

**CITY OF ALAMOGORDO, NEW MEXICO  
CITY COMMISSION SPECIAL MEETING MINUTES  
2:00 P.M., COMMISSION CHAMBERS  
TUESDAY, OCTOBER 4, 2005**

**MAYOR DON CARROLL  
MAYOR PRO-TEM RON GRIGGS  
COMMISSIONER INEZ MONCADA  
COMMISSIONER ED COLE  
COMMISSIONER DON COOPER  
BROYLES**

**COMMISSIONER JOHN ROBERTSON  
COMMISSIONER MARION LEDFORD  
CITY MANAGER PAT McCOURT  
CITY ATTORNEY KEN McDANIEL  
CITY CLERK ANGIE RAHN-**

Call Meeting to Order and Roll Call.

The meeting was called to order at 2:00 p.m.

**PUBLIC HEARING:**

1. Ordinance No. 1248 approving a project in accordance with the Alamogordo Economic Development Strategic Plan: Project CRISP.

*Recommendation:* Approve the Ordinance for final adoption. [Roll Call Vote Required]

Mayor Carroll asked Mr. Ed Carr, Director of OCEDC, to briefly summarize the project and how it relates to the Economic Development Strategic Plan.

Mr. Carr explained that Project CRISP is a start-up cookie manufacturing facility that has made a proposal to locate in Alamogordo, New Mexico. Their business plan shows their intent to purchase the former Presto Industries manufacturing facility from the Otero County Economic Development Council and renovate it into a food-grade manufacturing facility to service a growing regional and nation-wide need for baked cookies and snacks. This would be done over a period of about one year followed by the systematic installation and operation of six lines of baking equipment over a six-year period.

The first line of equipment will be operational one year after contract signing, and each new line of equipment will become operational at approximately one-year intervals after that until all six lines are in operation. Once completed, it will be one of the largest facilities of its kind in the United States. Project CRISP will create approximately 20 jobs at its inception and will ramp up to 400 jobs by the sixth year. The average salary will be \$9/hour. Mr. Carr went on to explain how OCEDC arrived at the proposed incentive. OCEDC uses a fairly sophisticated model to estimate the total economic impact a business would have in Alamogordo and Otero County. (After the state saw how OCEDC used the model, they adopted it for their use in justifying state incentives to the legislature.) There are over 80 discreet inputs to the model based on the company's activities including the number of jobs, type of jobs, salaries, business services purchased locally, trucking activity, business by out-of-town guests, utility usage, etc. After all of these factors are inputted, the model shows the total economic impact to Alamogordo. Since the City of Alamogordo is offering the incentive, the net benefits to the County, although substantial and in this case almost \$6 million over 10 years, are ignored. After establishing this total economic benefit, the proposed incentive is calculated. In this case, OCEDC calculated an incentive that balanced the need to attract the company against the money in the Economic Development Fund and the cash flow in the fund. The model showed that the City could afford a \$3 million incentive that would be paid out over 12 years.

The unusually long pay-out period of the incentive was needed to meet the cash flow in the Economic Development Fund but has the added benefit of Sunbaked Biscuits, Inc., staying in Alamogordo. It also mitigates the City's incentive risk. The incentive was also created to show a

relatively quick pay back period. In this case, the pay back to the City is 5.31 years. The pay back period is the amount of time it will take the City to recover the total \$3 million incentive package. The proposed City incentive would be paid out in the following manner: \$500,000 at contract signing; \$1 million paid out over the first year similar to a construction loan; \$500,000 paid at the beginning of the second year; and \$1 million paid out over the following 10 years in equal payments of \$100,000. The City's up-front incentives will be secured through a mortgage on the manufacturing facility that OCEDC has valued at \$1 million with an assessed value of \$2.2 million from 1996 or 1998.

The Project CRISP incentive would be paid back over a time period commensurate with the jobs being created. Given the flow of the incentive, the value of the plant, and the fact that the incentive money is going right back into the plant, OCEDC believes the City is in a very secure position. Standard new construction of an industrial building of this type costs approximately \$60 per square foot, which would put the cost of a new building of this size at a little over \$10 million. The economic model looks at the City's incentive from an investment perspective as if the City were a partner in the venture. Consequently, it shows a payback period of 5.31 years with an average rate of return on the City's \$3 million of 22%. It is significant to note that SBI will pay back to the City an economic benefit far faster than the City will pay out the incentive. The model also shows the first ten years of the project, and the total number of new direct and indirect jobs created is 937. The salaries to be paid to direct and indirect workers total \$151,264,228. The taxable gross receipts expected in the area over that ten-year period equal \$98,768,666. The market value of the property to be added to the local tax rolls is a little over \$5 million. The net benefit to the City over the ten-year period will be \$8,055,295, and the net is after they've already been paid the \$3 million.

Mr. Carr summarized what this project means to Alamogordo. It would result in the reutilization of the former Presto Industries plant, a 170,000 square foot industrial facility that has been vacant since Presto left with over 300 jobs that were lost. It would also bring about the reintroduction of a large-scale manufacturing facility into the economy, which Alamogordo has not had since Presto Industries moved their operation to China a little over four years ago. There will also be the creation of 400 jobs within 6 years that will pay an average wage of \$9/hour. Additionally, there would be the filling of a significant niche in the diversification of the economy that is over 50% dependent on Holloman Air Force Base. Once all six lines of equipment are in operation, Alamogordo will be the location of one of the largest cookie and snack food manufacturers of its kind in the nation. In accordance with the Alamogordo Economic Development Strategic Plan, this project meets the economic development goals by diversifying the local economy, supporting the development of industrial parks that will be attractive to new businesses, and using public funds to assist in the development of new jobs. The project meets the standards set forth in the Alamogordo Economic Development Strategic Plan for the type of business the Plan seeks to include, which is industry that meets all environmental standards, industry that does not use large amounts of water, industry that helps improve the local per capita income, and industry in light assembly or manufacturing that is labor intensive and helps diversify the economy and lessen the reliance on federal government employment.

This project has complied with the information requirements of the Alamogordo Economic Development Strategic Plan including the number of jobs to be created, the company's financial history, the business plan, compatibility with the City's strategic goals, resources available to the company and financial and marketing projections. This project meets the investment protections outlined in the Economic Development Strategic Plan by providing security in the form of a lien or mortgage and also makes a provision for performance reviews of the project. The contributions of each party will be clearly stated. There will be separate accounts for all financial dealings, and annual audits will be performed. It is the opinion of the Otero County Economic Development Council that the City of Alamogordo should approve this ordinance. Mr. Carr offered to answer any questions.

Mr. Carr introduced Chris Roberts, President of Sunbaked Biscuits, Inc. and Tim Whitehead, Chief Financial Officer.

City Manager McCourt explained that the step the Commission is now taking is the first step in saying that this proposed project meets the Economic Development Plan and is an eligible project. The next step is actually talking about the details of the Agreement and the securities.

Christopher Roberts, President, CEO and shareholder in Sunbaked Biscuits, Inc. took the opportunity to introduce himself and gave a brief statement concerning Sunbaked Biscuits, Inc. He is a recent graduate of the University of Idaho College of Law where he obtained the degree of Juris Doctorate. He grew up in the baked goods industry and has over eight years of hands-on experience in the industry. Sunbaked Biscuits is a New Mexico corporation that was specifically formed in order to undertake this venture in Alamogordo. The investors of Sunbaked Biscuits, Inc., have invested over \$7 million in equipment and after a period of one year will invest another million dollar's worth of cash in the spring. It currently consists of Mr. Roberts and Mr. Whitehead.

He stated that SBI plans to produce various products in the production facility that is planned for the Presto facility. These include fig bars, various shortbread cookies, vanilla wafers, some snack crackers and any other product that the research and development team deems worthy to break into the market. At the previous City Commission meeting, a City Commissioner had raised a specific concern about the feasibility of this plan in Alamogordo. Mr. Roberts addressed this by pointing out that there are a few important factors that make this project very feasible including the following: First, many major suppliers of baked goods have been recently consolidating bakeries under their control. This has entailed the buying of bakeries and eliminating of equipment to produce baked goods. Since historically there is a substantial annual growth in the industry, demand is increasing while supply is being eliminated by these major players. This creates a favorable market condition to put a facility at the old Presto plant. Second, the baked goods and snack industry is an \$11.2 billion industry. This plan projects that when SBI is in full production, it will have gross revenue of about \$81 million, which means that SBI is trying to capture less than 1% of the overall market at the end of six years. That, combined with the industry growth, makes the project very feasible.

He closed with saying that since he had been living in Alamogordo many people have asked him why SBI has chosen Alamogordo as its potential manufacturing location. He thinks that is an important question that should be addressed in this forum. He confirmed that the state incentives as well as the local incentives are integral to the commencement of this project. However, he also stated that the biggest draw to Alamogordo is the permeating sense of community. He let the Commission know that everyone he has had the opportunity to deal with in this process has handled himself or herself with the utmost professionalism and made the company feel welcome. He expressed confidence that the Commission would exercise the same amount of professionalism in the decision today. SBI feels that the project would be a deal that would benefit both the community and the company, and if both agencies are willing to invest, the project will become a very successful venture. He respectfully asked on behalf of Sunbaked Biscuits, Inc., that the Commission would affirm the commencement of the project so SBI could become a beneficial member of the community. Finally, he closed by thanking the Commission for their time and consideration and offered to respond to any questions.

Commissioner Cooper requested clarification on the amount of money required to renovate the building.

Mr. Roberts clarified that the plan projects \$1.85 million to renovate the building.

Commissioner Cooper asked if that included setting up the lines.

Mr. Roberts explained that the last portion in the spring does include setting up one production line as operable.

Commissioner Cooper pointed out that the initial line would have to be in operation before SBI could go out and sell the product.

Mr. Roberts said that SBI is currently negotiating some private label contracts, and they will have their own brand. However, in order to finalize those contracts, the equipment does have to be in place so that the equipment as well as the quality of the product can be examined.

Commissioner Cooper asked if the upgrade would be done by a company that SBI preferred or if it would be done by local contractors.

Mr. Roberts stated that the current plan is for SBI to work with local subcontractors and some local general contractors. They will also employ up to 20 people to do what is necessary to get the production line up to capacity.

Commissioner Cooper asked what that entailed.

Mr. Roberts explained that there is extensive work in setting up the lines as well as extensive training for the employees on each line because of the various pieces of equipment that are used in producing baked goods as well as the substantial clean-up work. In order to create jobs, Mr. Roberts explained, SBI sees no reason that individuals shouldn't be employed by SBI in order to do those things.

Commissioner Cooper expressed that his reason for asking was that the building would have to be up to code before setting up the lines and wanted to confirm that local contractors would do the bulk of the work.

Mr. Roberts clarified that it was not the bulk of the work. SBI has entered into some contracts where they have the use of a general contractor's license. He stated that some things needed to be done by subcontractors due to the time constraints, but that SBI does allow for the plan to employ 20 people to do the substantial amount of work to get into production. These individuals would not be in the construction field but would be trained as the maintenance crew. Because of the specialized nature of the business and the extensive nature and different types of equipment, Mr. Roberts explained that it is important to have a maintenance crew trained ahead of time. In that regard, one year of training would be very beneficial to SBI.

Commissioner Cooper wanted further clarification about the cleaning up and modernization of the building itself.

Mr. Roberts stated that in order to comply with government requirements SBI would use subcontractors where they needed to in order to get up to code.

Commissioner Cooper wanted to know what percent the subcontractors would fit in.

Mr. Roberts stated that the plan called for 20 full-time employees of SBI, but excavation work would be done by a subcontractor. The electrical work needs to be done by a subcontractor as well as a survey of the mechanical work, re-ducting, and things like that. As far as nailing down a percentage, Mr. Roberts did not feel comfortable doing that.

Commissioner Cooper stated that he did not feel comfortable with 20 people working on the building to prepare for the business not knowing whether they were capable of working on electrical or pouring concrete, etc.

Mr. Roberts stated that wherever the employees would be capable they would be used as the goal of SBI is to create jobs in Alamogordo.

Mayor Carroll stated that with no further questions he would entertain a motion for approval of Ordinance 1248 approving the project in accordance with the Alamogordo Economic Development Strategic Plan, Project CRISP.

**Commissioner Cole moved to approve Ordinance 1248 approving the project in accordance with the Alamogordo Economic Development Strategic Plan, Project CRISP. Seconded by Commissioner Moncada. Mayor Carroll, Mayor Pro-Tem Griggs, Commissioner Moncada, Commissioner Cole, Commissioner Robertson and Commissioner Ledford voted "aye." Commissioner Cooper voted "nay." The motion carried by a roll call vote of 6-1-0.**

### **CONTRACTS AND AGREEMENTS:**

2. Project Agreement and Construction Loan Mortgage with Sunbaked Biscuits, Inc.

*Recommendation:* Approve the Agreement and Mortgage.

Before beginning the discussion of the Project Agreement and Construction Loan Mortgage, City Attorney Ken McDaniel responded to Commissioner Cooper's questions indicating that the reason the Commission received two more documents was that because they were negotiating contract language until 1:30 the afternoon of the meeting. He offered to explain what had changed since the Commission received their version at 5:00 yesterday.

Mayor Carroll suggested that the discussion be held until after City Manager McCourt or Mr. Carr went through the details of the Project Agreement and exactly what it is that the City is proposing to do along with what it is that Sunbaked Biscuits is proposing to do under this Project Agreement.

City Manager McCourt explained that the proposed project is to build a manufacturing operation in the old Presto building. This operation would generate baked goods. The project would start with doing renovation on the existing building. Therefore, the first step, if the Agreement is ultimately approved by the City Commission, is that Sunbaked Biscuits would receive half a million dollars through the Economic Development Fund. During the course of the next twelve months while renovation is going on, the building will of course have to have all of the approvals from the building department and any permits that are required on admissions and so on from the various entities. The City will be monitoring the progress of that renovation work. As work is completed, draws essentially can be made on up to an additional million dollars. During the next year, a million dollars can be released as renovations are being accomplished within the building. The City will be verifying that with the code staff. There would be the original \$500,000 with what is essentially a construction loan. As construction is completed, SBI will be able to draw down portions of that money.

At the end of year one, presumably when the construction is completed and one line has been tested and is ready to run, Sunbaked will receive an additional half of a million dollars. At that point, the City will have a mortgage against the building and the land in the amount of \$3 million. The city has \$2 million out and a mortgage of \$3 million against the property and land. Each year, beginning at the end of year one, a job audit will be performed to see the number of jobs that have been created, and City Manager McCourt believes that was what was being mentioned with regard to the jobs being created during the first period. He also had the dollar amount that each job equates to. Based on the number of jobs created, for the equivalent of each full-time job, SBI gets a write-down of the mortgage in the amount of \$2,765. If ten jobs are created, they would get \$27,650 subtracted from the \$3 million mortgage. At the end of year one if they produced the equivalent of ten jobs,

that's what they would get subtracted from the mortgage. If they produced 20 jobs, they would get twice that amount subtracted. If they produced 100 jobs during that first year, they would get the equivalent of \$276,500 written off. It depends on the job creation. That is what is being looked for-- the payroll returning to the community. When that payroll returns to the community, it then buys goods and services. It circulates within the community. Ultimately, that's how the City gets paid back the money it is paying up front. Again, each year there is a job audit that occurs at the end of the year, and the calculation is done to see how many jobs have been generated. At this point there is a realistic projection of what that will take. If the projections hold true, by the end of 72 months, the City will have received back \$3 million in benefits. The City will not have paid out \$3 million in cash by that time.

Beginning at year one, the City puts up \$500,000. During the first year, the City puts out \$1 million. At the start of year two, the City puts up another \$500,000. By the start of year two, the City has put up \$2 million. For the next several years, three through twelve, the City at the start of each year puts up \$100,000, which is again during the same time that jobs are being produced, and at the close of each year, the City is writing down the mortgage on the property. If it goes as projected, the City will have recaptured the \$3 million by the 72nd month but will not have paid out \$3 million by that same time. The City would still have another six years to pay out \$100,000 a year because the 72nd month is six years.

If things don't turn out as anticipated and the number of jobs is less than projected, the write-off on the mortgage each year becomes less than anticipated. If by the end of the 72nd month, six years, SBI is not producing 400 jobs and, in fact, hasn't produced 1,085 jobs during that first period, then the City takes the difference. If they produce 985 jobs instead of 1,085, the City would take 100 times the \$2,765 figure and subtract it from the future payments to Sunbaked Biscuits. They are penalized for not meeting the job projections. The City would still have the mortgage on the building until it is fully paid off through job creation. If, in fact, things aren't going as anticipated, the future payments are reduced, and the City maintains its security in the building and the land.

Mr. McCourt offered to go through the Agreement question by question.

Mayor Carroll asked that City Attorney McDaniel go through the document and explain what changes had been made.

City Attorney McDaniel explained that the latest version of the Agreement that was provided to the Commission at about 4 o'clock yesterday did not contain the changes that had been made since then.

On the bottom of page 2 of the Project Agreement under "Labor Shortage," further definition was added. The initial Agreement indicated that it was an unemployment rate of 3% or less. The following was added: "...for a period of 36 consecutive months." The obligations under the Agreement would not be subject to little monthly up and down bobbles in the unemployment rate. If, however, there is a sustained boom where it drops below that for 36 consecutive months, then some of the obligations are tolled under this Agreement. It does not eliminate them but tolls them during the time that condition exists.

Mayor Pro-Tem Griggs had asked that at the bottom of page 5 the following words be added: "Pursuant to this agreement, beginning on the commencement date..."

Mayor Pro-Tem Griggs explained that what was a concern to him at that particular point in the contract was that the contract was quite absolute. It just said beginning at this time the City would pay, pay, pay, pay. There was nothing that tied it to the terms contained in the Agreement. Adding the words stated above would clarify that the other terms of the Agreement take part in this and the City is not just going pay as the date comes up.

Commissioner Cole asked City Manager McCourt what would happen if there was unemployment or positions were eliminated due to lack of demand for the product.

City Manager McCourt explained that it certainly could occur, but what would happen is it would still come into the accounting at the end of each year when the number of jobs created is taken into account. He clarified that it is job equivalents that have been created that is looked at to pay off the mortgage. If the estimate is not met, though City Manager McCourt stated that he believes the estimate to be reasonable, not as much of the mortgage gets written off. The security is still in the Mortgage Agreement.

The worst case scenario would be that Sunbaked Biscuits would go out of business and no jobs would be created. Even in those circumstances, the City's money is still secured against the building and property. That is not anticipated to occur, but in theory it could. City Manager McCourt assured the Commission that the City has worked to ensure that there is collateral to secure the money that the community is putting out to get this project going even in the worst-case scenario.

Commissioner Robertson asked if an appraisal had been obtained for the equipment.

City Manager McCourt said that they had discussed whether the City's investment would be secured by the plant, land and equipment or just by the plant and land. The way the Agreement is written, the City's investment is secured by the plant and the land, apart from the equipment. He referred to the figures Mr. Carr mentioned in his initial discussion regarding the value of the building and appraisals as well as what commercial buildings of that type are being valued at now.

Mr. Carr explained that the building was appraised at about \$2.3 million roughly seven years ago. However, a million-dollar figure has been affixed to it due to the fact that it has not been in operation for several years. That figure was somewhat arbitrary, but was a figure OCEDC felt was reasonable given the condition of the building and the fact that they want to encourage a company to come in. Mr. Carr believes that the million-dollar figure is less than the true value, but, again, is a figure OCEDC felt would be attractive to a company. There is an appraised value on the books of a little over \$2 million, but that was a few years ago. The million-dollar figure was mutually acceptable between the buyer and OCEDC.

Commission Robertson went on to ask whether the actual value of the building at this point takes into account the \$1.8 million worth of upgrades and improvements that are planned to be put into the building.

Mr. Carr indicated that was correct and went on to explain that it also does not take into account the standard construction figure provided by Mr. French of \$60/square foot for a new industrial facility. That would place the value of a newly constructed, 107,000 square foot industrial building at over \$10 million. Mr. Carr stated that OCEDC is providing the building as collateral to the City free of charge.

Mayor Carroll clarified that it was actually Sunbaked Biscuits that would be providing it.

Mr. Carr agreed but pointed out that it was OCEDC's building originally. The City would get a million-dollar building and put \$2 million into it for a total City investment of \$2 million. The whole incentive would be \$3 million, but depending on how it is calculated, that would create a building worth something less than \$10 million but something more than \$2 million.

Commissioner Robertson clarified that his question wasn't on the building. He feels like the building already belonged to the City to start with. He doesn't feel like the City is actually holding a note on it. He did, however, want to know if the equipment had been appraised.

Mr. Carr explained that the City has no interest in the equipment. That is strictly for OCEDC.

Commissioner Robertson questioned whether that was part of the collateral.

City Manager McCourt answered that it is not part of the City's collateral. There may be a separate agreement between OCEDC and Sunbaked Biscuits, but it is not part of the City's collateral.

Mr. Carr also explained that very early on the City felt that the equipment was insufficient collateral because its value was very difficult to assess. OCEDC has done a separate evaluation of that equipment, but at the City's request, that is not part of the Agreement.

Commissioner Cole inquired regarding the code standards for the building as it is refurbished or rebuilt. He alluded to a previous conversation between Mr. Carr and himself when Mr. Carr had given him some figures as to what the increase in value would be. He asked Mr. Carr if he recalled that conversation and those dollar values.

Mr. Carr stated that he did not recall those things.

Commissioner Cole wanted to confirm that it was a substantial increase in the value of the property.

Mr. Carr said that once the building was put back into use and made operational again, he felt that the value would be closer to \$10 million and certainly more than the \$2 or \$3 million dollars that the City would have put into it. He restated what was pointed out earlier that if the Economic Developmental Strategic Plan allows a spec building to be created, or an incubator building, or if the City were to try to build the Presto facility right now to make an incubator out of it to attract industry, it would cost about \$10 million. Under this plan, the City is getting an incubator with a buyer and a manufacturer to go into it for \$3 million.

Commissioner Cole went on to ask if after the first line was put in the building would already have been prepared for the other five lines and the equipment would just have to be put in place.

Mr. Carr explained that the plan was to significantly modify the building including its current shape. One portion of the building is U-shaped. That "U" would be eliminated to allow for the ovens to flow parallel to each other. The plan is to significantly push out one wall to square off the building and allow those lines of ovens to be put in place. There will be not only cosmetic changes to the building, cleaning up and renovation, but there will actually be some structural modification of the building to allow for the smooth flow of the product through the building. One of the things that attracted Sunbaked Biscuits, Inc., is the fact that it was originally a manufacturing facility. Even Presto used it in such a way that raw materials came in one end and finished product went out the other. The flow of the building was built into the building because that's what it was designed for, and SBI's product will do the same thing.

Commissioner Cooper asked Mr. Carr if the building would go on the tax rolls once it is brought up to speed or even before.

Mr. Carr said that it would, which is one of the advantages that would occur. He reminded the Commission that Presto Industries had an industrial revenue bond that took the building, all of the property, and the land off of the tax rolls. Under this plan, it would be put back on the tax rolls, which would be another significant advantage for bringing somebody into the building.

Commissioner Cooper asked for clarification regarding the employment numbers.

Mr. Carr explained that what was being discussed was man-years of employment. The total number of jobs created over the period of six years would be 400. That has not changed. In order

to facilitate auditing the number of people working and the calculation for how to give SBI credit for economic impact, a method was devised for adding up each year's number of jobs. If 20 are added the first year, 70 the second and 77 per year out to the six years, that's 400. If you add all of those numbers together, you have a number of man-years over 1,000. When that is then divided into the incentive, a calculation is arrived at of how much each man-year is worth. When the City Finance Director audits the company and asks how many people were hired in a given year, it is actually how many man-years have been created in that year. It is a fairly simple calculation, and it is then easy to calculate how much credit or deduction the company gets. It doesn't have anything to do with the economic impact. It is simply a way to calculate the incentive.

Commissioner Cooper inquired as to whether the company would be including any types of benefits or insurance along with the \$9/hour salary and wanted to know if it would be provided what the percentage would be.

Mr. Carr said that Sunbaked Biscuits, Inc., did plan to offer medical benefits to the employees.

Mr. Chris Roberts provided additional details and stated that the current plan calls for implementation of a benefits package once the renovation of the building is complete. At that point, along with the initial 20 employees there would be an additional 55, so a total of about 75 or 80, and all of the employees would be eligible for the benefits package including medical insurance.

Commissioner Cooper asked for the particular percentage the employees would have to pay and if SBI would match those dollars.

Mr. Roberts explained that SBI is currently negotiating with some medical providers under group plans to negotiate the percentage that is paid. In the quotes received so far, SBI would be paying a higher percentage in order to lower the premiums that the employees would elect to pay. The numbers that have tentatively come back have SBI paying roughly 67% of the cost.

Commissioner Cooper stated that what bothers him about the construction and modification of the building is that two months ago the Commission wasn't worried about that, but with the various disasters around the country, building materials have spiked in price along with the cost of gasoline. Everything is increased. He questioned whether that had been taken into consideration.

Mr. Roberts assured the Commission that those issues had been taken into consideration, and in fact some of the materials had been re-priced that caused an increased cost on the material end. As was pointed out before, however, if SBI is able to do some of the work through employees, completion of the renovations would still be under \$1.85 million. There is also a buffer zone to minimize the impact of such situations should they occur.

Commissioner Robertson went back to the question of whether the City would hold a note on the equipment. He stated that in his last meeting with Mr. Carr that was the plan, and he wanted to know what had happened to change it.

Mr. Carr stated that in agreement with the City, OCEDC and Sunbaked Biscuits had agreed not to do that because SBI felt that would encumber their ability to borrow against the commitment or do other things with it. OCEDC felt there was sufficient security in the building alone for the City. Consequently, they did not need or want to insist on it.

Commissioner Robertson questioned that point in that he felt the City already owned the building and in addition the City is loaning the money to put into the building.

Mayor Carroll stated it is OCEDC, a stand-alone corporation, which owns the building.

Commissioner Robertson said that the City is joined at the hip with OCEDC, and his question is that if the building is taken back when the City is loaning the money to put into the building, they're getting the building back with the reconstruction in it. In his opinion, the City would not be getting anything back if SBI happened to move out. The City would be left with a building that possibly would not work for the next company that would want to move in, and the City would have to go through this process all over again. He wanted clarification as to what the City would be left holding if SBI ended up moving out.

City Manager McCourt wanted to make clear that the building is old now and what is being discussed is bringing it all up to code so that even if nothing else is done, when the renovations are completed, the value of the building would be substantially increased. Sunbaked Biscuits, Inc., is, however, planning on doing much more than that.

Commissioner Robertson pointed out that they would be using City funds to do that.

Mr. Roberts stated that he appreciated the concerns of Commissioner Robertson and pointed out that an important thing to remember is that the equipment that is required by SBI to produce baked goods would be fixtures. It is basically like plugging in an appliance and bolting it to the floor. The funds received are going to be used to create a sterile and sanitary production facility. That doesn't mean that it's only good for baked goods. It will be possible to produce any other food-grade product in that facility as well as any other product that requires a sanitary environment, which is far from what it is now.

Commissioner Cooper said that he must go along with Commissioner Robertson in this because when he was told about this, he felt comfortable and thought it may be something good for the community in that the City would hold the lien against the building. That was what was discussed. The other things that have been discussed and it is now being said, no, we're not going to do that anymore--those things were not told to him either. He stated that he didn't know if the individuals responsible told anybody, and he gets a little sick and tired of having to work in the dark with these things being put upon him right out of no where. He felt he was then still expected to go along with it and say, yes, it's fine.

Mayor Carroll said that he didn't feel that was a question for Mr. Roberts to address, but rather it is between OCEDC and Sunbaked Biscuits and the collateral that is between the City and them.

Commissioner Cooper said that was the discussion that was made.

Mayor Carroll said that is why part of what the Commission received was some last-minute changes. All of these things were part of the negotiations around the project document and the mortgage document.

Mr. Roberts reminded the Commission that the City is not going to be out the entire \$3 million. In the first year when the renovations are taking place, the City will be out \$1.5 million. He said that the building and property alone in the condition it is in now is enough to secure that, and it doesn't take into account the improvements that are going to be placed into the facility.

Commissioner Cooper said that the building had been sitting there for seven years and nobody tumbled on it until this came up. He brought up the second lien against the equipment and questioned whether the equipment was new or used.

Mr. Roberts said that some of the equipment is new but the majority of it is used. He said that the reasons that through negotiations this decision had been reached are, first, the building and the property are enough to secure the City's interest, and, second, SBI does need some flexibility in order to operate the business.

Commissioner Cooper said that even with the improvements in the building and bringing it up to code it is still 35 to 37-years-old.

Mr. Roberts said that the concrete in the building and the steel structure is in very good condition. When the improvements are added, especially taking into consideration the climate of destruction and increased cost of materials, the building value is going to increase substantially. There is no way around that with the additional money that is being put into it.

Commissioner Cooper said that the location of a building dictates the value of it. If \$5 million is put into a building and all of the rest of the buildings around it are worth \$500,000, the \$5 million would never be gotten out of it because the location would dictate a lesser amount equivalent to those buildings worth \$500,000.

Mr. Roberts said he understands that and the condition of the building is important, but through SBI's analysis, they have found Alamogordo to be a very healthy location for a production manufacturing facility especially in their industry because most of the product that is being sold on the West Coast has to be shipped from the East Coast.

Commissioner Cooper asked with regards to bringing the raw materials in to manufacture the product whether SBI has their own equipment or transportation or if they would have to lease it.

Mr. Roberts stated that the business plan allows for bringing in a trucking division in-house. Initially, SBI will have to contract with truckers in order to carry their product, but over the six years they have a plan to implement an in-house fleet at their cost that will grow to 60 or 70 vehicles.

Commissioner Cooper asked about whether SBI would be manufacturing for brand names?

Mr. Roberts said they would have their own brand names, but the bulk of the contracts would be private-label contracts for grocery chains.

Commissioner Cooper asked if that would be like discount houses such as Dollar General, Dollar Foods and other places of that nature.

Mr. Roberts said that due to their pricing and the situation they are able to be super-competitive in that market and have really positive feedback on those contracts. The contracts are held up until SBI has a facility that is up to par to create the products.

Commissioner Cooper asked if they would have to put a product out in order to sell it.

Mr. Roberts said the plan allows for the production of samples in order to produce it, however, it would be necessary in order to finalize the contracts.

Commissioner Cooper pointed out that it is hard to sell inanimate object that people can't see, touch or taste.

Mr. Roberts did point out that the contracts also require an inspection of the facility itself. Is it sanitary? Can you produce a food that can be consumed by humans?

Commissioner Cooper then asked if the people SBI contacted to buy their finished product would have the opportunity to take a tour through the facilities to ensure that what they are investing in and selling is going to be up to par.

Mr. Roberts said that was the case. He also said that the American Institute of Baking, located in Kansas, comes in and rates the facility. All across the industry, the purchasers tie their contracts to that rating.

City Attorney McDaniel then continued to explain the changes that had been made to the Project Agreement. The final change is on page 10 §6.7. Previously force majeure had excused performance. This had been changed to where a force majeure tolls the time for the performance but does not excuse it. In other words, if something happened such as the U.S. had a war, implemented sugar rationing, and SBI couldn't bake cookies because there wasn't any sugar for a period of two years, that change would just put off everybody's obligations for that two-year period.

Mayor Carroll clarified that the document that the Commission members had under the red cover along with the two changes specified is the Project Agreement. He then asked City Manager McCourt to continue.

Commissioner Robertson asked where in the changes it was taken out that the lien would not be held on the equipment.

Mayor Carroll said it was in the mortgage and has nothing to do with the Project Agreement.

Commissioner Robertson then asked what city level it was that made the decision to do that.

City Manager McCourt said he had participated in those discussions along with OCEDC and Sunbaked Biscuits, and that is where the decision was made.

Commissioner Robertson asked then if it was made at the City Manager's office, and City Manager McCourt responded affirmatively.

City Manager McCourt said that there was one other minor change in the definition section on page two where it used to read, "full-time job means..." It now reads, "full-time job/job..." Those terms are used interchangeably in the Agreement.

Commissioner Cole said he had no problem with that but wanted a definition of a full-time job. Is it 50 weeks times 40 hours?

City Manager McCourt said that a full-time job equivalent is also in the definition and works out to be 2080 work hours multiplied times \$9/hour resulting in a wage of \$18,720.

Commissioner Cole asked what page that was.

City Manager McCourt said page two, and he then apologized to the Commission if he had overstepped his bounds. He said he had only known one commissioner to have really discussed the equipment and the security on the equipment as being an important component. City Manager McCourt does feel that the City's investment is quite secure in this Agreement.

City Attorney McDaniel pointed out that in a negotiation there is a lot of give and take, and that was one of the give and takes in this negotiation. He said he had participated in that Agreement along with the City Manager. He pointed out that the Commissioners cannot be brought into the negotiation process so it is necessary to do a good faith effort to negotiate on behalf of the City. These are the terms that they came up with.

City Manager McCourt pointed out again that with the minor items they had addressed, this is the Project Agreement that the Commission has had for some time. He said he touched the highlights of what has been accomplished. It's been reviewed by two legal guys from SBI's side, and legal

people from the City's side as well as himself and Mr. Carr. He feels it does say what will accomplish the goals that are to get a manufacturing operation built, to secure the public's money and to get the City's pay back if that doesn't come as quickly as anticipated. The amount of investment that would be put into this was reduced. Also, of course, it could get done faster, but the City would not be under any obligation to pay any additional money.

Commissioner Cooper wanted to make a statement for the record that decisions are being made to alter the different agreements, and though it may be that the Commission can not be part of that loop, when it comes to handing out the \$3 million, that is up to the Commission to do. Consequently, he feels they should have all of the information necessary to make that decision. After all, he pointed out, it's not personal money. It is the taxpayer's money being used in this venture.

Mayor Carroll said that what is being presented is for the Commission's decision. This is what has been negotiated on behalf of the City, on behalf of OCEDC, and on behalf of Sunbaked Biscuits. It now comes before the Commission for either agreement or disagreement. He doesn't think anyone has over-stepped any authority or any bounds in negotiating a contract. That is how it's always done, and now it comes to the governing body to either accept the contract as negotiated, not accept it, or attempt to re-negotiate it. That is where the Commission is during this meeting.

Commissioner Cooper said he believed he had said that.

City Manager McCourt thanked the Mayor, and he wanted to emphasize that no commitment had been made to Sunbaked Biscuits. The staff does not have the authority or the power to do that, but they have tried to negotiate in good faith with SBI. He feels the document is reasonable, and he understands there is risk involved in any enterprise but thinks adequate security has been provided to protect the public's money. City Manager McCourt said he is extremely conscious of the need to do that and has been since the beginning.

Mayor Carroll then redirected the discussion to the mortgage document and asked that City Attorney McDaniel address any changes that had been made to it.

City Attorney McDaniel said that, again, the Commission had the latest version as of around 4 o'clock the previous day. As mentioned, language was still being negotiated after lunch on the day of this meeting. The changes that have been made from yesterday's version to the version just given to the Commissioners begin on page two in the first full paragraph. The City negotiated a better provision than what was a standard form banker's type mortgage that had been gotten out of AmJur Legal Forms. In lieu of the statutory right of redemption after foreclosure that in New Mexico is 90 days, a right of redemption of 45 days was negotiated. That means there is less time the building might lie fallow after a foreclosure before somebody feels confident to move forward with its redevelopment. That's a change to the City's benefit.

There is another change in §9 on Default. There was a little bit of confusion regarding whether AmJur had messed it up or the computer had dropped something in the translation to Microsoft Word, but there had been two sets of small Roman numerals that repeated even though they were different provisions. In order to clear that up, an "A" was added to define the default events and a "B" to define what is done in the event of default. Consequently it is referred to as a §9A paragraph or §9B paragraph.

As far as a substantive change, there was one in §9B.3, which is the most draconian remedy in the event of default, declaring the whole thing due and owing, canceling the Agreement and demanding the money. SBI has asked that they be given a written notice and 60 day's time to cure, which is fairly standard in the industry before the contract goes away. SBI had initially wanted 90 days, but they agreed to 60. City Attorney McDaniel said he thought that was a reasonable time to cure.

However, time to cure does not affect the other remedies the City has in the event of default. It only applies to the remedy of completely tearing up the Agreement and demanding all the money.

In §16 a word had been left in that was strange because the numbering of the document had changed with the taking of provisions out that weren't suitable to this particular Agreement. In the second paragraph it had said, "If Mortgager neglects or refuses to act pursuant to this §18..." It was actually §16, and so they just took out the 18. Now it just says, "...refuses to act pursuant to this section." That was just an error that occurred because the document had been renumbered. It was not a material change.

Mayor Carroll clarified then that with those changes what the Commissioners have under the red cover is the proposed Mortgage Agreement.

Mayor Carroll asked if City Manager McCourt had anything to add.

City Manager McCourt replied that on the Mortgage Agreement they would have to speak with the attorney. City Manager McCourt said he had read through it and worked on it, but City Attorney McDaniel really has the best understanding of the document.

City Attorney McDaniel said that the form was pulled out of AmJur legal forms and is basically a construction loan mortgage that would be used by a bank for a construction project. That is essentially what this project is--a construction project and the ramping up of a business. A couple of paragraphs were eliminated that were not applicable. There was verbiage about condominiums that obviously would be relevant if apartments were being built but wasn't relevant to building an industrial plant particularly where there were already agreements between Sunbaked Biscuits and OCEDC that the industrial plant would not be subdivided to different tenants. Consequently, a couple of paragraphs were taken out because they were dealing with condominiums. Other than those, the document was kept as is with the changes that the Commission has seen in red lines.

Commissioner Robertson asked a question regarding page 5 of 15 in the insurance section. It says that SBI has to take care of the insurance, but there is nothing about the City being on their as the Mortgagee. He asked if the City would be required to be on the insurance policy as the mortgagee.

City Attorney McDaniel said he believed it was in there somewhere. It says "...insured for the benefit of Mortgagee against loss and..."

Mayor Carroll said that the City would have to approve the amount and the company.

Commissioner Robertson pointed out that there is nothing in the document that says the City would be on there as the mortgagee. If there is a fire or other disaster, SBI would collect 100% if the City is not involved in it.

City Manager McCourt pointed out §3, Stated Insurance, page 5 of 15. It says, "...with loss payable to Mortgagee with contribution to Mortgagee pursuant to New Mexico standard or other mortgagee clause satisfactory to Mortgagee." That requires the mortgagee to sign off on it as loss payee. Through the insurance policies that have been obtained, the City is named as loss payee.

Commissioner Robertson said that the document doesn't say that the City is on there as a mortgagee. It just says that SBI will supply a copy of the insurance.

Mayor Carroll said that about halfway down the document it reads, "...insurance which insures against any loss or damage to the premises with loss payable to the Mortgagee."

City Attorney McDaniel said that was with the mortgagee being the City, which makes the City a loss payee, and that is how it should appear on the face of the insurance policy.

Tom French, member of OCEDC, said he is not present at the meeting as a businessman today. He disclosed that although as the Commission knows he is in construction, he does not have any financial ties to this deal so he is a disinterested party. He addressed Commissioner Cooper and said that he thought Ed Carr had done an excellent job of asking the opinion of a lot of people in negotiating this contract where he didn't have the expertise. Mr. French said they talked a lot about the value of the building once this investment is put back into it, and the most difficult part of that is establishing a current value. It is much easier to establish a value once it is renovated because then it becomes marketable. The problem today is that it's not really marketable. Once that \$1.5 million is put into the project, OCEDC believes that the marketable value of the property is probably \$10 million. As a taxpayer himself, Mr. French said, that is a better method of security to the taxpayer than the equipment itself. The value of the equipment is dependent on somebody else's ability to take that particular equipment and put it into a business use. That is why the building under this scenario is an excellent method of security for the taxpayer. He said he didn't know if they could get any better than this. When OCEDC and the City of Alamogordo partner up with a business, there is going to be an element of risk. That is what business is all about. It's not foolproof, but this Agreement puts the City in an excellent position that is better than if it was being used as a call center. It is labor intensive, equipment intensive and much more difficult for SBI to pick up and move to another location. It is easier for a call center to do that. Half of the money up front in the first two years is put back into the business or back into the property. That means if it does go belly up, OCEDC can turn around and market that to other businesses. That has been one of the drawbacks that OCEDC has had in talking to potential companies coming in--the lack of availability of the building. Mr. French said he felt that those points speak to some of Commissioner Cooper's concerns.

Mr. French said that Mr. Roberts has said he is going to use local trade contractors. That answers part of the question in that a lot of the work is going to be maintenance-type issues, bring it back up to code and replacing equipment that is defective. That can be done under the purview of maintenance, and there are lots of local trade contractors that are very competitive who will be assisting Mr. Roberts in the parts of the work that their employees can't do. Mr. French said he hadn't seen the details of that, but he has seen the building and he thinks it's a pretty good project that bodes well for the taxpayer.

Mayor Pro-Tem Griggs requested clarification from City Attorney McDaniel regarding the last sentence on page 11, which starts off, "The Mortgagee shall not be required to determine..." What is that trying to do? What does it mean? Is it necessary, or is it not necessary? What is its purpose?

City Attorney McDaniel said it is a standard bank-friendly clause in mortgages. In this case, the City is the bank. The reason the bankers put that in is if they go after the Mortgager for misappropriating the funds and taking a trip to Brazil, they don't want the Mortgager coming back and saying, well, you didn't tell me that I couldn't do that, or you didn't adequately police me. You didn't police the fact that my factory foreman was taking this trip to Brazil without my knowledge. This puts it all on the company to make sure that they spend the funds properly or get dinged by the City without the City having any responsibility to look over their shoulder all of the time. The City can look over their shoulder but doesn't have to. They have no defense against having to pay it back or be held in default just because the City didn't look over their shoulder for every minute while they were building it. He said that bankers like that clause.

Poina Reese, a member of the audience, stated that she is a displaced worker from Presto. When she and others found out about this project, there was a lot of excitement among the people that the Presto building was going to be occupied again with a viable industry so that maybe displaced

workers would have a place to go. The impact that Presto leaving and going to China had on the community and on the workers was a lot of times very devastating. Ms. Reese said she is taking it on herself to be a spokesman for the people that there are many out there who worked for Presto who had resigned themselves that once it was gone they weren't employable anymore. Those are people in the community who can be drawn on and are fantastic workers. Ms. Reese said she had worked for Presto for almost 22 years, and that many of the other people at the meeting were also long-term workers. She said that at least when they receive questions like have you heard...they have some sense of what is going on and can say, yes, it is beginning to happen, isn't finalized or whatever. Everything that she sees from the perspective of a former Presto employee indicates that this would be a good thing for the people.

Mayor Carroll wanted to clarify that the fact that Presto left had absolutely nothing to do with the quality of the workforce that was in Alamogordo or the quality of the product. It was merely a corporate decision that had to do with the overall direction of the company and overall ability to compete. Alamogordo was one of their best locations, but in spite of the high quality of the workmanship and the employees, they were just not competitive in the world market. That is what forced them to relocate. There is a potential pool of very skilled and capable workers that SBI can certainly take advantage of.

Mayor Carroll reiterated that what is before the Commission is the Construction Loan Mortgage and a Product Agreement that will allow this project to move forward. He indicated that he would entertain a motion for approval of the Project Agreement and the Construction Loan Mortgage with Sunbaked Biscuits, Inc.

**Mayor Pro-Tem Griggs moved to approve the Project Agreement and the Construction Loan Mortgage with Sunbaked Biscuits, Inc. Seconded by Commissioner Cole. Even though not required, Mayor Carroll requested that the Clerk call the roll. Mayor Carroll, Mayor Pro-Tem Griggs, Commissioner Moncada, Commissioner Cooper, Commissioner Cole, Commissioner Robertson and Commissioner Ledford voted "aye." The motion carried by a roll call vote of 7-0-0.**

Mayor Carroll said that the Commission would sign the necessary documents as soon as they are in the final form and authorize the first payment under the Agreement. He thanked Sunbaked Biscuits, Inc. for coming to Alamogordo with this project and wished them all the success in the world.

The audience applauded the vote.

**Commissioner Cooper motioned to adjourn into Executive Session to discuss threatened and/or pending litigation and acquisition of water rights. Seconded by Commissioner Robertson. Mayor Carroll, Mayor Pro-Tem Griggs, Commissioner Moncada, Commissioner Cooper, Commissioner Cole, Commissioner Robertson and Commissioner Ledford voted "aye." The motion carried by a roll call vote of 7-0-0. Adjourned to Executive Session at 3:22 p.m.**

*"The Governing Body of the City of Alamogordo, New Mexico, hereby states that its special meeting of October 4, 2005 was called into executive session and the matters discussed in the closed meeting were limited only to those specified in the motion for closure."*

*/s/Donald E. Carroll*

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Mayor Donald E. Carroll

ATTEST:

*/s/Angie Rahn-Broyles*

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City Clerk Angie J. Rahn-Broyles  
(SEAL)

(Prepared by Ubiquis Reporting)

Approved at the City Commission Regular Meeting of October 25, 2005.