liquor License, Application No. A-599941, to La Raza Pizza Inc. d/b/a Pizza Hut, located at 615 S. White Sands Blvd.

Recommendation: Approve the restaurant beer and wine license for Pizza Hut.

Mayor Pro-tem Lujan read the background from the agenda report.

Commissioner Cole moved to approve the Beer and Wine Liquor License. Commissioner Ferguson seconded the motion. Motion carried with a vote of 6-0-0.

Mayor Pro-tem Lujan said staff would like to pull item #11 from the agenda and Interim City Manager McNeile confirmed this.

City Attorney Thies said prior to the considering the consent agenda, staff did request that you amend the agenda for the executive session and he thinks it is appropriate to do it at this time to add the two items. The first one is the consideration of the lease proposal for two lots in Block 4 of the A.G. McMath Building Site 1 & 3 Revised and also a discussion to purchase the water rights from the Mesa Verde Partnership.

CALL OF THE CONSENT CALENDAR: Items #4, 6, 7, 8, 12, 17, 18, 19 & 21.

Roll Call vote required on item #5, 6, 7 & 8.

Item #6 was removed from the consent calendar.

MINUTES:

CC 4. Minutes of June 22, 2009 Regular Meeting.

Recommendation: Approve the minutes.

ORDINANCES AND RESOLUTIONS:

CC 5. Consider Ordinance No. 1358 amending and adding new sections to Article 29-01 of the Code regarding fees for changes to zoning regulations.

Recommendation: Approve the ordinance for final publication. [Roll call vote required]

CC 7. Consider Resolution No. 2009-33 approving the acceptance of a Community Development Block Grant (CDBG) from the NM Department of Finance Administration/ Local Government Division, for CDBG project #09-C-NR-I-03-G-03: Plaza Hacienda Electrical Upgrade Project.

Recommendation: Approve the resolution. [Roll call vote required]

CC 8. Consider Resolution No. 2009-34 to re-adopt the updated Community Development Block Grant consolidated plan.

Recommendation: Approve the resolution. [Roll call vote required]

OTHER BUSINESS:

CC 12. Approval to hold the Bonito Lake Trail Run Race at Bonito Lake on October 31, 2009.

Recommendation: Approve the event to be held at Bonito Lake.

CC 17. Approval of Temporary Alcoholic Beverage Dispenser's Licenses for Applebees, to be held in the Applebee's parking lot for a fundraiser.

Recommendation: Approve the temporary license.

CC 18. Accept the Canvass of Returns for the June 23, 2009 Special Election.

Recommendation: Accept the canvass as presented.

CC 19. Statement regarding the Executive Session of June 22, 2009.

Recommendation: Approve the statement.

- CC 21. Approval to reappoint Ron Griggs to serve on the Otero County Economic Development Council (OCEDC) as the City Commission member.

Recommendation: Approve the reappointment of Ron Griggs to OCEDC.

Commissioner Ledford moved to approve items #4, 5, 7, 8, 12, 17, 18, 19 & 21 of the consent calendar. Commissioner Griggs seconded the motion. Roll call was taken for items #5, 7, & 8. Motion carried with a vote of 6-0-0.

Commissioner Cole asked for clarification on Item #11, he wanted to know if it was being removed from the agenda completely. This was confirmed.

ORDINANCES AND RESOLUTIONS:

6. Consider Ordinance No. 1359 authorizing the issuance and sale of City of Alamogordo, NM, General Obligation Bonds, Series 2009, in the principal amount of \$7,420,000, payable from ad valorem levied on all taxable property within the city.

Recommendation: Approve the ordinance for final publication. [Roll call vote required]

LeeAnn Nichols, Finance Director introduced Mr. Kevin Powers from RBC Capital Markets. Mr. Powers said they have a handout for the Commission that has the results of the competitive public sale that occurred that morning at 11 o'clock. The process that they used to see sell bonds is the process that is required by state law. In the public sale, they did incorporate the use of the Parity website to take sealed bids through the internet. The first page of the handout gives you an overview of the potential bidder accessed the website. It gives all the necessary information that is required to cure the bid. The bidders would then compute their bid using the Parity software system and then submit the bid electronically on the website. On page two we have a recap of the firms that submitted bids on the bonds. There were seven bids and he believed that this was one of the most active bidding that they had seen recently in the terms of New Mexico bonds. They have been running three to four bids for sale and there were seven on this one so he believed that this is a good sign. For the most part, the bidding was competitive and close. The bid of FTN Financial Capital Markets (First Tennessee Bank) they were actually the best bid with an interest cost of 4.12 percent. The \$7,420,000 bond issue is really the combination of the two of the questions that were approved by the voters in the recent election; \$6,500,000 for the Waste Water Treatment Plant and \$9,200,000 for Street Improvements. On page three is a side-by-side recap of all seven bids showing the interest rates that were bid by each. Just to give you a little reference point here, back in 2000, you sold \$2,000,000 in bonds for the fire station and the interest rates back then were 5.58 percent, so we have seen a general improvement in the interest markets. Also, another good reference point is earlier in the year we sold some bonds, \$5,000,000 for water and wastewater infrastructure under the streets and those bonds were sold through the New Mexico Finance Authority, these were revenue bonds, the interest rate on those were 4.45 percent; so this interest rate is a little better than that. The details of the sale on page 4, the bonds maturing between 2010 and 2029, that is an average life of about 13 years, you received a rating from Moody's Investor's Service for GO credit of A2. We actually have an upgraded rating due to assured guarantees credit enhancement. The total interest that you will pay on the bond over the life is \$3,990,587.75, which comes to a TIC of 4.125683 percent. A little more detailed bid is on page 5 and how they arrived at the coupon that you will actually pay. They will re-offer the bonds at different yields that will produce a slight premium, which allows them to pay their cost of issuance and the cost of insurance. This was a truly competitive bidding process, these were all sealed bids, the bidders did not know the others were bidding and they were certainly trying to arrive at the lowest interest cost to win the award.

Commissioner Cole asked, back on page 4, what does the underline A2 mean?

Mr. Powers replied we have a write up from Moody's Investors Service, it is under page 11. The A2 rating is a good rating, you are rated much higher than the state of California, which may not be a great comparison, they were A2 up until late yesterday, and now they are a Baa1. The A2 rating is a good solid rating, it puts you really in the upper group of cities in the state. There are a few cities that are rated in the double A category, Albuquerque and Santa Fe. Las Cruces is an A1, Farmington is an A1, and Roswell is an A1, you are A1, Clovis is A3, so within cities roughly your size, you are right up there in the upper levels. It is a solid rating and I would like to pull a couple of sentences out of this rating report. On the first page under the Opinion the A2 rating is based on the City's stable tax base that has experienced a pattern of growth and a history of well-maintained financial operations. You have consistent financial resolves, you carry solid predictable fund balances in your general fund and the rating agency acknowledges that as a rating strength. Then on the next page, top paragraph, last sentence, a strong fund balance is necessary given the city's reliance of approximately 57 percent of gross receipts taxes for operating revenues. Moody's believes the city's return to structural balance and maintenance of reserves comparable to other A2 rated credits is important to maintain the current credit rating. When they do these ratings, they actually look at you and they compare you to other cities in the state, the region and nationally. They look at fund balance, they look at revenue strength, they look at stability, they look at social economic data and they calculate various ratios and they use those ratios to compare you to others. The A2 is a strong investment grade rating and if you look at page 10, it will show the A2 it is in the good ability to pay principal and interest although more susceptible to adverse effects due to changing conditions. That basically translated to the fact that the city is a smaller economy, not quite as broad based as let's say the state economy or a larger city that has a larger tax payer base, a larger employment base or a more diverse economic base. It is a good rating and it is something that you should feel good about having an A2 rating. Page 6 is a debt service schedule that shows the schedule of payments of principle and interest over the next 20 years. Page 7 shows how these bonds fit into the other GO debt that you have. You have the 96 bonds that are rolling off; the last payment is actually due in August. The 2000's bonds run out in 2020 and these bonds will add to that. These bonds will be paid without increasing the tax rate on tax payers in the city and that is an important factor. On pages 8 and 9, we have some general information on the market. You can see on page 8 where the interest rates have dropped over the past few years. Back in 2006 we had a fairly flat yield curve, in 2007 that yield curve stayed fairly flat. In 2008 and 2009, we've seen a reduction in interest rates, particularly on the short end of the yield curve, you borrowed your money between 1-year and 20-years and you can see the shorter end of the curve has experienced more of an interest rate reduction than the longer end. The blue line is still below the previous year's levels all the way from one to 20 years. One of the things that Commissioner Cole asked about, the rating, if you look at the credit spread information on page 9, you will see that credit worthiness does make a difference today and it is really becoming increasingly more important with the financial crisis that we have been through people are looking more to credit ratings and credit worthiness. This spread that you see here today was considerably narrower a year ago and even more than that two years ago. You are on the bright line there the A category. You can see here that if you were on the lower investment grade ratings of the BAA1 you would pay a higher interest rate for borrowing money, so it is a good situation to be in and with that I stand for questions. He then introduced Mr. Dwayne Brown from Modrall law firm.

Mr. Brown said his part of the presentation relates to the ordinance that we are going to ask you to adopt tonight. The ordinance that has been handed out in front of you is very similar to the one that you received a couple of weeks ago when we started this process. What this ordinance does once adopted is award the sale of the bonds to FTN Financial and accepts their bid and sets the interest rate that will be paid on the bond issue over the next 20 years out until 2029. It has lots of other details about when these bonds may be subject to optional redemption starting August 1, 2019. That is a standard feature to have a 10 year call protection. There is a form of bond in here, a recitation, a general obligation debt of the City, which means that it is payable out of the property taxes levied on all property in the City. There is other information as well; details of the actual bonds that will be

delivered, tax covenants that ensures that the interest that is paid to the bond holder is tax free over the life of the bond issue. It designates the bonds as qualified tax exempt obligations under the internal revenue code, which means that you will not issue more than \$30,000,000 of tax exempt bonds in this calendar year. You are well under that and don't expect you to do any more. There is a legal notice that we will publish in the news paper this coming Sunday which starts a 30 day limited action period running so that if anyone wants to challenge the procedures for issuing the bonds or the process that we went through, the election, the sale of the bonds, the adoption of the ordinance, it has to be brought within that 30 day period. Once that 30 day period expires, we will proceed with actually delivering the bonds to the purchaser on August 19th, they will pay us the \$7.4 million and you will be able to start using the bond money for your Waste Water Treatment Plant upgrades and your road improvements.

Commissioner Ledford moved to approve Ordinance No. 1359 for final publication. Commissioner Griggs seconded the motion. Roll call vote was taken. Motion carried with a vote of 6-0-0.

OTHER BUSINESS:

9. Approval of Hamilton Road Engineering/Design - 2008 GRT Project.

Recommendation: Approve the project.

Brian Cesar, Public Works Director said this item and the next three, items 10A, B & C are all related to the 2008 Street Maintenance Program. Item number 9 is Fund 109, which has to do with just the street portion; these monies can only be used for the ADA compliance work, the paving work and etc. Right now what we are asking the Commission to approve is, when we had the bids come in from General Hydronics, we had a certain amount of money set aside in anticipation of how those bids would come in. They came in much lower than we expected. Right now we have approximately \$1.1 million that the Commission has not dedicated to a particular road project. What we are asking for is permission to begin the engineering portion of Hamilton Road, which we had planned to do a year from now. If we are allowed to do this, the engineering is going to take approximately one year and in doing this we will have definite costs for Hamilton Road which will help our finance department and Public Works be able to only secure the loan monies to complete Hamilton Road and the remaining first batch of the street maintenance projects.

Mayor Pro-tem Lujan said besides getting a jump start on it and being ahead, what all does this effect, what other issues or roads. Mr. Cesar said this is strictly the engineering and design of Hamilton Road. We are going to look at the right of way acquisition; we will have to do a drainage study down the area so that the road is constructed, level and so we can have traffic pass. During a 100 year even, it must be durable.

Mayor Pro-tem Lujan said he know it is going to take money to do this and if we start doing this right now it is not going to take money away from anywhere else or not effect any other projects. Mr. Cesar confirmed that it would not affect any other projects in Phase I.

Commissioner Rentschler asked if this is all done in house. Mr. Cesar said around October of last year we went out on an RFP for engineering services and Engineers Inc was the successful bidder. In the RFP Hamilton Road was included as one of the tasks, but it was going to be a later task. Commissioner Rentschler asked to clarify if this is an extension to an existing contract. Mr. Cesar confirmed this will be another task, but it was on the original RFP. Commissioner Rentschler asked if the money was already covered. Mr. Cesar said this amount is more than what we had expected the engineering to come in at for Hamilton Road.

Commissioner Ledford asked Mr. Cesar if he remembered when we went out for the RFP, what the bid amount was from Engineering Inc. Mr. Cesar said at that time it was a bid for qualifications, it wasn't a dollar amount. We negotiate with Engineering Inc for each of these various tasks.

Commissioner Ledford said this is a lot of money for little Hamilton. He was just trying to get a handle on this, is this what we had left from 2009 and we don't know for sure how much this will use?

Mr. Cesar said it will be substantially lower than the \$1.1 million. It should be in the range from \$250,000 to \$300,000. Commissioner Ledford said that is what he thought, but what he is trying to figure out what the point of this is. Why did we put the full \$1.1 million to the engineering allocation? Mr. Cesar said this money right now is not in the engineering portion of the project, it is in the fund balance of Fund 109. Commissioner Ledford asked but you are going to put it for engineering costs?

Mr. Cesar said they would not put the whole \$1.1 million, I will have to come back to the Commission with the final numbers for Commission approval and we will have to do a budget resolution to take the monies and put it in the engineering fees. Commissioner Ledford asked if the balance that we are not using can go for other projects, and this was confirmed by Mr. Cesar.

Commissioner Cole asked where the north end of this project would start? Mr. Cesar said as you come off Panorama heading south on Hamilton, there is the improved portion through Carey in that area, the wider portion, as the road narrows, that is where this project begins. As you continue to head south on Hamilton Road, it ends just short of Martin Luther King.

Commissioner Cole asked once this project is completely finished, if the street will be the same width all the way up to the golf course complex? Mr. Cesar confirmed this is correct.

Commissioner Rentschler asked if curbs and sidewalks were included in this or just curbs. Mr. Cesar said right now just the curbs; we will have to do an ADA accessible corridor through there. On other projects we have done this by putting in a walking path. What we are going to ask Engineers Inc to do is evaluate both of them and if we have the funding available then sidewalks will go in. He didn't think that we will have enough to do sidewalks on both sides.

Commissioner Rentschler asked who currently owns this land, if it would normally be assessed when they developed it. Mr. Cesar said there is quite a large portion of it that the City owns, the Golf Course. Back towards the north there are 12 separate property owners.

Commissioner Ferguson asked if those property owners would be assessed or are we going to wait until we start developing. If we don't put in the sidewalk when we start developing, then they are going to have to put in a sidewalk because they will not be in ADA compliance. If they put in the sidewalk when they start developing it will save that much money.

Mr. Cesar said through the area that Commissioner Ferguson was talking about, the undeveloped areas, which is also an area that we will have to look at for right of way acquisition, so he is sure there is going to be somewhat of a trade off in the area. He is just not sure at this time.

Commissioner Griggs moved to approve Hamilton Road Engineering/Design – 2008 GRT Project. Commissioner Ferguson seconded the motion. Motion carried with a vote of 6-0-0.

10. Approval of various projects.

A. Alamo Canyon Booster Station Project.

Recommendation: Approve the project.

Mr. Cesar said what we are talking about here is fund 81 money, which is water and sewer money. What we have left here, the \$1.7 million, when we originally did our estimating for this project, we

didn't expect for the first set of projects to come in this low. We do not have utility work on Hamilton, which is the last project to be competed with the 2008 money. We want the Commission to be aware that these three projects are not the only projects that this money could be used for. Other possible uses for the loan proceeds could be the Waste Water Treatment Plant Upgrade; we still need a substantial amount of money to complete that. The Radio Reprogram, which is run through our Water Billing Department, they need more money to complete that project. We have the Effluent Extension Project or any number of projects that we have on the books right now. These are the three that he is asking for tonight. Project 10A, the Booster Station, we have almost completed the waterline replacement between the Alamo water tank and the Alamo filter plant. Those lines were originally placed in the 50's. The last portion of this project is to install a booster station. We don't have adequate detention time from our plant to the Alamo tank. We have a number of users off this line and this will be a compliance issue with the New Mexico Environment Department because we do not have that detention time. In this project, he is asking for \$180,000 to complete the Alamo Canyon Project. If this is approved, it would leave a balance of a little over \$1.5 million.

Mayor Pro-tem Lujan said just for a reference, what was the estimated cost that this project came out to, it seems kind of low. Mr. Cesar said originally what we asked for, on the street side from fund 109 was \$15 million in the amount of proceeds and on the water and wastewater side was \$5 million.

Commissioner Ferguson asked if the Booster Station Project was going to cost \$180,000 to finish that. This was confirmed by Mr. Cesar.

Commissioner Ferguson moved to approve \$180,000 for the Alamo Canyon Booster Station Project. Commissioner Cole seconded the motion. Discussion was held.

Mayor Pro-tem Lujan asked if it was the total amount of the project that came in low and how much lower did they come in then what was estimated. Mr. Cesar said that they came in at a little over \$1.7 million lower than was expected.

Mayor Pro-tem Lujan said this is not going to because one of those low income housing problems again is it to where we took the low bid, it seems like every time we take a bid that is too low, it ends up being a problem with it, they don't finish it or change orders come because they didn't understand that they had to do this as well. It seems like there is always something. He understands that there is going to be change orders, He understand that, usually we know what they are going to be. When it comes to us almost \$2 million lower than what you think, are they forgetting something, or did they not understand something like that last time.

Mr. Cesar said the way that they bid out, the first phase of the 2008 Street Maintenance Program; this is different and much larger than anything we have done in Alamogordo in the past. We had companies bidding on this project from out of town and out of state; normally we don't see that in Alamogordo. We do have money set aside, already reserved, for the change orders, we know that we will have change orders on this project. We do have money set aside for that.

Mayor Pro-tem Lujan said we usually see them in here, but he doesn't see them, the bids that come in to compare them. Did they all come pretty much in at the same price or was one just drastically low?

Mr. Cesar said of the two lowest bidders; there was only a \$300,000 difference between number 1 and number 2. Mayor Pro-tem Lujan asked what about the one we are going with. Mr. Cesar said they were roughly \$300,000 lower. The next closes bidder was a company from out of town, so most of that \$300,000 was mobilization costs. Mayor Pro-tem Lujan said so it was not like someone was a million under the rest. This was confirmed by Mr. Cesar

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

B. La Luz Reservoir Project.

Recommendation: Approve the project.

Mr. Cesar said you have the same background on this project and the next project. The La Luz Reservoir Project, on May 28th the City was notified by the office of the State Engineer that our La Luz Reservoirs are out of compliance because we do not have an approved Operations and Maintenance Plan or Emergency Action Plan. If we fail to comply with this, the Office of the State Engineer could place storage restrictions on those reservoirs. Last year at roughly this time, we had an inspection by the State Dam Safety Bureau, at that time they indicated that we would not have to have the Operations and Maintenance Plan or the Emergency Action Plan on those reservoirs, they have since changed their minds, not only here in Alamogordo but throughout the state. To complete both of those plans for this project we are asking for \$65,000; which would take the balance down, if this one was approved, to just under \$1.5 million.

Mayor Pro-tem Lujan said that he had a meeting that morning with the Interim City Manager and the City Attorney and there were two of these projects that were mandated by the state, and wanted to know is this one of those that have to be done by the state. Mr. Cesar said this is a compliance issue from the State. Actually right now, we have to do the same thing for our Bonito Lake Dam and that is almost complete.

Commissioner Rentschler asked who we hired to do this. Mr. Cesar said for the Bonito Lake Dam, we have Santa Fe Engineering, out of Santa Fe. We have asked them to submit a bid and cost estimate for our La Luz Reservoirs but he did not have it in time for this meeting.

Commissioner Rentschler said it just seems like the Operations and Maintenance Plan should come from operations and maintenance. Mr. Cesar said the state has a format that they are requiring and the entity cannot provide their own Operations and Maintenance Plan or Emergency Action Plan.

Commissioner Ferguson moved to approve \$65,000 for the La Luz Reservoir Project. Commissioner Griggs seconded the motion. Motion carried with a vote of 6-0-0.

C. Juniper Re-use Line Project.

Recommendation: Approve the project.

Mr. Cesar said this is the last project; it will be the Juniper Re-use Line Project. In this we will transport effluent water from Oregon Park, by means of a booster station, up 18th Street to water the medians from Indian Wells to Aspen on Juniper. The approximate cost for this project will be \$400,000, which would take the budget balance down to just over \$1 million.

Commissioner Cole said is this for Indian Wells, he thought that it was just for Juniper. Mr. Cesar said this will be used on the medians on Juniper from Indian Wells to Aspen.

Commissioner Cole said he knows there are trees on Indian Wells that are watered by the tank. Mr. Cesar clarified that it would not be the medians on Indian Wells, just the ones on Juniper.

Commissioner Ledford wanted to know how this one jumped above all the other projects. He is okay with it; he gets the same calls as everybody else, but said that will complete our public parks being watered by effluent, is that correct. Interim City Manager McNeile confirmed that is correct.

Commissioner Ledford said that would be good and long over due. We were never really sure what to do with that area, we tried to make it look like a desert since we live in one, but that didn't look too

good. The line is not already there is it; he means that we would have to take the line as well correct. Mr. Cesar said if this project is approved, one of the things that he will be asking the engineers to look at, we are doing a water line replacement on 18th Street itself from Washington all the way up to Scenic, with that line being replaced the effluent water will be at a much lower pressure so he thinks we will be able to use a good portion of the line that we are replacing and turn that into the effluent line.

Commissioner Ledford asked if it was a potable line that we are putting on 18th Street and we would use the old line. Mr. Cesar said yes, we will use the old line from Washington up to Arizona, at that point the lines are too close together, actually a segment is missing, so we would have to build a new line from Arizona up to Juniper itself. If we are able to do this, it would drop the cost down to well below the \$400,000 but if the lines are too close we will not be able to do that. If the state environment department does not give us permission to reuse that old potable water line then we will have to build a new line from Washington to Juniper.

Commissioner Rentschler said that it seems like a good time to do this.

Commissioner Cole said he does not see how that line can set underground for such a long time and be reused.

Mr. Cesar said the effluent itself, right now our system pressure on the potable system down at 18th and Washington, runs about a 100 psi. With the booster station, you get the effluent water from Oregon Park up to Juniper, we are looking at using roughly half of that, about 50 psi. A small part of why that line is being replaced on 18th Street is because it is undersized. It is a 6 inch line on 18th Street and our Water Master Plan calls for a 12 inch line. That is part of the reason that we are replacing the water main.

Commissioner Rentschler said so as you go along; all the corporation stops have to be stopped? Mr. Cesar said yes, and that is actually part of our existing project. Commissioner Rentschler asked what the clearance requirement between the two pipes are. Mr. Cesar said we need at least 10 foot horizontal difference. We have that between either a potable line and sewer line or effluent line or reuse line and we have that at least up to Arizona.

Commissioner Griggs said just so that everyone understands the situation as it exists and existed, back several year ago when we had our real issues with water delivery, the City cut off the potable waterline to the medians on Juniper. The City did look into a variety of ways to address the fact that the grass was going to die and it didn't look very attractive. He thinks the cost for a lot of that exceeds the cost of running this waterline and supplying it with effluent water. It is really a good thing that everybody was on top of this to sit there and consider that once 18th was being reworked and we had the opportunity to run this line up there that staff knew that it was there and jumped on it. He thinks it certainly helped that new Commissioner Rentschler was on the job, but those sort of things are good. It is stuff that we have been looking at and we didn't necessarily know the answer but this is a great opportunity to make part of the community look more attractive than it does today and bring it back to the way it looked years ago. He thinks it is a very good deal.

Commissioner Rentschler said he thinks so too. It has been five years actually since the water has been cut off and he can assure the Commission that all the residents in District 3 and the surrounding districts will appreciate this.

Commissioner Rentschler moved to approve \$400,000 for the Juniper Re-use Line Project. Commissioner Griggs seconded the motion. Motion carried with a vote of 6-0-0.

Commissioner Ferguson said that will leave us with a little over \$1 million is that correct plus if it comes in at less than \$400,000 it will be even more, is this correct. Are we looking at other projects to

do or should the Commission look at taking the rest of this money and applying it to our Waste Water Treatment Plant because we are only approving \$6.5 million for a \$15 million waste water project and we could add this money to that. The difference will have to be made up in the rates and if we add this to it this means that we will not have to raise the rates as much to our citizens. He is not sure how the Commission feels but he would like to take the balance of this money and apply it to the Waste Water Treatment Plant. In the long run it will save us money unless there are additional projects that the Commissioner has and wants to use this money for.

Commissioner Griggs said he thinks there is some real merit to that idea, but what he would like to have staff do is to evaluate as to whether we are in pretty good shape on the projects as we have now. Are we going to need any money for change orders if there is any part of that money left. He would like staff to bring to the Commission a variety of projects to look at which would include the Waste Water Treatment Plant. The Waste Water Treatment Plant is one of our biggest deals if not the biggest deal, so it may be hard to take other projects but it might be some other projects that have some real need and he would like to know more before he assigns all of this money to the Waste Water Treatment Plant.

Mr. Cesar said that they are looking at other projects to bring to the Commission.

Commissioner Ledford said this was a loan that was designed for street maintenance was it not. He thinks that is what the voters wanted. Ms. Nichols said that it was designed for water.

Commissioner Ledford said we still have to deal with the balance of the sewer project, the change orders you have already talked about and budgeted for, he thought they had taken that out of those bids. Mr. Cesar said it was taken out of the bids but the money is encumbered. We still have to come before the Commission to ask for any change order. Commissioner Ledford said he thinks part of this million that is left is struck out. Mr. Cesar said it is not. Commissioner Ledford said so we have that plus this. Mr. Cesar said \$350,000 on the water side that is encumbered with the project. So that is not part of this money that we are talking about. Commissioner Ledford said wasn't there a half million line item that we took out. Mr. Cesar said it was \$350,000 on the water side, fund 81 side and \$150,000 on Fund 109, the street side, which makes the \$500,000 that you are talking about. Commissioner Ledford said he agrees with Commissioner Griggs that maybe you can bring it back with your recommendations to the Commission, but the Waste Water Treatment Plant is a possibility.

11. Approval of the Change Order Policy.

Recommendation: Approve the policy.

WITHDRAWN BY STAFF

13. Consider approval of Change Order No. 1, Public Works Bid No. 2008-004 for Abbott Ditch Phase III, Access ramp to Bonnell Drive, and close out the project.

Recommendation: Approve the change order in the amount of \$5,898.53.

Mark Threadgill, Community Development Director, said this is a close out of the Abbott Ditch Phase III, the aligning of the ditch. This is actually a reduction in the total amount and a total reduction in the contract time.

Commissioner Rentschler asked who the contractor was on this. Mr. Threadgill said it was Star Paving.

Commissioner Ferguson moved to approve Change Order No. 1, Public Bid No. 2009-004 for Abbott Ditch Phase III, Access ramp to Bonnell Drive, and close out the project.

Commissioner Cole seconded the motion. Motion carried with a vote of 6-0-0.

14. Approval of a Memorandum of understanding between the city and PreCheck to expand their building to meet job creation obligations.

Recommendation: Approve the memorandum of understanding.

City Attorney Thies said in the way of background, in 2006 the City entered into a Project Agreement with PreCheck where they agreed to relocate their facilities here to the City of Alamogordo and create a specified number of jobs over a period of 5 years. If they met those job creation requirements, they would receive some incentive payments. Just recently, this past legislative session, the New Mexico Economic Development Department was able to get an appropriation that they are now giving to us, an appropriation of \$400,000. In turn, we are amending our Project Agreement with PreCheck and we would give the \$400,000 to them. This will allow them to complete the build out of their facility in order for them to complete their job creation obligations. What we are going to be doing is extending the job creation period from 5 years to 10 years. They are going to agree to create 205 jobs within 60 months of the commencement date, which was in 2006, and maintain those for an additional 5 years for a total period of 10 years. This Memorandum of Understanding is with the New Mexico Economic Development Department where we act as the fiscal agent for this appropriation where we ensure that they are meeting their job requirements and submitting paperwork to the State of New Mexico.

Commissioner Cole said in the grammar or English, what is build out. City Attorney Thies said what it means is they have the existing building, the build out is where they complete or finish the interior of the building. The West half of the building was basically a shell and they are completing that and putting roofing or ceiling panels, some type of materials on the wall, he is not sure what they are using. Mr. Martinez is the contractor on the project and could probably shed some more light on exactly what was done to build out the facility.

Commissioner Cole said it was used in two different places there and he could not figure if it was supposed to be building or what. Mr. Earnest Martinez, Bar M Construction, said the build out refers to, just as the City Attorney stated, when PreCheck originally came in to Alamogordo, they agreed to build a building, expecting to occupy half of that building; that would accommodate their initial obligation to the City. The other half was just a shell, basically the exterior of the building, the façade. There was no heating or cooling, no flooring, no bathroom facilities, so it was just the exterior. The build out would consist of the bathroom facilities that would be erected, the office spaces being framed on the interior, heating and cooling, electrical in that part of the building, the flooring, the ascetic dropped ceiling, painting and those sorts of things, everything from drywall installation.

Commissioner Rentschler asked how much square feet we are talking about. Mr. Martinez said it is just under 6,000 square feet. Commissioner Rentschler asked what the total cost comes in at. Mr. Martinez said the total cost would be \$425,000. Commissioner Rentschler asked how we let this money out, do we do it all at once or a little at a time. City Attorney Thies said that we will receive the \$400,000 as soon as all the paperwork is processed and we will have to get documentation from PreCheck to show that they have incurred those costs. Once these steps are done we would distribute to PreCheck. We would also be entering into a promissory note with PreCheck in which they agree to pay the money back in the event they don't meet their job creation obligations.

Commissioner Rentschler said so this is a post construction check, they are going to build it and we are going to pay them. This was confirmed by City Attorney Thies.

Mr. Martinez said just as a side, the contract was awarded. We competed for that bid, it was awarded and because there was some confusion originally, the project was kicked off and actually started. The project at this point is about 95 percent complete. We are really hoping and encouraging the Commission to approve this Memorandum. As Bar M Construction, he is not here

representing PreCheck, but he can tell the Commission that they have been a pleasure to deal with. He sees them as a huge asset to the Community. He thinks this type of business coming into our community should be applauded and encouraged and he appreciates the Commission pushing this through.

Commissioner Ledford said a lot of this came about, not because of PreCheck or for sure not because of our end; it came about because of our Governor. He then asked City Attorney Thies this is a Memorandum of Understanding between the State and the City, but there are terms of the Agreement that we have with PreCheck that have altered; is there going to be another agreement with them that will be amended? City Attorney Thies said that amendment to the Project Agreement was presented to the Commission approximately a month ago.

Commissioner Ledford said it is the same changes as what is in here as far as extending the terms and everything. City Attorney Thies said yes, the Amendment to the Project Agreement or had to get sent up to the State of New Mexico for review and approval. Once the State approved it, they would present it to the Commission for their approval.

Commissioner Ledford said then we present it to them. City Attorney Thies said yes, they would sign it because they like a lot of paperwork.

Commissioner Griggs said in Section 4, The City's Responsibilities, under paragraph B.1, one of the things mentioned is a mortgage. What does the mortgage cover?

City Attorney Thies said the mortgage secures the repayment of the promissory note and effectively secures their job creation obligations. It is conceivable that PreCheck could close shop in a year and if they did, the State would require us to recover that money from PreCheck, the \$400,000. The mortgage is intended to secure our ability to recover that money. The mortgage is placed against the property, once they meet their job creation requirements, to discharge this obligation, we would release the mortgage. Commissioner Griggs said the mortgage will actually encumber the property where the building sits. This was confirmed by City Attorney Thies.

City Attorney Thies said they would have to give us a mortgage against the property; we have to have some type collateral to secure the performance of their job creation obligation.

Commissioner Rentschler said we are using the building as collateral and if they don't live up to their obligation, essentially we get the building if they shut down, is that what you are saying? City Attorney Thies said he would not necessarily say that we get the building, we have a second lien.

Commissioner Ledford moved to approve Memorandum of Understanding between the city and PreCheck. Commissioner Ferguson seconded the motion. Motion carried with a vote of 6-0-0.

15. Discussion on development of a Sidewalk/Driveway Apron Revolving Loan Fund.

Recommendation: Provide direction to staff.

Mr. Threadgill said what you have before you has been floating around Community Development, Public Works and Finance for about a year now. It is a way to address a requirement within the community in which property owners are responsible for sidewalks on the property. As you know you approved, back some months before we started the Florida, Mimosa project and the 13th Street project from the 2008 Gross Receipts Tax. Letters to be sent out to property owners in these areas, their responsibilities, what we would be doing, covers sidewalks, curb fills, expansion tanks and one of the issues we have had is these people come to us and they have called the City Managers office and even contacted the Commission, is we tell them they have to repair or replace their sidewalk that

is in disrepair. They want to do it, but they just can't afford it, they may be retired or they are on a fixed income, there are many reasons why they just can't do it. What we have put together here is a program that is primarily targeting the moderate to low income families in the community, property owners, as a way to assist them in complying with our ordinances and that is a small loan with a very affordable interest rate and generous terms. So that they can repair, replace or place initial sidewalks in the areas where we are doing streets, curbs, gutters and ADA ramps. We are throwing this out for discussion, he knows from the staff side where they discussed this with everyone and they had their input, this is a synthesis of input from Finance, Building, Public Works, Engineer, Project Managers and the City Manager and that is what is in front of the Commission now. Before we go any further, we have drafted a policy and given you an example of how a loan might work some of the qualifications that might be required and we would like to get your feed back and some direction from you on whether or not to proceed any further.

Mayor Pro-tem Lujan said that he has lots of question and he had been talking about this all day. He will let the rest of the Commission go first.

Commissioner Ledford said you have here the qualifications of the property owner and it says a family income of 80% or less. The way you have done this pretty much addresses the issues that you had with this. Mr. Threadgill said it addresses one issue and that is when we notify the property owners within the property areas, we have had a number of them come in and say they are on a fixed income, we are a single income family, we cannot afford to spend \$1,200, \$1,500 or \$2,000 depending on the size of the lot, at this particular time, what can I do. We came up with this as a way to assist residents to comply with our ordinances. Commissioner Ledford said he knows a lot of fixed incomes are \$50,000. Mr. Threadgill said that is why we put this in there. There are obviously people on a fixed income that can well afford to place sidewalks on their property. The medium income in Alamogordo in 2000 was \$50, 046, 80 percent of that is approximately \$40,000. If the medium family income right now is \$40,000 or less, verifiable by the prior year's income tax return, they qualify for this program as long as it is owner occupied property and not commercial property.

Commissioner Rentschler said by owner occupied you mean they have to be living on the property. Mr. Threadgill said it cannot be rental property. If you are making money off the property we are not going to subsidize you. Commissioner Rentschler said same as vacant lot across town. Mr. Threadgill said we are not going to subsidize a vacant lot, rental property or commercial properties. We are only going to subsidize owner occupied properties.

Mayor Pro-tem Lujan said his main concern is, and he understands that the main concern is to start with the properties on the streets are going to be done first, he thinks the big problem is the people are going to come through and say "why do I have to do it just because my street is being done". He knows sidewalks on other streets are not done but they are dangerous, why are they not doing it. Mr. Threadgill said if he had \$500,000 he would say lets open it up city wide right now because we are missing a lot of sidewalks and a lot of sidewalks are in disrepair.

Mayor Pro-tem Lujan said he is not just talking about loan; he is talking about as far as making people do their sidewalks. If we are making them do their sidewalks and they are going to say why are you not making John Doe down the street do it. The thing is that if we are going to do that eventually then maybe we need to put it out now. If we try to do it later on they are going to say, well how come he got financing for his and I did not get financing for mine and all that money is gone and if they would have known you would have made us do it then we could have taken advantage of that money while it was available.

Mr. Threadgill said it is a City ordinance and every property owner is responsible for it. Mayor Pro-tem Lujan said but it is not being enforced. Mr. Threadgill said if it is the Commissions intention is for us to go out and notify each and every property owner that is missing sidewalks or has sidewalks in disrepair, we will do it, but unfortunately we are going to have a lot of people say that they cannot

afford it. Mayor Pro-tem Lujan said he understands that. Either we are enforcing all or we are not. Right now we are picking a selected few and we are enforcing it and not enforcing the rest.

Mr. Threadgill said you are exactly right, but we have to start somewhere. If he had \$500,000 or \$1.5 million to start this loan program, it would be much better, he could do it city wide. He would love to do that, the sidewalks are an important part of the quality of life of any community. He would like to get this done, but we have to start somewhere. Projects where we are upgrading the ADA compliance in the area anyway, we are repaving the streets, we are redoing or installing curb and gutter, that seems to me the perfect opportunity then to also include the sidewalks in the project. Sidewalks are the property owner's responsibility. This is a way to assist those who can't afford it at this time to comply with the city ordinances. He agrees with Commissioner Ledford wholeheartedly, he would love to go through the community and say put in or fix your sidewalks, clean up the sidewalk areas, but you know and he knows that it is not a possibility right now.

Mayor Pro-tem Lujan said that he understands that, he is just trying to protect the Commission from all sides. Mr. Threadgill explained this is a revolving loan fund, once these people start paying back in, we are going to have that money to loan out again. He has faith that they will pay it back, the terms are very generous. The example he gave shows the higher end, if someone would need \$1,000, its \$29.30 a month for 36 months.

Mayor Pro-tem Lujan said that he is not talking about whether or not we have the money to loan or not, he is not even speaking about the loan right now. In order to approve the loan, he wants to first address the issue that if we are going to enforce it on these residents to fix their sidewalks, for whatever reason because we are doing these streets at this time, are we going to enforce the rest of the residents at some time? Mr. Threadgill said at some time, yes. Mayor Pro-tem Lujan asked if we have any plan or idea? Mr. Threadgill said the ordinance is on the books right now, if the Commission tells him right now that the Public Works Inspectors are to go out and start enforcing this section of the ordinance, but issuing correction notices to the residents, we will have those out tomorrow.

Mayor Pro-tem Lujan said he is sure they will, what he is saying is that what he is hearing today, he had a meeting and this fund is not just for those that we are enforcing to fix their sidewalks because their streets are being done, this fund is for anyone right now, anyone that wants to come in. If we have any plans on enforcing anyone anytime soon, a year, two years, whatever it is going to be then we need to let them know now so they can take advantage of this fund before it runs out. If not then we need to make it clear right now that we are only enforcing those that are having their streets done and we are not going to enforce the rest.

Mr. Threadgill said they had already sent notifications to everyone in the project areas. They have been put on notice that they need to come up to code in this area. Mayor Pro-tem Lujan said maybe he is calling himself out to make a decision here, but he is just trying to get the Commission to say if we are going to enforce it on everybody of just these areas. Mr. Threadgill said if the Commission tells them that it will be everybody, he is sure the Alamogordo Daily News will put that in the newspaper tomorrow or the next day.

Mayor Pro-tem Lujan said this isn't for publicity, this is for the fact that we have already received calls and he knows that we will receive more calls, and once we start enforcing this on people, because if their sidewalks are not done right now then he can almost guarantee that they don't care about their sidewalks. They are never going to intend on getting their sidewalks finished. Since we are going to enforce them to spend \$1,000 to \$1,500 out of their pockets, to get this done whether it is in payments or not. Mr. Threadgill said this is not enforced; this is at the option of the property owner.

Mayor Pro-tem Lujan said he understands that but he is trying to address the issue now or there is no sense in passing this. He wants to understand that before he passes this. Mr. Threadgill asked what

he would like them to tell the residents about this program. Mayor Pro-tem Lujan said what they are pretty much going to come to the Commission with is that we are enforcing some but not the rest.

Mr. Threadgill asked if the Commission would like them to go out and site all of the sidewalks. Mayor Pro-tem Lujan said he just would like some sort of plan of what we are looking at. Mr. Threadgill said the plan is that since we have already put on notice, in writing, all of the residents in the project area that this Commission approved, that was the target of this. It is not to say it is exclusive, but that is the target. It may or may not be fully utilized by the residents in those areas, we are talking about 660 notifications went out, between Public Works and Community Development. This will fund approximately 50 to 55 sidewalk projects, depending on the lot width, the condition of the sidewalk. Not everyone will come in to get a loan to fix it. Not everyone will even qualify based on these that come in and get a loan. This is just a way to assist citizens with a way of complying, this in no way makes them comply, they are not compelled to come in and borrow from us, they can go to the bank and borrow. You, as the Commission tell us, do you want us to go and do this blanket across town or the areas that we already notified? That is why he is here.

Commissioner Ledford said we had this issue before where there were some improvements and he thinks the city ended up footing the bill for the sidewalk. We have notified them but he thinks in the past the property owners have been caught off guard so the \$1,500 or \$1,800 was probably a little annoying to them. You are right, we have to start somewhere and the best place to start is those who are getting, what he would consider a direct benefit, their streets improved. We are asking them to take care of their sidewalk, rather than doing it across the city because we would not be able to do that under this program anyway. You say this would take care of 50 houses. Mr. Threadgill clarified it would be roughly 50 loans.

Commissioner Ledford said what he is more curious about is, we are going to get complaints no matter what happens, he doesn't care how you do it. We could tell them just to pay it and the heck with it we are not even going to help you, see how many complaints you get there. His point is that when we run out of money and we are requiring them to do it that is when the complaints are going to come in. This concerns him because the reason why he thinks they could run out of money is why would they want to pay when you can attach a lien on it and they will worry about it when they sell the house.

Mr. Threadgill said Commissioner Ledford is perfectly right. He does not know how to cure that but they would have to trust the property owner. Commissioner Ledford said he knows this, but these are lower income citizens and that might be the best and only option, maybe they cannot afford an additional \$80 a month. How much is it? Mr. Threadgill said \$1,000 for 36 months based on the 3.5 percent interest, they are looking at \$29.30. \$1,800 is the approximate average to do a complete sidewalk on an average lot. Could be a little more, could be a little less depending on what they need or if they just need a section replaced. There are so many variables in that. People can do it themselves too.

Commissioner Ledford said he thinks this is actually a benefit for the citizens if we were in fact to enforce the ordinance. We are going to continue to not enforce the ordinance because we are not going to require those other people to worry about it yet. We are going to wait until they do their street to make them comply. He thinks that is the approach that we are taking.

Mr. Threadgill said we do have the ordinance and if we want to make this city wide, that is fine. He is sure that there will be people who come in for streets we are not doing projects who want their sidewalk done or installed. Commissioner Ledford said he would rather not do this city wide but let them pay for it. Mr. Threadgill said they could borrow the money and he would have no problems with that. Fact is we have limited funds and if we limit it to the areas where we are already upgrading the street service, the curb gutter, the ADA, it seems like the perfect time to do this. Commissioner Ledford said he thinks it is a positive thing and that is how we need to present it.

Mayor Pro-tem Lujan said it will start out positive, but it will not finish positive, he can guarantee that. Mr. Threadgill said we have to take positive steps somewhere, even a small one.

Commissioner Ferguson asked if they were going to send separate bills to these individuals each month. Is there a way to make sure we get paid every month? Will it be put on their water bill? Mr. Threadgill said that he believed it will be put on their water bill. He stands corrected; it will be a separate bill. Commissioner Ferguson asked if we could make it a part of their water bill, this way we are only sending one bill instead of two and will save us some money. Mr. Threadgill said they would have to see how much that would cost. That may require a modification to our software and we would have to look at this.

Commissioner Rentschler said you say approximately 660 notices went out. Is this how many residents are in the project area? Mr. Threadgill replied it would be the 13 streets that Public Works are doing. Commissioner Rentschler asked if that was total residents? Mr. Threadgill replied it is the number of households, addresses where the notices were sent. Commissioner Rentschler asked how many have received correction notices? Mr. Threadgill said none of the residents have received official correction notices because they were given timelines. They were notified that this was a requirement as well as their thermal expansion tanks and any ADA requirements that they may need because we have to address that when doing streets. No demand was made at this time; just these are your responsibilities. Commissioner Rentschler asked if have we identified any problem sidewalks already? Mr. Threadgill said many of them. Commissioner Rentschler asked if there were 660 of them? Mr. Threadgill said there are not 660 problem sidewalks; there are 660 addresses in the project area. Commissioner Rentschler said he guesses what his question would be how many problem sidewalks do you have of that 660? Mr. Threadgill said he could not tell how many at this time.

Commissioner Cole said he thought most of them were in District 6. Commissioner Rentschler asked if we are requiring people who live in the corners to pay for the ADA upgrades? Mr. Threadgill said the ADA corner ramps are part of the projects so the property owners are not responsible for them just the sidewalks.

Mayor Pro-tem Lujan said he thinks it is a great deal and he is in favor of it. He just thinks that before the Commission approves it that we should fine tune it. Mr. Threadgill said that is the reason we are having this discussion is to get the Commission's feed back so that when he does bring it back and say this is what we want to do, we are not having this discussion then. We can say this is what we want to do and we can actually pass something or adopt something.

Mayor Pro-tem Lujan said he thinks no matter what the Commission does, they are not going to be popular. He is talking about the enforcement on the property. If they only enforce a few, they are not going to be happy, if we enforce them all, they are not going to be happy, if we enforce them all later on and didn't tell them now when the funds were available and they can't get financing that the other people got. We are going to say that we only gave them financing because we were doing their street and they are going to say that they need their street done too. He just wanted to discuss it, we can come to a decision later.

Commissioner Ledford wanted to know if someone wanted to know if they were in compliance or not, could they call Community Development and could they go out and tell them. Mr. Threadgill said yes that is in the letter as well, along with any questions that they may have on the thermal expansion tank and the ADA compliance, they just call us or Public Works and after they look at it. After they install the thermal expansion tank we go out and inspect it. We receive the calls; we go out there and give them advice. Some of the things we can't do, they will have to hire someone to make corrections.

Commissioner Ledford asked even if it was not a project house, they could still call you?

Commissioner Griggs said one of the things that he thinks is important with this is the fact that we've undertaken a major street program, it creates a big issue with the street maintenance programs we have undertaken in the past it has not created near this type of a challenge for us or the people. He thinks we almost have to limit this to the street projects because we don't want to run out of the limited money that we have while we are doing those streets, and we may anyway. He thinks that if we limit it to them, we know how much money we have, we know where these things are and hopes we know that most of them, if not all of them will be taken care of in this street project. Mr. Threadgill said at least he hopes they are taken care of.

Commissioner Griggs said it is important, if you have one not done or two not done when you have the streets fixed and everything looking good. That is what is what he thinks is important to us. He appreciates the fact it would be good to have the program across town and open it up to people but that is where you just have to have more money than what we have. We have to try to look at what we have and use it in the best possible way to give people the best possible opportunity because what we have done in past meetings is say that they will have to fix them. If they are going to have to fix them, this is an opportunity to help some people fix them where others are just going to have to have them pay their own. While we are here talking, one of the things that is interesting to him, and he is not sure of the figures, when you talk about \$6 a square foot for concrete, are you talking about tearing out the old? It seems to be a lot to me. Mr. Threadgill said it is a general average. If they have to completely replace it, they will have to tear it out and haul it away before replacing it. Commissioner Griggs said it must be the question because it seems like pouring it and forming it would not be that much. Mr. Threadgill said it is an average. Some people may choose to do it themselves, we do not have a problem with that as long as they conform to our technical specifications and they have to have it inspected.

Commissioner Griggs said if a guy has 10 feet of sidewalk that needs to be fixed up and he has a 120 foot lot, his sidewalk is either 3 or 4 feet right now; we are going to make him put a 5 foot sidewalk all along the 10 feet. Mr. Threadgill said we are hoping that we don't run into that situation. We have thought about that, but we are not sure what the answer is yet.

Commissioner Cole said he wants to take you down South Florida. Lets start where the Bowling Alley is, this is an actual phone call. No sidewalk there the whole length, we go up the street where we are doing the project, to about the radio station on the south, the two corner lots. The one lady wrote him a letter and called him, she has a corner lot, another lady contacted him later, her husband had passed away and wanted to know how she is going to pay for it. There was a person who talked to me about the radio station area, are you going to make them put in a sidewalk and he doesn't remember how far of an area that is. There are quite a few cases there and he has received several phone calls and letters. A man called me one night, he was walking to Wal-mart and it had rained, he said they are making them put in sidewalks but they are not making them put in sidewalks around the bowling alley and that area there. He said since you are making other people do it, are you going to make whoever owns that lot there at the bowling alley put in a sidewalk too? That is not part of the construction area, but what he is saying that there is a whole area there but the only area being affected based on my input is only where the construction area is taking place. The blanket is not a complete blanket. In hardship cases, this loan with low interest might be helpful. He did go and see the ladies who were handicapped and the gentleman has a disability of some type. Mr. Threadgill said he believes that they already had contacted us on their ADA requirements for that area.

Commissioner Cole said none of this was on the ADA, he is talking about the sidewalks. What he is saying to staff, whatever you work out, has either got to be a complete policy for everybody and not sections. It might go into sections because of costs, but it has to be everybody or nobody. It will take a period of time and he understands that. When he is talking to those folks, when he comes in for suggestions, and he does pass this on. This tonight is brand new, he did not know anything about until he met with the City Manager yesterday and he was telling him about it. Whether it is good or

bad he is not saying, all he is saying for the cases he is talking about, going up to the bowling alley, and the man who walked to Wal-mart in mud. You are making other people put in sidewalks but he can't walk on a sidewalk because there is not any there and it is an empty lot. What are you going to do about it? However you look at the variables, these are actually examples that have actually happened. Conversations that he has had either by letter or phone, he is just putting it out there for the Commission to look at.

Mr. Threadgill said the same issue the Mayor Pro-tem Lujan was speaking about. We are doing it in the project areas but in this case on both ends of that project, there are properties that do not have sidewalks. No, we didn't notify them, they were not in the project area, and they were not in the addresses for the projects, so they did not get notified. The ordinance requires all property owners within the City of Alamogordo to install and maintain sidewalks. As he had asked Mayor Pro-tem Lujan earlier, if it is the desire for us to go out and notify all the property owners of that requirement and to inspect and notify property owners of sidewalks that are in disrepair and don't meet our standards, we can do that. One of the issues is going to be owners who are going to say that they cannot afford it that is why we came up with this. This money is going to run out very fast, we have 13th Street, 14th Street, 1st Street, North Scenic, LaVelle Road, Hamilton Road. We are going to have a lot of people that will probably try to take advantage of this limited amount of money.

Commissioner Cole said the checker board approach may or may not be the right solution. He is just pointing out the phone calls and letter. Mr. Threadgill said he has received a few himself. He wishes he had enough money so that he could go around to everybody and say that we could do this. We have to start somewhere. We have a small amount of money to work with.

Commissioner Cole said he wants to put one more caveat in if he could. On South White Sands Boulevard when they put the sidewalk in on one side going up to the stop light from the intersection there, he received a phone call asking why we are not putting in a sidewalk on both sides. We found out that the state was paying for it and we were doing the work, so he explained that to him. The caller wanted to know why there was a sidewalk on one side of the highway, the highway is dangerous so why were they not putting a sidewalk on both sides. Mr. Threadgill said that the State Highway Department put it in and we were just the fiscal agent and the project manager on it.

Commissioner Cole said he called the caller back and told him that answer. He is just pointing out that the highway was built on one side and not the other and it is a danger for people to cross the highway to get to the sidewalk. The idea is good, but some people would not be able to pay and these are variables thrown into the picture. He does think it is important that the project on South Florida, the checker board approach is not going over that way. He doesn't know the answer but it is something that everyone will have to wrestle with.

Commissioner Rentschler asked what would happen when you get an ADA complaint from somebody about no sidewalk, do you go in and look at it at that time? In other words, when someone in a wheelchair sends in a complaint that a sidewalk is not ADA complaint, do you go look at it at that time and correct it? Mr. Threadgill said yes, part of the rules is that when we are doing these projects, a certain level of street maintenance repair rebuilding, pretty much anything, past a slurry seal on a street, all the ADA requirements kick in. Part of that, especially when there is state or federal funding involved, is that we have to request from citizens feed back from then saying do you have any ADA requirements, do you have any complaints about ADA accessibility? The Project Manager and the City Engineer goes out and takes a look and they will determine whether or not it is a true problem, if there is an alternate way of addressing the accessibility issues that may be in the area. As part of the project, we always design in the corner ramps and alley aprons.

Commissioner Rentschler asked if a citizen comes in and complains that there is no sidewalk, do you go and investigate and issue a citation? Mr. Threadgill replied no, we are not doing that right now.

Commissioner Cole said that is the problem on the Florida Street project, they are only doing it where the construction is taking place. Mr. Threadgill said all of those individuals have been notified. If it is the will of the Commission that we put notices on all of the property owner in the community about their responsibilities, give them a time certain for them to repair or install their sidewalks, we will do that. It has been his belief from the past practices of the community, that that is not the will of the Commission.

Mayor Pro-tem Lujan said he thinks we have had a lot of discussion and believes that they will have more discussion, but he thinks we have a lot of progress tonight and the best thing to do at this time is to decide if we want to go across the board or just wait until the streets are going to be done and then notify them there, but if we are going to go across the board maybe we can do it in phases as the money being paid back and more of that fund is available. He doesn't think that it will be done tonight, it was just discussion, and he thinks right now the Commission just needs to provide direction. As far as the loan fund, he thinks that everyone is in favor of that.

Mr. Threadgill said that conceptually everyone is in favor of it, if they want him to do some tweaking on how it will be applied, rather across the community as a whole or in just the project areas.

Commissioner Ledford said we don't have that much money. We can add to it or drop it later; we can do anything we want.

Mayor Pro-tem Lujan said he thinks they are going to stick to the plan right now, but he thinks that himself and Commissioner Cole, maybe some of the other Commissioners, maybe we can bring this up later on, have more meetings on it, and decide what they want to do then, right now we need to stick with the projects that are going to get done. Mr. Threadgill said he could bring back an actionable item based on the material in here if that will be acceptable to the Commission. Commissioner Ledford said it would be subject to change.

Commissioner Cole asked in the area of construction, are you applying the sidewalk on both sides of the street? Mr. Threadgill said if there is a property owner who is responsible for the sidewalk, they have to put in the sidewalk or repair the sidewalk as it exists, on both sides of the street. Commissioner Cole said it just dawned on him that on the east side of where he has his questions, you are going to have sidewalks on both sides. Mr. Threadgill said yes all property owners on both sides of the street of all the streets that we are doing, have been notified, that it is their responsibility, every address.

Commissioner Ferguson said on South Florida, isn't part of the property County property and not City property? Mr. Threadgill said the area that Commissioner Cole is talking about is below South Florida. Commissioner Ferguson said he is talking about further on down. Are we going to have sidewalks on both sides all the way down South Florida? Mr. Threadgill said that we will not get into the County part.

Commissioner Griggs said on South Florida, before the road was constructed, portions of it were in the County and portions of it were in the City. When the French Brothers proposed the Los Lomas Subdivision, the City annexed that along with all other property owners along South Florida. When the road was constructed, all of the property owners were in the City.

Commissioner Ferguson said right, they annexed the west side. We just took the easement and annexed that far or did we take that property owner; Lee Minjarez, he owns thousand fee back, did we annex his whole property into the City or did we take that part that we needed for the road and say this is the City? Commissioner Griggs said right now, going all the way to the end of Sedona Ridge, the property on both sides of South Florida is in the City. Once you go immediately south of Sedona Ridge, that property he does not believe, an 88 acre section, that may not be in the City. The Subdivision that Doug Nelson put in off Hamilton Road, south of the Golf Course, south of Desert

Hills is in the City limits. There may be a little bit that is still in the County. One of the issues with that whole building of South Florida was getting all of the property owners in the City. Currently right now, once you go south of Panorama all the way to Desert Lakes, all of that is in the City.

Recommendation is to bring back a proposal to the Commission starting with property owners in the project areas.

16. County resident connection to City of Alamogordo sewer system - 4017 North Florida and discussion regarding lifting the moratorium on water and sewer connections outside the city limits.

Recommendation: Provide direction to staff.

Mr. Threadgill said we had an incident that he had detailed in the packet, an issue to a sewer tap along Tierra Bella Drive, which is out near North Florida. We issued a permit for a sewer tap to a County resident who happens to share a property line with the City limits. It came to our attention from a contractor working in the area that a County resident was attempting to attach to our sewer line, which as you know, unless explicitly allowed by the Commission, County residents do not hook into the City water or City sewer services. There are a lot of issues involved with this one in that a permit was issued but had the connection been completed, we are not exactly sure how any charges would have been levied because had the contractor not notified us, we would have not known a connection had been made. Typically since your sewer rate is based on your water usage and there is no water meter there, as you can see there are a number of issues there. We did issue a permit; it was probably issued erroneously thinking that it was part of the subdivision when it was annexed. We thought, this particular piece of property, was included, it was not. He sent them a letter letting them know they could not attach. We did notify the contractor that was ready to do that attachment. They are not connected to the best of our knowledge. This did bring to light that we have a list of people that at one time or another did want to attach to our water and sewer services, that it may not be a bad idea seeing as how we are getting ready to spend large sums of money to upgrade and repair our Waste Water Treatment Plant that if residents nearby the Corporate City Limits would pay for the infrastructure and pay an increased rate and make their contributions as a property owner within the City, as a repayment of the bond, to allow these connections to the City water and sewer system. We just bring it as a point of discussion, we have had it for a number of years, there may be a number of customers, our customer base has been fairly stable for the last 8 or 9 years, it hasn't grown a great deal. This might be a great way to grow our customer base for water and sewer services and extend our services a little bit. Make the alternate users pay for the extension and the connections at a slightly higher fee than we charge resident customers.

Mayor Pro-tem Lujan said he had discussed this issue with the City Manager and City Attorney, he was not in favor of it at the time, he did not want to provide any services to anyone outside City limits, he had his reasons, but he will be honest, his mind has since been changed. If the City Manager or City Attorney has anything to add that will be to the benefit of the city or the consumer, he would appreciate their input.

City Attorney Thies said one of the items that the Commission approved tonight, the Booster Station at Alamo Tank, primarily will benefit a number of residents along the road, he is not sure what it is called but is located just outside the City limits between the Alamo Tank and Alamo Filter Plant. Back when the original line was installed, the City swapped water connections for easements, so there are 10 or 11 properties that are connected to the City water system, that is why we had to have the Booster Station meet the State's requirements. Any people who have driven in that area will realize there are potentially another 30 or 40 residents in that area. If you were to reconsider your moratorium on water connections, those houses could conceivably connect to the City system and the rates that we receive from those users could be used to offset the cost of that Booster Station.

Commissioner Ledford said if we lifted the moratorium temporarily and allowed this list to hook up, they would have to pay to have it hooked up and they will pay double rates. What disadvantage would it be, especially since they are right on the edge to hook up to service? He thinks before they didn't have the service, we had water problems as far as delivery or supply, that maybe we don't have now. The projects that we have brought on in increasing our water production over the last few years, not just because of the rain, we have done some positive things in water supply delivery since he has been on the Commission. What reason would we not want to allow this?

Interim City Manager McNeile said he thinks the discussion among staff has been just that. The water delivery system has been improved where it makes sense to do this. We suggest that we seriously look at doing this for all the reasons mentioned. We really don't see a down side at opening this up at this time. Commissioner Ledford asked if it would open up anything legally? City Attorney Thies said it will primarily be driven by the finances. How much are they willing to spend to install the infrastructure necessary to connect to the City system? Commissioner Ledford said that is their issue, for example if they are a mile out and they are willing to bring a mile pipe, they have pressure issues. Are we going to be responsible for the pressure? City Attorney Thies said we would make sure that the system is designed to be compatible with our system and also look to future expansion. We don't want to allow them to connect a substandard system to our system where we can't add future development. Commissioner Ledford said we want to be careful of that.

Mr. Threadgill said it would be under our technical specifications. He doubts that we would want to let a subdivision developer move a mile or two away from the City limits and lay a water and sewer line and try to supply water to the entire subdivision. Commissioner Ledford said it could happen and we would be responsible for the pressure and delivery.

Mr. Threadgill said with properly written policy, properly written technical standards that say you are responsible from this point on, it is your cost, and this is what it will cost you for cubic foot of water or sewer plus a little added to help repay the bond for the Waste Water Treatment Plant. He does not see the down side here.

Commissioner Griggs said he does see some down side here. He sees some opportunities with this, he thinks one of the things they have not touched on is most of these guys outside the City are the first to get cut off if we have water issues. If we get to a point that we have to restrict water usage to the City, the people who are outside the City we can actually cut them off of our service in order to provide water to the City users, as they exist now. The new users would be the same way. When you talk about a subdivision, it is a big deal. Mr. Threadgill said that is why we would not allow subdivisions to develop that way.

Commissioner Griggs said what he would like to see is to look at the areas that make the most sense. Around North Scenic, Alamo Canyon, maybe there are some spots on the west side of town that makes sense. There are some individuals that applied for this way back in 1993, they may not have any interest anymore. Mr. Threadgill said this list has been hanging around forever and some of these people may not even live here anymore. Commissioner Griggs said he thinks if we can develop where it makes the most sense to the Commission in conjunction with those on the list it will make sense. The issue at hand though deals with the property on North Florida and what you brought up earlier was how to pay or how do the property owner pay for the right to use the sewer system? Because normally sewer rates are based on water usage, what plan or proposal do you have to just allow them to utilize the sewer system? Mr. Threadgill said they have to have water one way or another, whether it is from a well or from us. Commissioner Griggs said he believes that they do have a well.

Mr. Threadgill said he had not heard back from the property owner since he sent out the notice. It is possible that the well could be metered and get the usage, that could be a way to do it. He would not recommend doing it that way, but it is one way to do it. This is one of the issues here, whether it is

connected or not, there is no way to get a connection because there is a moratorium on those connections. He is asking the Commission to say, if you want to go that route, let us sit down and develop a policy and procedures to do this and bring it back to you for your blessing.

Commissioner Griggs said he appreciates that and he believes that we could decide this issue by itself and also decide the issue on the moratorium. We have a deal here where we authorized a tap.

Mr. Threadgill said the tap was put in and inspected. Commissioner Griggs said we need to deal with this question along with the other question. We don't have any real options on having to figure out how this deal could be paid for or the use of our line paid for. We are going to have to come up with something like that while we are coming up with the policy or separate from. Mr. Threadgill said he thinks there could be a concurrent solution. He thinks the policy could be broad enough to cover this situation. Commissioner Griggs said he thinks it could be too, he just doesn't understand why they are dealing with the policy; we have a practical matter at hand.

Mr. Threadgill said this was the perfect transition, let's look at the whole situation we have here. Commissioner Griggs said he appreciates that, he doesn't know when these individuals have to be hooked into the sewer system. He doesn't know if they have a septic system right now, but if they are sitting there waiting to hook up to our system and they can't utilize their facilities, we need to be able to fix this.

Buddy Sanford said he is responsible for doing all of this on his son-in-law's property. We had talked to Shannon Wright when they were doing the utility works on Bella Vista and he said he would talk with Greg Twite, he was an inspector at the time inspecting the project out there. We went through all the legal channels and did everything they told us. Mr. Twite then told us that we could not hook on to the City water. The City sewer, there is no ordinance against hooking up to the City sewer; we will permit you to hook into the City sewer. That is why he paid Shannon Wright \$650 to hook onto the sewer while it was opened out there in the street before it was paved on the assumption that we could hook onto it when we needed to.

Commissioner Griggs asked if they are using a septic system out there right now? Mr. Sanford said basically the sewer is for a building that is not even there yet. We have a septic system and a well system out there, we are using well water. We wouldn't have done it had he not said, hey you can hook onto the sewer but you can't have water. Commissioner Griggs asked when was the plan to start using the sewer line. Mr. Sanford said as soon as they could so we can get the yard straightened up.

Commissioner Ledford asked Mr. Threadgill if it is true about the ordinance, that we don't have an ordinance on the sewer line. Mr. Sanford said that is what Mr. Twite told him, but he understands that he is retired now. Mr. Threadgill said it was Greg Twite that authorized the permit and did the inspection and approved the tap. He can find nothing in the documentation of that permit, one way or another, and to be honest with you, he has not looked at the ordinance to see if it said thou shall not attach to the sewer. He would have to go back and look at the ordinance and look for that specifically. It was signed off by the City Inspector, he went out and said it was okay, gave it his initial and approved the tap.

Commissioner Ferguson said he thought it was going to be our policy, he is just asking because he wants Mr. Sanford to have his hook up, but how are we going to fairly charge him if he doesn't have the water. Could we just set some sort of rate for someone who just uses the sewer system who lives outside the City limits? Mr. Threadgill said the sewer rates are dependent on the water usage within the corporate limits. It only makes sense that we treat users outside the corporate limits the same way; otherwise a fixed rate would not be representative of their usage.

Commissioner Ledford asked what is the usage. Mr. Threadgill said generally speaking, this property might not be reprehensive of all properties coming into the system.

Commissioner Ferguson said he doesn't have any idea how we can do that because it is his understanding from the Commission that if they are inside the City, we want everyone hooked up to the sewer if they are using the water. Maybe have everyone get hooked up to the water and pay the minimum water bill.

David Miller, Property owner, has a City water bill and sewer bill from a business that he owns, can it be attached to there as far as water usage? It is a home garage; the water usage would be whatever the minimum would be. It is not attached to the house, he has septic for that. He does have a brand new shop sitting there, that wouldn't be there and he has a mortgage that wouldn't be there if he knew he couldn't hook up to the City sewer system. That is where he is sitting right now, the building has stopped, the contractor had to stop, and everything has stopped for this for permission to do it. As far as the rate and what you want to charge per month, he is not sure how the Commission wants to do that. It would be minimal, he is not sure what he pays now for his business, but you could tack on there, it is okay with him.

Mayor Pro-tem Lujan said what he wants to point out here is if we don't approve this, we still have to deal with the issue that it was signed off and approved by a City Staff, that is apparently not here any longer, and now Mr. Miller has incurred part of the cost due to our mistake. Commissioner Ledford agreed that is the issue. Mayor Pro-tem Lujan said not if we pass it, it is not an issue. He is saying if we don't approve it, it becomes an issue.

Commissioner Ledford said he guesses that we have an ordinance that is such that we don't allow it, but because we approved it we should consider that. City Attorney Thies said not necessarily. Mr. Twite did not have the authority to bind the City and was not that level of Employee.

Mayor Pro-tem Lujan said this is not just for this issue; we are trying to decide if we should do this across the board. City Attorney Thies said if you did it across the board, it is another matter. This particular circumstance, it's unfortunate, but the City Inspector does not have the authority to be authorizing sewer taps.

Commissioner Ledford asked what authority did he have? City Attorney Thies said he inspects and makes determinations whether or not the system complies with the code requirements. Commissioner Ledford said did they have the permit to hook up and where does that permit come from? Mr. Threadgill said yes, at that time, the building permit was signed off by Greg Twite, the inspection was conducted by Greg Twite, the City Inspector, and the building was approved by Greg Twite, the City Inspector. Commissioner Ledford asked does he have the authority to issue that permit? Mr. Threadgill said at that time the building official or the building official's designee had the authority, which would have been him. Commissioner Ledford said so he had the authority. City Attorney Thies said it was erroneously issued.

Mr. Threadgill said it was erroneously issued; the policy for the Commission has been that there has been the moratorium on connections from outside. We are not opposed to do it which is why we brought up this discussion at this time. He believes that it is something the Commission and the City as a whole should reexamine. If it is not out of line, he says to direct them to come back in two weeks with a policy that would allow these connections. We can set some ground rules and the way to establish a set of charges. Had the connection been completed without us being notified, the sewer system would have been used and we would have not known about it and not know what to charge.

Mayor Pro-tem Lujan said he agrees with what Staff is saying, not just with this issue; bring it back to the Commission with a plan. Mr. Threadgill said direct us to come back at the next meeting and we will have, at worst, a draft policy to present to the Commission that will say, if you are serious about this, here is how we should progress.

Commissioner Ledford said there may be other hook-ups that we don't know anything about so we will have an amnesty program to bring those into the system too. Mr. Threadgill said it is absolutely correct, and there could be someone out there tapping our sewer system, and it is so easy to do. If it is not out of line, direct us to come back with in two weeks and we could have a draft policy that deals with charges and how we would regulate this. We could see if the Commission is willing to change this.

Mayor Pro-tem Lujan said we have to provide direction tonight and he is in favor of that.

Commissioner Griggs said the only issue he would like to see addressed in doing this, he would like to see the over all plan and the overall plan may take a little while to agree to and a solution to this issue as well. Come up with a plan because they are sitting there waiting on this. The other individuals will do whatever is laid out for them. These people are sitting there with a need to get a project completed. If we could address that need as well as the policy, he thinks that would be a good thing. Mr. Threadgill said he would see what they can come up with.

Recommendation is to look at seriously opening this up with written standards for the property owners.

20. Appointments to Boards and Committees.

There were no appointments made. Mayor Pro-tem Lujan asked anyone interested in serving to contact the City Clerk.

UNSCHEDULED COMMUNICATIONS:

- A. Commissioner Griggs extended the condolences of the entire Commission to Mayor Brockett and his family for the loss of their loved one.
- B. Matt McNeile gave the water report.
- C. Mayor Pro-tem Lujan also wished to extend the condolences of the entire Commission to Mayor Brockett and his family for the loss of their loved one.

EXECUTIVE SESSION: Adjourn into Executive Session to discuss threatened or pending litigation (Oasis Mobile Home Park); and limited personnel matters (City Manager recruitment); disposition of real property (A.G. McMath Building Site, 1 & 3); and the purchase the water rights (Mesa Verde Partnership).

ADJOURNMENT.

Commissioner Cole made a motion to adjourn at 9:43 p.m. Commissioner Ferguson seconded the motion. A Roll Call vote was taken, and all voted "aye." The motion carried with a vote of 6-0-0.

(SEAL)

/s/Mayor Ron Griggs

ATTEST:

Mayor Ron Griggs

/s/Reneé L. Cantin

City Clerk Reneé L. Cantin

(Prepared by Marsha D. Brady, Deputy Clerk)

Approved at the Regular Meeting held on July 28, 2009.